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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JANUARY 22, 1991
 See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT FEBRUARY 19, 1991

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

RULE ADOPTIONS

Interested persons comment deadline	800
BANKING	
Closing of branch offices	801(a)
Location of mortgage and consumer loan records	803(a)
Surety bonding of mortgage loan licensees	802(a)
COMMUNITY AFFAIRS	
Uniform Construction Code: plumbing and energy	
subcodes	804(a)
Elevator Safety Subcode	805(a)
ENVIRONMENTAL PROTECTION	
Endangered Plant Species Program	812(a)
Fee schedule for hazardous waste generators, facilities,	
and transporters	814(a)
Toxic Catastrophe Prevention Act Program: annual	
registration fees	818(a)
HEALTH	
Birth Defects Registry: reporting requirements	820(a)
Designation of additional Level II trauma centers	822(a)
Controlled dangerous substances: reopening of comment	
period	823(a)
INSURANCE	
New Jersey Property-Liability Insurance Guaranty	
Association: assessment premium surcharge	823(b)
Department fees	825(a)
LABOR	
Workers' Compensation	834(a)
COMMERCE AND ECONOMIC DEVELOPMENT	
Development Authority for Small Businesses, Minorities	
and Women's Enterprises: micro-loan program	828(a)
Development Authority: loan guarantee program	830(a)
Development Authority: direct loans	832(a)
LAW AND PUBLIC SAFETY	
Board of Medical Examiners: biennial registration fees	833(a)

ADMINISTRATIVE LAW	
Evidence rules: administrative correction to	
N.J.A.C. 1:1-15.4	847(a)
Public hearings: administrative correction to	
N.J.A.C. 1:30-3.3A	847(b)
COMMUNITY AFFAIRS	
New home warranties and builders' registration	847(c)
Landlord-tenant relations	848(a)
ENVIRONMENTAL PROTECTION	
Division of Fish, Game, and Wildlife	848(b)
Listing of hazardous wastes	852(a)
Green Acres Program: public hearing requirement on	
proposed transfers or use of Department-held	
land and water	852(b)
HEALTH	
Handling of human remains	888(a)
Hospital reimbursement	889(a)
Hospital rate setting	898(a)
Dedicated home health services and long-term care beds	
for AIDS and HIV-infected patients	905(a)
Long-term care facilities: Mantoux tuberculin testing of	
staff; pharmacy organization	905(b)
Interchangeable drug products	906(a), 907(a)
HUMAN SERVICES	
Recoveries involving county welfare agencies/boards	
of social services	856(a)
Physician's Services Manual	858(a)
Podiatry Services Manual	858(b)
Nurse-Midwifery Services Manual	858(c)
Medical Supplier Manual	858(d)
Independent Laboratory Services Manual	858(e)
Hearing Aid Services Manual	859(a)
Psychologist's Services Manual	859(b)

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **April 17, 1991**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

RULEMAKING IN THIS ISSUE—Continued

CORRECTIONS			
Attorney-client visits	859(c)		
Adult county facilities	860(a)		
INSURANCE			
Premiums for perpetual homeowners insurance	860(b)		
Personal Auto Injury Fee Schedules: Physicians' Services and Dental Services	861(a)		
LAW AND PUBLIC SAFETY			
Board of Examiners of Electrical Contractors: fee schedule	879(a)		
TRANSPORTATION			
Speed limit zones along Route 57 in Warren County	879(b)		
Parking and stopping restrictions along U.S. 9 and U.S. 40-322 in Atlantic County, U.S. 22 in Hunterdon County, and Route 28 in Union County	880(a)		
No stopping or standing zones along Route 23 in Kinnelon Borough and Route 35 in Dover Township	881(a)		
Midblock crosswalk on Route 33 in Hamilton Township	882(a)		
Midblock crosswalk on Route 91 in New Brunswick	882(b)		
Left turn prohibition on Route 27 in Franklin and South Brunswick townships	882(c)		
TREASURY-GENERAL			
State Police Retirement System: service credit for back pay awards	882(d)		
Governor's Council on Alcoholism and Drug Abuse: annual funding formula	883(a)		
TREASURY-TAXATION			
Property tax deduction for qualified low income groups	883(b)		
CASINO CONTROL COMMISSION			
Automated coupon redemption	885(a)		
EMERGENCY ADOPTION			
TREASURY-TAXATION			
Extension of time to file income tax return due to service in combat zone	908(a)		
PUBLIC NOTICES			
COMMUNITY AFFAIRS			
Community Services Block Grant Discretionary Program: availability of funds	909(a)		
		ENVIRONMENTAL PROTECTION	
		Clean Air Council: public hearing on "Health Alerts—Air Quality Standards"	909(b)
		Tri-County water quality management: Winslow Township	909(c)
		Tri-County water quality management: Winslow Township	910(a)
		Northeast water quality management: Oakland Borough	910(b)
		Monmouth County water quality management: Bayshore Regional Sewerage Authority area WMP	910(c)
		HEALTH	
		Deletion of batching cycle for rehabilitation hospitals and comprehensive rehabilitation services	911(a)
		Deletion of batching cycle for magnetic resonance imaging services	911(b)
		HUMAN SERVICES	
		New expenditures required of local entities: rulemaking petition regarding exclusion from annual budget cap	911(c)
		General Assistance rate in residential health care facilities	911(d)
		Rehabilitation Engineering Services for non-speaking children: grant funding	912(a)
		CASINO CONTROL COMMISSION	
		Surrender option in blackjack: petition to amend N.J.A.C. 19:47-2.8	912(b)
		INDEX OF RULE PROPOSALS AND ADOPTIONS	913
		Filing Deadlines	
		April 15 issue:	
		Adoptions	March 22
		May 6 issue:	
		Proposals	April 8
		Adoptions	April 15
		May 20 issue:	
		Proposals	April 22
		Adoptions	April 29
		June 3 issue:	
		Proposals	May 3
		Adoptions	May 10

NEW JERSEY REGISTER

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RULE PROPOSALS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Procedural Rules

Closing Branch Offices

Proposed New Rule: N.J.A.C. 3:1-2.17

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1.

Proposal Number: PRN 1991-134.

Submit comments by April 17, 1991 to:

Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking proposes to adopt a new rule to set forth procedures for the closing of a branch office.

Many urban neighborhoods throughout New Jersey are no longer served by banks, savings banks or savings and loan associations. Residents of these communities must therefore use check cashers, check sellers, money transmitters and pawn shops. Services are typically provided by these licensees at a relatively high cost. Through this rule, the Department hopes to encourage institutions to consider these effects upon residents before closing branch offices. By taking this lead, depositories may diminish the need for legislative initiatives in this area, such as required basic banking services.

The Community Reinvestment Act ("C.R.A."), 12 U.S.C.2901, ratings of depositories are now being made public for the first time. An institution's community reinvestment obligations are determined, in part, by the location of its branches. By this rule, the Department hopes to discourage institutions from avoiding their C.R.A. obligations by closing branch offices.

The rule first requires that a bank, savings bank or savings and loan association provide the Department with notice at least 60 days before closing a full branch office. The notice must contain the name of the institution, the location of its principal office, the location of the branch which will be closed, the prospective date of closing, a statement of reasons leading to the decision to close the branch and a map of the general area served by the branch showing all remaining branches of State or Federally chartered banks, savings banks and savings and loan associations within such area. The 60-day notice is similar to the notice Federal associations must provide the Office of Thrift Supervision pursuant to 12 C.F.R. §545.94.

The institution must also provide notice of the closing in a local newspaper for four successive weeks. This notice must indicate the name of the institution, the location of the branch office which will be closed and the prospective date of closing. In addition, the notice must contain a statement indicating that all objections to the closing of the branch may be made to the Department, along with the mailing address of the Department.

Upon review of the notice and any objections received, the Commissioner may conduct such meetings with the institution closing the branch, and with banks, savings banks, savings and loan associations, community leaders and others as are necessary in his or her judgment to explore the effect of the branch closing on the community and the possibility of replacing such branch office with other adequate facilities.

The rule authorizes the Commissioner to suspend the notice requirements in the case of an emergency or a supervisory merger or acquisition, or when otherwise in the public interest.

Social Impact

The proposed rule will have the beneficial social impact of encouraging depositories to review the impact the closing of a branch may have upon

the community. By doing this, institutions may not close marginal branches, and will thereby continue to provide banking services.

Economic Impact

In response to this rule, depositories may continue branch banking services in areas where those services are not otherwise available. Residents would therefore have access to these services to their economic benefit. Banks will incur the cost of publishing notices for four consecutive weeks, in a newspaper designated by the Commissioner.

Regulatory Flexibility Analysis

The proposed rule places reporting requirements on banks, savings banks and savings and loan associations, many of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In particular, these institutions must notify the Department of proposed branch closings, and must place notices in local newspapers. In addition, an institution may be required to attend a meeting. None of these requirements are viewed as burdensome when compared with the substantial impact a branch closing may have on the community. Further, the impact of a branch closing will be significant regardless of the size of the institution. Accordingly, no differentiation is made for small businesses.

Full text of the proposed new rule follows:

3:1-2.17 Closing of branch offices

(a) A bank, savings bank or savings and loan association shall notify the Department not less than 60 days before closing a full branch office. The institution shall include in this notice the following:

1. The name of the institution and the location of its principal office;
2. The location of the branch office which will be closed;
3. The prospective date of closing;
4. A statement of reasons leading to the decision to close the branch;
5. A map of the general area served by the branch showing all remaining branches of State or Federally chartered banks, savings banks and savings and loan associations within such area; and
6. A statement indicating the effect the branch closing will have on the availability of financial services in the area.

(b) Beginning within 10 calendar days after notification of the Department, the bank, savings bank or savings and loan association shall publish notice of the proposed closing once a week for four successive weeks in a newspaper designated by the Commissioner, which is published and circulated in the municipality in which said branch is to be closed, or if there be no such newspaper, then in a newspaper of general circulation in the municipality. The institution shall include in this notice the name of the institution, the location of the branch office which will be closed and the prospective date of closing and a statement indicating that all objections to the closing of the branch may be made to the Department of Banking, along with the mailing address of the Department.

(c) If the Commissioner determines that there are valid concerns regarding the effect of the closing upon the local community, the Commissioner shall be authorized to conduct such meetings with the institution closing the branch, and with banks, savings banks, savings and loan associations, community leaders and others, as are necessary in his or her judgment to explore the effect of the branch closing on the community and the possibility of replacing such branch office with other adequate facilities.

(d) The Commissioner may suspend the notice requirements on this rule in the event of an emergency or a supervisory merger or acquisition, or when otherwise in the public interest.

(a)

DIVISION OF REGULATORY AFFAIRS**Surety Bonds****Proposed Amendments: N.J.A.C. 3:18-10.5 and 3:38-1.5**

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1; 17:11A-45.3 and 54; 17:11B-8 and 13.

Proposal Number: PRN 1991-130.

Submit comments by April 17, 1991 to:

Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend its rules regarding the surety bonds obtained by mortgage bankers and brokers and secondary mortgage loan licensees.

The proposed amendments first require that the original copy of the surety bond be filed with the Department. If the licensee changes its surety company or the bond is amended, the licensee must also provide the Department with this original.

The proposed amendments next set forth an orderly procedure to follow when a claim is made against the bond. The surety company must immediately notify the Department when any claims are made against the bond. When the Department receives notice of such a claim, when a consumer is unable to obtain payment of a court judgment against the licensee or when the Department otherwise determines it is necessary, the Department must publish notice advising consumers of their right to file claims against the bond. The proposed amendments set forth the form of this notice.

After the Department reviews all timely claims made against the bond, it must decide which claims are valid and submit them to the surety company. All consumers with valid claims against the bond will share pro rata in their claims against the bond. The Department shall then submit claims it has against the licensee for unpaid examination charges or for other penalties, charges or fees to the surety company for payment. Consumers submitting claims after the filing date set forth in the published notice will recover next against the bond in the order that the claims are submitted.

The surety company will be liable under the bond for consumer claims which are based on damages directly incurred by the wrongful act, default, fraud or misrepresentation of the licensee. Attorney's fees, interest, court costs and similar charges are not recoverable through the bond, unless such charges are included in a final judgment against the licensee and the surety company was given prior notice of the court action and an opportunity to respond. A consumer may not recover third party charges for services which are necessary and transferable for future mortgage loan applications.

Social Impact

The proposed amendments require the bonding company to notify the Department at least 30 days before a bond is cancelled. This requirement is consistent with the statutory restrictions set forth in N.J.S.A. 17:11A-45.3 and 17:11B-8. Once the bond is cancelled, the Commissioner has the authority to suspend the licensee's ability to engage in new business, and impose a fine. Accordingly, having the bonding company notify the Department has the beneficial social impact of preventing licensees from transacting new business without a bond.

The notice of claim provision will notify consumers of their ability to assert claims against the bond. This will have the beneficial social impact of alerting consumers of this right.

Economic Impact

By limiting damages to those directly incurred, the proposed amendments will stretch the coverage of the bond to more consumers. This will have a positive economic impact on some consumers, and a negative economic impact on others. The Department will incur expenses advertising the notice of claim, but these fees will be recoverable under the bond.

Regulatory Flexibility Analysis

The financial institutions regulated by these rules are predominantly small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Compliance merely requires licensees to provide the Department with original copies of surety bonds. Since it is necessary for the Department to have originals of these bonds to ensure that consumers are protected, no differentiation is made for business size.

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

3:18-10.5 Bonds

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

(d) A licensee shall provide the Department with the original copy of a surety bond. If the licensee changes its surety company or the bond is otherwise amended, the licensee shall immediately provide the Department with the amended original copy of the surety bond. A surety company shall not cancel a bond for any cause unless written notice of its intention to cancel is filed with the Department at least 30 days before the day upon which cancellation shall take effect, and cancellation without such notice shall not be effective.

(e) When a person submits a claim with a surety company against the bond of a licensee, the surety company shall immediately notify the Department and shall not pay any claim unless and until it receives notice to do so from the Department.

(f) When the Department receives notice from a surety company of a claim against a licensee which appears valid, a consumer is unable to obtain payment of a court judgment which was obtained against the licensee for activities undertaken as a licensee, or the Department in its sole discretion otherwise determines it is necessary and proper to do so, the Department shall cause a notice to be published once a week for three successive weeks in a newspaper having general circulation in the area where the licensee conducts or conducted business advising consumers of their right to file claims against the bond. This notice shall be in the following form:

NOTICE TO CONSUMERS

TO ANY CONSUMER HAVING CLAIMS AGAINST (Name of Licensee), A SECONDARY MORTGAGE LOAN LICENSEE

TAKE NOTICE that in order to provide a procedure for the orderly resolution of claims against the bond obtained by (Name of Licensee) for the benefit of any consumer injured by the wrongful act, omission, default, fraud or misrepresentation of (Name of Licensee), you are hereby required to present your claims against (Name of Licensee) at the following address:

N.J. Department of Banking
20 West State Street
CN 040
Trenton, NJ 08625
Attn.: Regulatory Affairs Division

Each claim shall be presented in writing, specifying the amount claimed and the particulars of the claim, and shall be duly verified under oath or affirmation.

TAKE FURTHER NOTICE that each person having claims against (Name of Licensee) should file a claim no later than (one month after last notice) or risk losing the opportunity to file a claim.

Commissioner of Banking

(g) The Department shall review all timely claims made against the bond of a licensee and shall decide which claims are valid. All consumers with timely valid claims shall share pro rata in their claims against the bond. The Department shall then submit claims it has against the licensee for unpaid examination charges or for other penalties, charges or fees to the surety company for payment. Consumers submitting claims after the filing date set forth in the published notice but before the expiration of the applicable statute of limitations period shall recover next against the bond in the order that the claims are submitted.

(h) The surety company shall pay consumers' claims based on the damages directly incurred by the wrongful act, omission, default, fraud or misrepresentation of the licensee. Attorney's fees, pre- or post-judgment interest, court costs and similar charges are not recoverable through the bond, unless such charges are included in a final judgment

against the licensee and the surety company was given prior notice of the court action and an opportunity to respond. A consumer may not recover third party charges for services which are necessary and transferable for future mortgage loan applications.

3:38-1.5 Bonds

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

(e) A licensee shall provide the Department with the original copy of a surety bond. If the licensee changes its surety company or the bond is otherwise amended, the licensee shall immediately provide the Department with the amended original copy of the surety bond. A surety company shall not cancel a bond for any cause unless written notice of its intention to cancel is filed with the Department at least 30 days before the day upon which cancellation shall take effect, and cancellation without such notice shall not be effective.

(f) When a person submits a claim with a surety company against the bond of a licensee, the surety company shall immediately notify the Department and shall not pay any claim unless and until it receives notice to do so from the Department.

(g) When the Department receives notice from a surety company of a claim against a licensee which appears valid, a consumer is unable to obtain payment of a court judgment which was obtained against the licensee for activities undertaken as a licensee, or the Department in its sole discretion otherwise determines it is necessary and proper to do so, the Department shall cause a notice to be published once a week for three successive weeks in a newspaper having general circulation in the area where the licensee conducts or conducted business advising consumers of their right to file claims against the bond. This notice shall be in the following form:

NOTICE TO CONSUMERS

TO ANY CONSUMER HAVING CLAIMS AGAINST (Name of Licensee), A LICENSED MORTGAGE BANKER OR BROKER

TAKE NOTICE that in order to provide a procedure for the orderly resolution of claims against the bond obtained by (Name of Licensee) for the benefit of any consumer injured by the wrongful act, default, fraud or misrepresentation of (Name of Licensee), you are hereby required to present your claims against (Name of Licensee) at the following address:

N.J. Department of Banking
20 West State Street
CN 040
Trenton, NJ 08625

Attn.: Regulatory Affairs Division

Each claim shall be presented in writing, specifying the amount claimed and the particulars of the claim, and shall be duly verified under oath or affirmation.

TAKE FURTHER NOTICE that each person having claims against (Name of Licensee) should file a claim no later than (one month after last notice) or risk losing the opportunity to file a claim.

Commissioner of Banking

(h) The Department shall review all timely claims made against the bond of a licensee and shall decide which claims are valid. All consumers with timely valid claims shall share pro rata in their claims against the bond. The Department shall then submit claims it has against the licensee for unpaid examination charges or for other penalties, charges or fees to the surety company for payment. Consumers submitting claims after the filing date set forth in the published notice but before the expiration of the applicable statute of limitations period shall recover next against the bond in the order that the claims are submitted.

(i) The surety company shall pay consumers' claims based on the damages directly incurred by the wrongful act, default, fraud or misrepresentation of the licensee. Attorney's fees, pre- or post-judgment interest, court costs and similar charges are not recoverable through the bond, unless such charges are included in a final judgment against the licensee and the surety company was given prior notice of the court action and an opportunity to respond. A consumer may not recover third party charges for services which are necessary and transferable for future mortgage loan applications.

(a)

DIVISION OF EXAMINATION

Licensees Records

Proposed Amendments: N.J.A.C. 3:17-3.4, 3:18-2.1 and 3:38-2.1

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.1, 17:11A-54(a), 17:10-23.

Proposal Number: PRN 1991-135.

Submit comments by April 17, 1991 to:

Robert M. Jaworski
Assistant Commissioner
Division of Legal Affairs
Department of Banking, CN-040
20 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed amendments would allow licensees under the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq., the Secondary Mortgage Loan Act, N.J.S.A. 17:11A-34 et seq., and the Consumer Loan Act, N.J.S.A. 17:10 et seq., to keep their records at licensed sites outside of this State or at unlicensed sites in this State provided they enter into agreements with the Department of Banking governing the retention of records at such sites.

Social Impact

These amendments will give licensees greater flexibility in where they retain their records while the agreements entered into will fully satisfy the regulatory concerns of the Department regarding the retention, availability, and examination of such records.

Economic Impact

The amendments will have no economic impact on the State because the costs of examinations at the sites authorized will be borne by licensees. Licensees may well realize economic benefits by centralizing their record-keeping.

Regulatory Flexibility Analysis

These amendments will have no adverse impact on those licensees which are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It will allow them a greater measure of flexibility regarding where and how they can maintain their records, consistent with Department of Banking requirements.

Entering into an agreement with the Department is the compliance requirement imposed on those businesses choosing to pursue the option for out of state or unlicensed sites for records. This is not viewed as burdensome in light of the flexibility it allows both large and small businesses and therefore, no specifically differing standards are offered.

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

3:17-3.4 Maintenance of general ledger

(a) Companies operating more than one licensed office may maintain the general ledger at their home office, providing the trial balance or balance sheet and profit and loss statement of the licensed office are available to the examiner at the licensed office upon request.

(b) A licensee may keep its consumer loan records at either a licensed site located in a state other than this State, or an unlicensed site located in this State, provided that, in either instance, the licensee secures the prior approval of the Department of Banking. The approval of the Department will be given only if the licensee enters into an agreement with the Department governing keeping records at the site. The provisions of the agreement shall include, but shall not be limited to, the designation of the site where the records will be maintained, the fees and expenses chargeable by the Department for conducting examinations, and the right of the Department to rescind the agreement.

3:18-2.1 Preservation of records

(a) Every licensee shall preserve the books, accounts and records for at least two years after making the final entry on any second mortgage loan.

(b) A licensee may keep its secondary mortgage loan records at either a licensed site located in a state other than this State, or an unlicensed site located in this State, provided that, in either instance, the licensee secures the prior approval of the Department of Banking. The approval of the Department will be given only if the licensee enters into an agreement with the Department governing the maintenance and production of records at such a site. The provisions of the agreement shall include, but shall not be limited to, the designation of the site where the records will be maintained, the fees and expenses chargeable by the Department for conducting examinations, and the right of the Department to rescind the agreement.

3:38-2.1 Methods and accounting

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

(e) A licensee may keep its mortgage banker or broker records at either a licensed site located in a state other than this State, or an unlicensed site located in this State, provided that, in either instance, the licensee secures the prior approval of the Department of Banking. The approval of the Department will be given only if the licensee enters into an agreement with the Department governing the maintenance and production of records at the site. The provisions of the agreement shall include, but shall not be limited to, the designation of the site where the records will be maintained, the fees and expenses chargeable by the Department for conducting examinations, and the right of the Department to rescind the agreement.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Plumbing and Energy Subcodes

Proposed Amendments: N.J.A.C. 5:23-3.15 and 3.18

Authorized By: Melvin R. Primas, Jr., Commissioner,

Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1991-142.

A public hearing on this proposal will be held on:
Thursday, April 4, 1991, at 10:00 A.M., at:
Construction Code Element Offices
3131 Princeton Pike, Building 3
Lawrenceville, N.J.

Submit written comments by April 17, 1991 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The 1990 National Standard Plumbing Code, which New Jersey has adopted as its plumbing subcode, was most recently changed to leave the gallon-per-flush (GPF) requirement for water closets blank. Because this requires the individual adopting authorities to set the GPF requirement, the Department proposes to establish 1.6 GPF as the requirement for New Jersey. In addition, the Department proposes to restrict 1.6 GPF gravity water closets to certain residential applications, in accordance with the recommendations of a technical study conducted at Stevens Institute of Technology in Hoboken, New Jersey. Finally, in conformance with its long-standing practice of resolving conflicts between two model codes and because the Plumbing Subcode has primacy over the Energy Subcode in matters of water conservation and plumbing fixtures, the Department proposes to resolve the conflict between the Plumbing Subcode and the Energy Subcode by amending the Energy Subcode to reference the pertinent section of the Plumbing Subcode.

The primary impetus for this Departmental action was a resolution (No. 88-2) by the Delaware River Basin Commission (DRBC) to require the use of low-volume water conservation toilet fixtures within its boundaries by January 1, 1991. The DRBC's main goal is to conserve water. From the Department's perspective, low-volume fixtures not only conserve water but also facilitate efficient development in areas with limited water resources. The Department of Environmental Protection, particularly the Division of Water Resources, has indicated it is in favor of this amendment to the plumbing subcode.

While the DRBC's jurisdiction does not encompass all of New Jersey, the Department's goal of Statewide uniformity in the Construction Code is served by requiring the low-volume toilet fixtures Statewide. This serves the dual purpose of conserving a greater volume of water Statewide, while making planning, building and code enforcement uniform and less subject to ambiguity or dispute.

The DRBC has worked to bring about similar low-volume fixture requirements in the neighboring states of New York, Pennsylvania and Delaware. While each neighboring state has different time constraints on its implementation of new requirements, it is believed that all DRBC states will require low volume fixtures by 1992.

The relevant toilet functioning standards set by the American National Standards Institute (ANSI) have been modified as of 1990 to accommodate testing of low-volume fixtures. These tests are the ANSI A112.19.6 test, which monitors fixture flushing performance, and the A112.19.2 test, which controls the design and durability of bowls and tanks.

Technically, the Department has based its decision to insert the 1.6 GPF requirement on the results of a study funded by the American Society of Plumbing Engineers Research Foundation, which was conducted at Stevens Institute of Technology in Hoboken, New Jersey. The results of the study are summarized in a November 28, 1990 letter from Stevens Institute, . . . follows:

"The result of our laboratory tests comparing the performance of the conventional, 3.5 GPF (gallons per flush) with the emerging 1.6 GPF products show no significant differences when measured by the methods and procedures of the ANSI A112.19.2 standard. As such, there is no technical basis for delaying their use for residential service in New Jersey.

We have evaluated these consumer products further using alternate test media in our continuing research to integrate ultra low flush products into current plumbing technology. Our results indicate there is a reduction in functional performance with the lower flush volumes. These data confirm our position limiting the use of gravity type 1.6 GPF units to residential applications."

Other community studies, such as those in Phoenix, Arizona, Plano, Texas and Princeton, New Jersey, have shown successful water use reduction in certain residential settings.

It is anticipated that the Department, if provided with more supporting data, may approve a wider variety of toilet mechanisms for commercial applications in the future.

This amendment also deletes a requirement that time clocks be installed to cycle swimming pool filters off during peak electrical demand. The requirement was added to the energy subcode under authority granted to the Department when it took over code-related powers of the former Energy Department, pursuant to section IV of Governor Kean's Reorganization Plan for the Department of Energy (No. 001-1986), issued June 30, 1986. Pool timers are not required by national codes currently adopted by the Department. The timers have not proven to be cost effective for all pools and their installation should be optional.

Social Impact

The primary goal of this amendment is to cooperate with the Delaware River Basin Commission in its efforts to mandate measures to conserve water by reducing household water use in toilets without sacrificing health and safety. This has been estimated to be as much as 60 percent of household water use.

Available low-volume toilet models benefit the public by saving water. They meet the standards of the plumbing subcode without compromising health and safety.

The provision concerning swimming pool timers will allow pool owners themselves to decide, based on usage and pool size, whether timers to cycle off pool filters are cost effective additions to their pools.

Economic Impact

Installation of low volume flush toilets, at a comparable or slightly higher initial cost than conventional (3.5 gallon) toilets, saves water for the entire state. Individual customers may expect to save up to 30 percent on water and sewer bills, depending upon local rate schedules.

While early, experimental low-volume flush toilets did not meet with immediate consumer acceptance, current models are stylish, affordable and more efficient. A recent *Consumer Report* review noted a number of reasonably priced (\$100.00-\$150.00) units available from well-known manufacturers and retailers.

Major manufacturers have indicated that they anticipate no problems in supplying new low-volume fixtures. The conventionally-sized fixtures in stock can be phased-out during the comment period for this amendment and the six-month phase-in period allowed under the Construction Code for new requirements subsequent to adoption.

The provision concerning pool timers will save owners of small or of continuously used or monitored pools the expense of installing, securing inspections for, and operating timers that may not be cost-effective.

Regulatory Flexibility Analysis

Both distributors that are "small businesses" within the meaning of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and those that are not would be allowed a reasonable period of time to dispose of non-conforming plumbing fixtures before the new rules become effective. After the effective date, however, there is no practical way to allow nonconforming fixtures to be used in construction only if they were purchased from a "small business," nor should the use of such fixtures be allowed for any extended period of time, since that would compromise the public interest in water conservation that the rule is intended to further. Similarly, there is no good reason to allow an extended period for compliance for builders who are "small businesses", but not for large firms.

The provision concerning pool timers deletes a requirement previously added to the Energy Subcode. Small businesses, as well as other persons and entities, that own or operate pools will benefit from having the option of not installing timers that may prove not to be cost-effective.

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

5:23-3.15 Plumbing subcode

(a) (No change.)

(b) The following pages, chapters, sections or appendices of the plumbing subcode are amended as follows:

1.-17. (No change.)

18. Appendix D, entitled "Water Conservation," is amended as follows:

i. Item D.2 is amended to [insert the numbers 3.5 and 4.0 respectively in the blanks provided] **read: Water closets, either flush tank, flushometer tank or flushometer valve operated, shall be designed, manufactured and installed to be operable and adequately flushed with an average of 1.6 gallons or less of water per flushing cycle, when tested at any one test pressure in accordance with listed standards. Only pressurized (not gravity flow) water closets are acceptable for commercial uses. Commercial uses are A, E, B, M & U uses with an occupancy requiring more than one fixture for persons of either sex, I uses and R-1 and R-2 uses.**

ii.-v. (No change.)

19. (No change.)

5:23-3.18 Energy subcode

(a) (No change.)

(b) The following chapters or articles of the Energy Subcode are amended as follows:

1.-4. (No change.)

5. The following amendments are made to Article 5 of the Energy Subcode entitled "Plumbing Systems":

i. Delete Section E-502.1, "Water Closets and Urinals."

ii. Add Section E-504.0 SWIMMING POOLS as follows:

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

(3) E-504.3 Time Clocks. Time clocks shall be installed so that the pump can be set to run in the off-peak electric demand period and can be set for the minimum time necessary to maintain the water in a clean and sanitary condition, in keeping with applicable health standards]

6.-8. (No change.)

(c) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Elevator Safety Subcode

Proposed New Rule: N.J.A.C. 5:23-12

Proposed Repeal and New Rule: N.J.A.C. 5:23-5.19

Proposed Amendments: N.J.A.C. 5:23-1.1, 1.4, 2.14, 2.23, 2.25, 3.4, 3.11, 3.14, 4.3, 4.5, 4.12, 4.13, 4.18, 4.20, 4.24, 5.1, 5.3, 5.5, 5.7, 5.20 and 5.23

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

Authority: N.J.S.A. 52:27D-124.

Proposal Number: PRN 1991-143.

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

Wednesday, April 17, 1991, at 10:00 A.M., at:

Construction Code Element Offices

3131 Princeton Pike, Building 3

Lawrenceville, New Jersey

Submit written comments by April 17, 1991 to:

Michael L. Ticktin, Esq.

Chief, Legislative Analysis

Department of Community Affairs

CN 802

Trenton, NJ 08625

The agency proposal follows:

Summary

The maintenance of elevator devices (including, without limitation, elevators, escalators, moving walks, dumbwaiters, wheelchair lifts, man-lifts and stairway chairlifts) may currently be regulated by the local code official by using the ANSI and ASME standards referenced in Article 26 of the BOCA National Building Code, 1990 edition. While the referenced standards provide uniform technical requirements for elevator maintenance, there have been no State administrative standards and, as a result, administration of the enforcement of these standards has varied amongst municipalities.

Complaints from the general public and elevator inspectors and their associations, as well as fatality and injury statistics, have indicated that a more rigorous program of State regulation would be desirable.

Extrapolations from nationwide data compiled by the Federal Consumer Product Safety Commission suggest that nearly 1,000 people are injured annually as a result of elevator malfunctions in New Jersey. This data represents injuries either fatal or severe enough to cause the injured party to seek emergency medical care. It may reasonably be assumed that many less serious injuries also occur. Beyond deaths and injuries, the malfunctioning of elevators can result in panic, delay, loss of productivity and attendant hardships.

The Department is particularly concerned about elevator safety because of the growth in recent years in the number of high-rise buildings being constructed in New Jersey. Elevators are also of great importance to the disabled individuals whom the barrier-free subcode (N.J.A.C. 5:23-7) is intended to assist. Retroactive requirements utilizing the ASME standard A17.3, "Safety Code for Existing Elevators and Escalators," are included in order to provide a basis for requiring safe maintenance of existing elevators and escalators according to accepted minimum standards.

The elevator safety subcode will exempt from periodic inspection requirements devices not required by code that are installed at the owner's option in structures of R-3 and R-4 use groups. While plan review for elevators, escalators and moving walks in use groups other than R-3 and R-4 will be done by the Department, plan review for all other elevator devices, including those exempt from periodic inspection requirements, will continue to take place at the local level.

Finally, the proposed amendments delete provisions of N.J.A.C. 5:23-2.23 and 5.3(b)3 and 4, since these requirements are covered by the Fire Code, or, in the case of N.J.A.C. 5:23-2.23, have not, and will not, be utilized at any time.

Social Impact

The implementation of an elevator safety subcode throughout the State will ensure that elevator safety and maintenance procedures are uniformly observed throughout New Jersey.

Proper maintenance will have the positive effects of reducing the frequency of elevator accidents leading to fatalities and injuries. Additionally, it will reduce delay, inconvenience and discomfort due to elevators that function erratically. Because elevators and similar devices covered in these rules are often in public buildings or in portions of private buildings to which the public has access, improved safety should benefit a significant portion of the public.

Devices covered by the proposed new rules and amendments include escalators and moving walks, to which the general public almost always has access. Because elevators and related devices are especially important to the less ambulatory members of society—the disabled, injured, elderly and small children—these members of society should especially benefit from a rigorous safety and maintenance program.

Economic Impact

Elevator inspections are already required by the Uniform Construction Code; however, the administration of those inspections has been at the discretion of local enforcing agencies. The proposed amendments and new rules would increase neither the frequency nor the extent of inspections; however, they would require that inspections now required by national standards referenced in the building subcode of the State Uniform Construction Code be performed. They would require enforcing agencies to establish, at a minimum, a position of elevator subcode official and, depending on workload, may require establishment of elevator inspector positions as well.

The Department estimates that the proposed fees are commensurate with the average of fees currently charged. Overall costs of compliance will not change. Fees may be higher in some areas and lower in others, as a result of the adoption of the proposed fees; however, the impact on the elevator owner is expected to remain essentially the same. It should be noted that the Department invites comments on the amount of the fees and will carefully review any analyses submitted in support of alternatives.

Regulatory Flexibility Analysis

These proposed new rules and amendments are intended to protect the safety of persons who use elevators. The requirements include structural, inspection, training, reporting, and recordkeeping specifications regarding elevators. As is generally the case with rules adopted as part of the State Uniform Construction Code, requirements vary among different types of buildings, but cannot, by reason of the need to protect life safety equally in different buildings of the same type, be made to vary based upon whether the owner of the building qualifies as a "small business" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Moreover, there is inherent flexibility in the State Uniform Construction Code because it is a performance code, so that certain choices are available to the business seeking to comply with the proposed new rules and amendments. Therefore, no differentiation based on business size has been provided in this proposal.

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

5:23-1.1 Title: division into subchapters

(a) (No change.)

(b) The [regulations consist] **chapter consists** of the following subchapters:

1.-11. (No change.)

12. (Reserved)

13. "Elevator Safety Subcode" which may be cited throughout the rules as N.J.A.C. 5:23-12 and when referred to in subchapter 12 of this chapter may be cited as this subchapter.

5:23-1.4 Definitions

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

"Certificate of approval" or "certificate of compliance" means the certificate provided for in N.J.A.C. 5:23-2, indicating that potentially hazardous equipment is being maintained in accordance with the Act and this chapter.

"Elevator" or "elevator device" means a hoisting and lowering device equipped with a car or platform which moves in guides for the transportation of individuals or freight in a substantially vertical direction

through successive floors or levels of a building or structure; or a power driven, inclined, continuous stairway used for raising or lowering passengers; or a type of passenger carrying device on which passengers stand or walk, and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted. This includes, but it is not limited to, elevators, escalators, moving walks, dumbwaiters, wheelchair lifts, manlifts, stairway chairlifts and any device within the scope of ASME A17.1 (Safety Code for Elevators and Escalators) or ASME A90.1 (Safety Standards for Belt Manlifts).

"Elevator subcode official" means a qualified person appointed by the municipal appointing authority or the Commissioner, pursuant to the Act and this chapter, to enforce the provisions of any subcode specifically designated for such enforcement in N.J.A.C. 5:23-3, within the jurisdiction of the enforcing agency.

5:23-2.14 Construction permits; when required

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

(e) Conditions of the annual permit are as follows:

1. The "annual permit" may be issued for building/fire protection, electrical, **mechanical** or plumbing work, or any combination of these classifications of work, provided that the individual responsible for work done under the annual permit possesses knowledge as evidenced in accordance with N.J.A.C. 5:23-2.14(c)5, in the technical work classification for which the annual permit is sought.

2.-12. (No change.)

(f) (No change.)

5:23-2.23 Certificate of [occupancy] **Occupancy** requirements

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

[(i) Limitations: Equipment herein below listed, having been determined to create a significant potential for hazard to public health and safety shall be granted a certificate of approval by the appropriate subcode official or other approved agency for the duration specified herein:

1. Elevators: six months;

2. Platform lifts: six months;

3. Dumbwaiters: 12 months;

4. High pressure boilers: 12 months;

5. Refrigeration systems: 12 months;

6. Pressure vessels: 12 months;

7. Hazardous uses and places of assembly: three months;

8. Cross-connections and backflow preventers: three months;

9. Sprinklers: 12 months;

10. Such equipment shall be periodically reinspected or tested in accordance with the provisions of the regulations, prior to the expiration of such certificate of approval, and any violation corrected before a new certificate may be issued. No such system or assembly shall continue in operation unless a valid certificate of approval has been reissued. It shall be a violation of the regulations for an owner to fail to provide for such periodic inspection and testing.]

(i) **Equipment listed below, which has been determined by the Department to create a significant potential hazard to public health and safety, shall be granted a certificate of approval by the appropriate subcode official or approved agency for the time period specified. Such equipment shall periodically be reinspected or tested in accordance with the provisions of the regulations, prior to the expiration of a certificate of approval, and any violations corrected before a new certificate may be issued. No device shall continue in operation unless a valid certificate of approval has been reissued.**

1. High pressure boilers: 12 months;

2. Refrigeration systems: 12 months;

3. Pressure vessels: 12 months;

4. Cross-connections and backflow preventers: three months.

(j) **Elevator devices, as defined in N.J.A.C. 5:23-12, have been found by the Department to pose a significant potential hazard to public health and safety and shall therefore be tested or reinspected periodically in accordance with N.J.A.C. 5:23-12. A device shall be granted a certificate of compliance by the State or the municipality for the time period specified. No device shall be operated unless a valid certificate of compliance has been issued. Any violation shall be corrected before a new certificate may be issued. A temporary certificate of compliance**

may be granted to keep in service a device on which minor repairs are being diligently performed, if the elevator subcode official finds that no hazard to the public is thereby created. A temporary certificate of compliance may be issued for no longer than 180 days.

1. No certificate of compliance shall be issued for any elevator device in use on or before the effective date of N.J.A.C. 5:23-12 that is subject to these rules and is not registered with the Department in accordance with N.J.A.C. 5:23-12, except that elevator devices in structures classified as Use Group R-3 and R-4 shall be exempt from registration.

2. No certificate of occupancy shall be issued for any new structure in any use group other than R-3 or R-4 that contains an elevator device until each such device is registered in accordance with N.J.A.C. 5:23-12.

3. Elevator devices that have been temporarily taken out of operation with the approval of the construction official, so that modernization or major repair work can be performed, shall be exempt from periodic inspection requirements during the period of approved non-operation.

4. Elevator devices in structures classified as Use Group R-3 and R-4, excepting those elevator devices accessible to the public, shall be exempt from periodic inspection requirements. In addition, signed statements and supporting inspection and acceptance test reports, filed by an approved qualified agent or agency, for elevator devices in such structures, other than elevator devices accessible to the public, may be accepted by the construction official, in accordance with N.J.A.C. 5:23-2.19 and 2.20, in lieu of inspections performed by, and acceptance tests witnessed by, the enforcing agency.

Redesignate (j)-(k) as (k)-(l). (No change in text.)

5:23-2.25 Establishment of Fees

The municipality in accordance with [the regulations] **this chapter** shall by ordinance establish enforcing agency fees for the following activities: plan review; construction permit; certificate of occupancy; **elevator device inspections and tests and certificate of compliance; certificate of approval;** demolition permit; moving of buildings permit; and sign permit. The fee shall be collected prior to the issuance of the permit or certificate. A schedule of such fees shall be posted in the office of the construction official and shall be accessible to the public.

5:23-3.4 Responsibility

(a) Responsibility for enforcement of specific provisions of the building subcode shall be as follows:

1. Plan review functions of sections 513.0, 514.0, 601.0 through 604.0, 606.0, 607.0, 609.0 through 620.0, and 624.0, articles 8 and 9; sections 2002.0, 2301.0 and 2302.0, articles 24 and 25; [and] sections 2606.0 through 2611.0 **for elevator devices other than elevators, escalators and moving walks; and** 3018.0 and 3020.0 shall be enforced jointly by the building subcode official and fire protection subcode official.

2.-3. (No change.)

4. Construction inspection functions of sections 513.0, 601.0 through 601.8, 601.13 through 601.14.1, 601.14.3 through 624.0; articles 8 and 9; sections 2002.0 and 2302.0 **and** article 24 [and sections 2606.0 through 2607.2 and 2607.4 through 2611.2] shall be enforced exclusively by the building subcode official.

5. (No change.)

6. Construction inspection functions of sections 2606.0 through 2607.2 and 2607.4 through 2611.2 shall be enforced jointly by the building subcode official and the elevator subcode official and the fire protection subcode official.

7. Section 2602.2 shall be enforced exclusively by the elevator subcode official.

Recodify 6.-7. as 8.-9. (No change in text.)

(b)-(g) (No change.)

(h) **Enforcement of the elevator safety subcode shall be the sole responsibility of the elevator subcode official, unless otherwise specified in N.J.A.C. 5:23-12.**

5:23-3.11 Enforcement activities reserved to the Department

(a) The Department of Community Affairs shall be the sole plan review agency for the following structures:

1.-6. (No change.)

7. Elevators, escalators and moving walks in use groups other than R-3 or R-4.

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

5:23-3.14 Building subcode

(a) (No change.)

(b) The following articles or sections of the building subcode are modified as follows:

1.-13. (No change.)

14. The following amendments are made to Article 26 of the building subcode entitled "Elevators, Dumbwaiter and Conveyor Equipment, Installation and Maintenance":

i. Section 2600.1 is amended to delete the phrase "Except as otherwise provided by statute" in the first line, to add the words "and subchapter 12 of these rules" after the word "article" in the first sentence, to delete the phrase "and amusement devices" from the second sentence and to substitute "construction official" for "code official."

ii. Section 2600.2 is amended to substitute "these rules" for "this code" and the following sentence is added: "However, any education, experience or training requirements included or cited in reference standards shall not be binding in this State.";

[ii.]iii. Sections 2601.1, 2601.2, 2601.3, **2602.5.4**, 2603.1, 2603.2 (first line), 2603.3, 2604.4, 2604.5, and 2604.6 are amended to delete the term "code official" and substitute in lieu thereof, "construction official";

iv. Section 2602.1 is amended to delete the words "and maintenance" and "and periodic inspections" in the second line;

v. Section 2602.2 is amended to delete the words "code official" in the last sentence and substitute in lieu thereof "appropriate subcode official as designated by N.J.A.C. 5:23-3.4";

vi. Sections 2602.3 and 2602.4 are deleted in their entirety;

vii. 2602.5.2 is amended to delete the words "and amusement devices" in the section heading and second line. Further, the word "and" is inserted before the word "conveyor" in the first and second line;

viii. Section 2603.2 is amended to delete the words "code official" in the second sentence and substitute in lieu thereof "appropriate subcode official as designated by N.J.A.C. 5:23-3.4". Further, section 2603.2 is amended to delete the word "made" in the last sentence and substitute in lieu thereof, the words "will make";

ix. Section 2604.3 is deleted in its entirety.

Recodify iii.-vi. as x.-xiii. (No change in text.)

15.-21. (No change.)

5:23-4.3 Municipal enforcing agencies[-]; establishment

(a) Notice of intention to establish:

1.-2. (No change.)

3. **A municipality may, by resolution, provide for the employment of an elevator subcode official, licensed in accordance with N.J.A.C. 5:23-5, to perform inspections and witness tests within its jurisdiction. If a municipality fails to employ such an official by July 1, 1991, the Department shall have exclusive jurisdiction to review plans and witness tests for, and inspect elevators within, the municipality. Thereafter, a municipality may acquire such jurisdiction by enacting the necessary resolution and employing an elevator subcode official, but the transfer of jurisdiction to the municipality shall not be effective until 120 calendar days after a certified copy of the resolution is received by the Department.**

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

(d) Establishment by ordinance:

1. (No change.)

2. Such ordinance shall establish the construction official as the chief administrator of the enforcing agency. It shall establish [such number of] **as many** subcode official positions as the [commissioner] **Commissioner** shall [have adopted subcodes] **issue types of licenses for subcode officials**. Any person who holds more than one subcode official position[,] shall[, however,] be qualified for [all such] **each** position[s] pursuant to N.J.A.C. 5:23-5. [Such staffing procedures shall not, however, permit the establishment or continuation of an inspection force insufficient to meet the municipality's needs.] **Staffing procedures shall not result in an inadequate municipal inspection force.**

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

5:23-4.5 Municipal enforcing agencies[-]; administration and enforcement

- (a)-(e) (No change.)
 (f) Duties of construction officials:
 1. The construction official shall enforce the regulations and:
 i.-xvii. (No change.)
 xviii. Coordinate the activities of the subcode officials in enforcement of the energy, radon hazard, **elevator safety** and mechanical subcodes.

xix.-xx. (No change.)

2. (No change.)

(g) (No change.)

(h) Conflict of interest:

1. No person employed by an enforcing agency as a construction or subcode official, assistant to the construction or subcode official, trainee, inspector or plan reviewer, shall engage in, or otherwise be connected directly or indirectly for purposes of economic gain, with any business or employment furnishing labor, materials, products or services for the construction, alteration, or demolition of buildings or structures within any municipality in which he is so employed by an enforcing agency, and in any municipality adjacent to any municipality in which he is thus employed. [The application of this subparagraph to adjacent municipalities shall not take effect until July 1, 1978.]

2.-3. (No change.)

4. No person employed as a licensed elevator subcode official or elevator inspector shall have any economic relationship with the elevator industry anywhere in the United States, except that any such official or inspector may perform consulting work on elevator devices for individuals or firms, provided the requirements of (h)1 above are met. For the purpose of this rule, "elevator" shall have the meaning given in N.J.A.C. 5:23-1.4.

5:23-4.12 Private [enforcing agencies—] **on-site inspection and plan review agencies**; establishment

[(a) Private on-site inspection and plan review agencies:]

[1.](a) The [department] **Department** shall authorize the establishment of private on-site inspection and plan review agencies, hereinafter called "on-site inspection agencies,"[,] for the purpose of contracting with municipalities in order to act in the place of subcode officials for specified subcodes.

[i.]1. No person shall undertake the service herein described or enter into any contract pursuant to [these regulations] **this chapter** without first receiving the authorization of the [department] **Department**.

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

Recodify 2.-3. as (b)-(c) (No change in text.)

[4.](d) The application shall contain information relating to:

Recodify i.-vii. as 1.-7. (No change in text.)

[5.](e) (No change in text.)

[6.](f) Applications for reauthorization shall be filed with the [department] **Department** at least 60 days prior to the scheduled expiration for the current authorization from the [department] **Department**. The on-site inspection agency shall make current the information previously submitted to the [department] **Department**. The on-site inspection agency shall provide such information as the [department] **Department** may request. The application shall be accompanied by the fee established [pursuant to these regulations] **by this chapter**. The [department] **Department**, may conduct such additional investigations of the applicant as it may deem necessary.

[i.]1. Within 20 days of receipt by the [department] **Department** of an application for reauthorization, the [department] **Department** shall make its determination as to whether the on-site inspection agency continues to meet the requirements of [the regulations] **this chapter**. In the event of disapproval, the [department] **Department** shall provide the on-site inspection agency with a written explanation of the reasons for such disapproval. Each reauthorization shall expire one year from the date of the current authorization from the [department] **Department**.

[ii.]2. (No change in text.)

[7.](g) Existing private electrical inspection authorities, licensed by the [Department] **Board** of Public Utilities [under authority of N.J.A.C. 14:5-7.1 et seq.] **pursuant to N.J.A.C. 14:5-7**, may continue to operate as inspection authorities for a period of one year from the effective date of [the regulations] **this chapter**. Therefore, they shall continue in operation only if authorized in accordance with this [section] **chapter**, and shall become known as "on-site inspection agencies-electrical".

[i.]1. Electrical inspection agencies may continue to operate [as per N.J.A.C. 14:7.1 et seq.] **pursuant to N.J.A.C. 14:5-7** until such time as the municipality contracts directly with an on-site inspection agency for exclusive services in the municipality or appoints an electrical subcode official. In no case shall existing electrical inspection authorities continue after January 1, 1978, except in conformity with this section.

[(b)](h) (No change in text.)

5:23-4.13 Private [enforcing agencies—] **on-site inspection and plan review agencies**; organization

[(a) Private on-site inspection and plan review agencies:]

Redesignate 1. as (a). (No change in text.)

[i.](b) Each on-site inspection agency authorized by the [department] **Department** shall organize its operations to effectively fulfill the requirements of [these regulations] **this chapter** and to provide any municipality with which it contracts all the services that would otherwise be provided by a municipal subcode official under [the regulations] **this chapter**. All officers, inspectors and plan reviewers of the "on-site inspection agency" shall be certified by the [department] **Department** in the appropriate subcode [prior to January 1, 1978, and] prior to employment [thereafter].

Renumber ii.-iii. as (c)-(d) (No change in text.)

(e) **An on-site agency acting in place of an elevator subcode official in any municipality shall answer to the local construction official, who shall be responsible to the Department for supervising the activities of the elevator subcode official.**

[2.](f) Each on-site inspection agency shall maintain an adequate number of offices for the purposes of meeting with the public and **shall maintain records as follows:**

Recodify i.-ii. as 1.-2. (No change in text.)

Recodify 3. as (g) (No change in text.)

5:23-4.18 Standards for municipal fees

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

(g) Elevator fees **are as follows:**

1. The fee for a permit to install an elevator[, or to inspect an elevator] **device** shall be a flat fee. The fee may vary [from] **for different [required] types of inspections, tests and elevator devices**[, but this shall be clearly indicated in the ordinance and the schedule].

2. The fees for a certificate of compliance and for inspections and tests for an elevator, escalator, moving walk, dumbwaiter or other elevator device shall be flat fees. These fees may vary for different required inspections and tests, but any variation shall be set forth in the ordinance and the schedule.

(h)-(j) (No change.)

(k) Fees to be charged to municipalities by private on-site inspection and plan review agencies are as follows:

1. Where the local enforcing agency uses the services of a private on-site inspection and plan review agency to enforce one or more subcodes, then the fees charged to the municipality by the private on-site agency shall be identical to those charged by the Department pursuant to N.J.A.C. 5:23-4.20 and as provided in this paragraph.

i.-iv. (No change.)

v. Elevator safety subcode: Fees charged to the municipality when a private on-site agency performs inspections and witnesses tests shall be identical to the fees established by the Department at N.J.A.C. 5:23-12.5(a) and (b).

Recodify v. as vi. (No change in text.)

2.-5. (No change.)

5:23-4.20 Department fees

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

(c) Departmental (enforcing agency) fees **shall be as follows:**

1. Plan review fee: The fee for plan review shall be 20 percent of the amount to be charged for a new construction permit, **except that elevator device plan review shall be as in (c)6 and 7 below.**

2. (No change.)

[3. Elevators: The fee for a permit to install an elevator shall be \$260.00.]

[4.]3. Certificates and other permits: The fees [are] shall be as follows:

i.-vi. (No change.)

vii. The fee for a certificate of approval **or certificate of compliance** certifying the work done under a construction permit has been satisfactorily completed shall be [\$20.00] **\$26.00.**

viii.-xi. (No change.)

[5. Periodic inspections: Fees for the periodic Departmental re-inspection of equipment and facilities granted a certificate of approval for a specified duration in accordance with N.J.A.C. 5:23-2.23 shall be as follows:

i. For elevators, escalators and moving walks requiring reinspection every six months, the fee shall be \$65.00, except for each five-year inspection and witnessing of tests on elevators, for which the fee shall be \$208.00.

ii. For dumbwaiters requiring reinspection every 12 months, the fee shall be \$26.00.]

Recodify iii. as 4. (No change in text.)

Recodify 6. as 5. (No change in text.)

6. The fee for plan review for elevator devices in structures in Use Groups R-3 and R-4 shall be \$50.00 for each device.

7. The fee for plan review for elevator devices in Use Groups other than R-3 and R-4 shall be \$260.00 for each device.

8. The fees for elevator device inspections and tests shall be as set forth in N.J.A.C. 5:23-12.

5:23-4.24 Plan review; Department of Community Affairs

(a) Rules concerning establishment are:

1. (No change.)

2. Plan review:

i. (No change.)

ii. Special or hazardous uses and types of construction:

(1)-(4) (No change.)

(5) Installations of elevators, escalators, and moving walks, except in structures of use group R-3 or R-4, shall require Departmental plan review and release.

iii. (No change.)

(b) (No change.)

5:23-5.1 Title; scope; intent

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

(c) This subchapter shall control all matters relating to qualifications for and licensing of all subcode enforcement officials engaged in or to be engaged in the administration and enforcement of the New Jersey Uniform Construction Code, including types of licensed code enforcement officials; procedures for application insurance, denial and revocation of licenses; approval of training and/or educational programs offered to meet the requirements for licensing of code enforcement officials or construction board of appeal members; application fees for a license; and enforcement of penalties for violations of this subchapter. **Additional provisions regarding the licensing of elevator subcode officials are contained in N.J.A.C. 5:23-12.**

5:23-5.3 Types of licenses

(a) (No change.)

(b) Rules concerning **classification** of code enforcement officials [classified] are:

1. Technical licenses: Subject to the requirements of this subchapter, persons may apply for and shall be licensed in the following specialties:

i.-v. (No change.)

vi. Elevator inspector with a specialty in high-rise and hazardous structures (H.H.S.): Elevator inspectors H.H.S., are authorized to carry out the elevator device inspections, or to witness testing, required by this chapter in all structures.

2. Administrative licenses: In addition to the basic required technical license specified in N.J.A.C. 5:23-5.3(b), a person may apply for the administrative licenses specified herein.

i.-v. (No change.)

vi. Elevator subcode official: An elevator subcode official is authorized to act as the administrator of the elevator safety subcode, as required by N.J.A.C. 5:23-4.4.

[3. Special technical licenses: Subject to the requirements of the regulations, persons may apply for the following special technical licenses specified herein:

i. Elevator inspector: Elevator inspectors are authorized to carry out the elevator inspections and tests required by the regulations.

ii. Mechanical inspector: Mechanical inspectors are authorized to carry out the mechanical inspections required by the mechanical subcode.

4. Facility fire protection supervisor technical licenses: Subject to the requirements of this subchapter, persons may apply for facility fire protection supervisor technical licenses.

i. Facility fire protection supervisors are authorized to review plans and carry out inspection activity, pursuant to the regulations, in a facility having an annual construction permit.]

5:23-5.5 General license requirements

(a) (No change.)

(b) After receipt of the required nonrefundable fee, the Department shall determine, by examination of the application and review of any supporting documents, including any evidence of experience, training and/or education submitted, whether an applicant is qualified for a license of the type and specialty for which the application has been made. If the application is satisfactory, the [commissioner] **Commissioner** shall issue a license to the applicant. This license will show that the person has met the established requirements and is eligible to be employed in this State in accordance with the provisions of [these regulations] **this chapter.**

1.-3. (No change.)

4. Only test results for test modules passed within three years of the date of application shall be accepted toward fulfilling the requirements for the license sought. **However, results of passed tests taken prior to July 1, 1991 of test module 6B—Elevator General shall be accepted toward fulfilling the requirements for elevator inspector H.H.S. licensure, if application is received by the Department within three years of issuance of the test results or by June 30, 1992, whichever is later.**

5.-7. (No change.)

(c) The following persons shall be exempt from the requirements of this section and shall be issued a license upon submission of an application and payment of the required fee.

1.-2. (No change.)

3. Inspectors with civil service status or tenure:

i. A license of the appropriate type and specialty shall be issued to any person holding or receiving, prior to January 1, 1978, tenure or permanent civil service status. **Additionally, those persons certified by the New Jersey Department of Personnel as an elevator inspector prior to July 1, 1991, and currently employed in said certified title, shall be entitled to elevator inspector H.H.S. licensure on a provisional basis pending successful completion of the required course and test within a period not to exceed 24 months from the date of provisional licensure.**

(d) Special provisions:

1.-4. (No change.)

5. An applicant who is licensed as a building inspector, electrical inspector, fire protection inspector [or], plumbing inspector **or elevator inspector** shall be eligible for licensure as an inspector at the same level or lower in any other subcode upon satisfactory completion of the approved educational program, if applicable, and the examination for licensure as an inspector in that other subcode, provided that the applicant has at least the number of years experience required for that other subcode inspector's license.

5:23-5.7 Subcode official requirements

(a) A candidate for a license as a building, electrical, fire protection [or], plumbing or elevator subcode official shall meet the following qualifications:

1.-5. (No change.)

6. A person who is already licensed as a building, plumbing [or], electrical or elevator subcode official shall be deemed to have satisfied the experience requirement for any other subcode official license other than the fire protection subcode official license.

7. (No change.)

5:23-5.19 [Special technical license] Elevator inspector H.H.S. requirements

(a) [Elevator inspector: Requirements reserved pending adoption of special regulations governing elevator inspections.] A candidate for a license as an elevator inspector of high-rise and hazardous structures (H.H.S.) shall meet the following educational and/or experience requirements:

1. Seven years experience consisting of some combination of the following:

i. Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the elevator subcode;

ii. Experience in inspecting elevators; or

iii. Experience as a construction contractor in a field of construction currently regulated by the elevator subcode; or

2. Graduation from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study directly related to building construction, and two years of subsequent experience in construction, design, inspection or supervision in a field of construction currently regulated by the elevator subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education and three years of subsequent experience in the construction, design, inspection, or supervision of construction work currently regulated by the elevator subcode; or

4. Possession of a current New Jersey license to practice as an architect or engineer at the time of application.

(b) [Mechanical inspector: Requirements reserved.] A candidate for licensure as an elevator inspector H.H.S. shall also meet the following requirements prior to application:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for elevator inspector H.H.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in a major area of study directly related to building construction shall be exempted from the educational program requirements for elevator inspector H.H.S. Additionally, any individual who has successfully completed an educational program determined by the Department as equivalent to that established in N.J.A.C. 5:23-5.20 shall also be exempted from the educational program requirements for elevator inspector H.H.S., provided application for licensure is received by the Department on or before June 30, 1992.

2. Successful completion of an examination as required by N.J.A.C. 5:23-5.23.

5:23-5.20 Standards for educational programs

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

(d) Each course of study should consist of a planned pattern of instruction and experiences designed to meet the standards specified herein.

1.-10. (No change.)

11. Elevator Inspector H.H.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as elevator inspector H.H.S. Each such program shall consist of three major subjects and shall provide at least 90 contact hours with a minimum of at least 30 contact hours of instructions in each subject as specified below and shall ensure technical competence in the following subject areas as they apply to all structures:

i. Subject 1: Inspection and testing rules and regulations for elevators, escalators, lifts and other miscellaneous hoisting and elevating equipment; hoistways and related constructions:

(1) Minimum requirements, acceptance tests; periodic and routine tests and inspections; alterations, repairs, replacements and maintenance; certificate of compliance;

(2) Construction of hoistways, enclosures and machine room; vents and opening protective requirements; pits; clearances and runbys for cars and counterweights; hoistway doors, hardware and operations; chair platforms; special requirements for escalators and other elevating equipment.

ii. Subject 2: Machinery and equipment for elevators, escalators and lifts:

(1) Guide rails; buffers and bumpers; counterweights; carframe and platforms; safeties and speed governors; suspension ropes; capacities; driving machines; valves, pipings and tanks for hydraulic elevators; terminal stopping devices; operating devices and control equipment; emergency operation and signalling devices; power wiring and controls.

iii. Subject 3: Plan review and inspection techniques:

(1) Performance standards for machinery, equipment and systems, materials standards; engineering and type tests; design data; special requirements for escalators, chairlifts and other elevating equipment; barrier-free subcode requirements for elevators and lifts; plan review techniques for electrical and mechanical systems; inspection techniques and checklists for inspection—inside the car, outside hoistway, top of car, machine room and pit and testing of various systems.

Renumber 11.-12. as 12.-13. (No change in text.)

[13. Elevator inspector program (Reserved).

14. Mechanical inspector program (Reserved).]

5:23-5.23 Examination requirements

(a) Examinations shall be held, at least twice annually, to establish eligibility for the following license specialties: building inspector R.C.S., building inspector I.C.S., building inspector H.H.S., electrical inspector I.C.S., electrical maintenance inspector H.H.S., fire protection inspector I.C.S., fire protection inspector H.H.S., facility fire protection supervisor, plumbing inspector I.C.S., plumbing inspector H.H.S., elevator inspector H.H.S., and inplant inspector.

(b) In instances where more than one license level within a given subcode area requires the successful completion of one or more examination modules, award of the higher level license specialty will be dependent upon successful completion of the educational program in accordance with N.J.A.C. 5:23-[5.21]5.20 and the examination module(s) required for the lower level license or possession of the applicable lower level license.

(c) Applicants for licenses listed above shall demonstrate competence by successful completion of the relevant examination modules of the National Certification Program for Construction Code Inspector administered by the Education Testing Service for the Department.

1.-11. (No change.)

12. Examination requirements for elevator inspector H.H.S.:

i. (No change.)

Recodify (b)-(e) as (d)-(g). (No change in text.)

SUBCHAPTER 12. ELEVATOR SAFETY SUBCODE

5:23-12.1 Title; scope; intent

(a) This subchapter of the rules adopted pursuant to the authority of the Uniform Construction Code Act, entitled "Elevator Safety Subcode," shall be known and cited throughout this chapter as subchapter 12 or N.J.A.C. 5:23-12, and when referred to in this subchapter may be cited as "this subchapter."

(b) Unless otherwise specifically provided, all references to paragraphs, sections, or to provisions not specifically identified, shall be construed to refer to such paragraph or section or provision of this subchapter.

(c) This subchapter shall control all matters relating to administration of tests and inspections of elevator devices as defined in (e) below.

(d) It is the purpose of this subchapter to enhance the public safety, health and welfare by ensuring that elevator devices as defined in this subchapter are periodically inspected and maintained in accordance with nationally recognized, referenced standards.

(e) For purposes of this subchapter, "elevator" or "elevator device" means a hoisting and lowering device equipped with a car or platform

which moves in guides for the transportation of individuals or freight in a substantially vertical direction through successive floors or levels of a building or structure; or, a power driven, inclined, continuous stairway used for raising or lowering passengers; or, a type of passenger carrying device on which passengers stand or walk, and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted. This includes, without limitation, elevators, escalators, moving walks, dumbwaiters, wheelchair lifts, manlifts, stairway chairlifts and any device within the scope of ASME A17.1 (Safety Code for Elevators and Escalators) or ASME A90.1 (Safety Standard for Belt Manlifts).

1. This definition shall not apply to any conveyor devices that are process equipment.

5:23-12.2 Referenced standards

(a) Periodic tests and inspections, including acceptance tests and inspections, if applicable, shall be required on all new and existing power elevators, escalators, dumbwaiters, moving walks, wheelchair lifts, manlifts and stairway chairlifts in accordance with ASME A17.1 listed in Appendix A of the building subcode. This subsection shall not apply to elevators in structures in Use Group R-3 or R-4.

1. Periodic tests, other than routine tests, shall be witnessed by the elevator subcode official and shall be made at the expense of, and be the responsibility of, the owner.

2. Periodic inspections, which shall include routine inspections and tests, shall be made by the elevator subcode official.

(b) All elevator devices, as defined in this subchapter, that were installed in accordance with the State Uniform Construction Code shall be inspected and tested periodically in accordance with the applicable provisions of Appendix A of the building subcode under which the construction permit was issued.

(c) Periodic tests and inspections of elevators installed in accordance with N.J.A.C. 5:23, the State Uniform Construction Code, shall be conducted as follows:

1. Periodic inspections shall be made at intervals of not more than six months for all manlifts, and at intervals not exceeding those set forth in ASME A17.1 listed in Appendix A of the building subcode under which the construction permit was issued for elevators, escalators, dumbwaiters and moving walks.

2. Periodic tests shall be witnessed at intervals not exceeding those set forth in ASME A17.1 listed in Appendix A of the building subcode under which the construction permit was issued.

(d) All operating and electrical parts and accessory equipment or devices for elevator devices installed in accordance with the State Uniform Construction Code shall be maintained in safe operating condition. The maintenance of elevators, dumbwaiters and escalators shall conform to ASME A17.1, listed in Appendix A of the building subcode under which the construction permit was issued.

(e) The provisions of this subchapter shall not be retroactive except as otherwise provided in this section.

1. All existing elevators and escalators in structures other than those in Use Group R-3 or R-4 shall conform to ASME A17.3-1986 (Safety Code for Existing Elevators and Escalators) listed in Appendix A of the building subcode. Requirements for electric and hydraulic elevators and escalators are included in ASME A17.3. Specific requirements include, but are not limited to, safety requirements for hoistway and car doors, undercar safeties and terminal stopping devices, and inspection, maintenance and operating requirements.

i. These retroactive requirements shall not apply to existing elevators and escalators that are in full compliance with the subcodes of the State Uniform Construction Code in effect at the time of construction and for which a valid certificate of approval or compliance is in effect.

(f) If, upon inspection of any elevator device subject to the requirements of this subchapter, the equipment is found to be in a dangerous condition, or if there is an immediate hazard to persons riding on or using any such device, or if the design, or the method of operation in combination with the design, of the device is determined to be inherently dangerous by the elevator subcode official, the elevator subcode official shall so advise the construction official so that a notice of unsafe structure may be issued pursuant to N.J.A.C. 5:23-2.32.

(g) Inspection and testing procedures for equipment within the scope (section 1) of the ANSI/ASME A17.1 Safety Code for Elevators and

Escalators shall be performed in accordance with the latest edition of ANSI/ASME A17.2.

(h) Any education, experience or training requirements included or cited in reference standards shall not be binding in this State.

5:23-12.3 Registration of elevator devices

(a) Within one year after the effective date of this subchapter, and thereafter as required by (e) below, the owner of every existing structure containing one or more elevator devices, other than a structure in Use Group R-3 or R-4, shall register each elevator device with the Department on a form provided by the Commissioner.

(b) The owner of every new structure containing one or more elevator devices, other than a structure in Use Group R-3 or R-4, shall register each elevator device with the Department, on a form provided by the Commissioner, prior to the issuance of a certificate of occupancy.

(c) Each filed registration form shall contain the following information for each elevator device:

1. The identification or code number for each individual device;
2. The name of the device's owner or the owner's representative;
3. The mailing address and phone number of the person listed in (c)2 above;
4. The street address of the building or structure, including lot and block number, where the device is located;
5. The type of device;
6. The vertical travel of the device in number of feet and stories, or horizontal feet of travel of the walk or other device;
7. The rating load of the device in pounds;
8. The occupancy load in number of persons;
9. The speed of the elevator in feet per minute;
10. The manufacturer of the device;
11. The date of installation, if known, and date of last inspection performed; and

12. Special devices, such as, but not limited to, oil buffers, counterweights, governors and safeties, and auxiliary power generators.

(d) Each construction official shall provide the Department with the following information concerning each device within the municipality:

1. The name and mailing address of the owner or owner's representative of each device; and
2. The street address, including lot and block number, where the device is located.

(e) If the ownership of a structure containing one or more elevator devices, other than a structure in Use Group R-3 or R-4, is transferred, whether by sale, gift, assignment, intestate succession, testate devolution, reorganization, receivership, foreclosure or execution process, the new owner shall file a notice of change of ownership, with the appropriate re-registration fee, with the Department within 60 days of the date of transfer.

5:23-12.4 Registration fee

The initial registration fee for each elevator device in any structure that is not in Use Group R-3 or R-4 shall be \$50.00. A re-registration fee of \$50.00 shall be required for each structure containing one or more elevator devices, upon change of ownership.

5:23-12.5 Acceptance test and inspection fees

(a) The Department fees for witnessing acceptance tests and performing inspections shall be as follows:

1. The basic fees for elevator devices in structures not in Use Group R-3 or R-4 shall be as follows:

- | | |
|---|-----------|
| i. Traction and winding drum elevators: | |
| (1) One to 10 floors | \$225.00; |
| (2) Over 10 floors | \$375.00; |
| ii. Hydraulic elevators | \$200.00; |
| iii. Roped hydraulic elevators | \$225.00; |
| iv. Escalators, moving walks | \$200.00; |
| v. Dumbwaiters, platform lifts | \$ 50.00; |
| vi. Chairlifts and manlifts | \$ 50.00. |

2. Additional charges for devices equipped with the following features shall be as follows:

- | | |
|---|-----------|
| i. Oil buffers (charge per oil buffer) | \$ 40.00; |
| ii. Counterweight governor and safeties | \$100.00; |
| iii. Auxiliary power generator | \$ 75.00. |

3. The Department fee for elevator devices in structures in Use Group R-3 or R-4 shall be \$150.00. This fee shall be waived when signed statements and supporting inspection and acceptance test reports are filed by an approved qualified agent or agency in accordance with N.J.A.C. 5:23-2.19 and 2.20.

(b) The Department fees for periodic tests and inspections for elevator devices in structures not in Use Group R-3 or R-4 shall be as follows:

1. The fee for the six month periodic inspection of elevator devices shall be as follows:

- i. Traction and winding drum elevators:
 - (1) One to 10 floors \$140.00;
 - (2) Over 10 floors \$180.00;
- ii. Hydraulic elevators \$100.00;
- iii. Roped hydraulic elevators \$140.00;
- iv. Escalators, moving walks \$140.00.

2. The fee for the one year periodic inspection and witnessing of tests of elevator devices shall be as follows:

- i. Traction and winding drum elevators:
 - (1) One to 10 floors \$200.00;
 - (2) Over 10 floors \$240.00;
- ii. Hydraulic elevators \$150.00;
- iii. Roped hydraulic elevators \$200.00;
- iv. Escalators, moving walks \$320.00;
- v. Dumbwaiters, chairlifts \$ 80.00;
- vi. Manlifts \$120.00.

3. Additional yearly periodic inspection charges for elevator devices equipped with the following features shall be as follows:

- i. Oil buffers (charge per oil buffer) \$ 40.00;
- ii. Counterweight governor and safeties \$ 80.00;
- iii. Auxiliary power generator \$150.00.

4. The fee for the three year or five year inspection of elevator devices shall be as follows:

- i. Traction and winding drum elevators:
 - (1) One to 10 floors (five year inspection) \$340.00;
 - (2) Over 10 floors (five year inspection) \$380.00;
- ii. Hydraulic and roped hydraulic elevators:
 - (1) Three-year inspection \$250.00;
 - (2) Five-year inspection \$150.00.

(c) When the Department is the enforcing agency, the fees set forth in (b) above shall be paid annually in accordance with the following schedule, which is based on the average of the fees to be collected over a five year period:

1. Basic annual fee as follows:
- i. Traction and winding drum elevators:
 - (1) One to 10 floors \$370.00;
 - (2) Over 10 floors \$450.00;
 - ii. Hydraulic elevators \$270.00;
 - iii. Roped hydraulic elevators \$300.00;
 - iv. Escalators, moving walks \$460.00;
 - v. Dumbwaiters, platform lifts \$ 80.00;
 - vi. Chairlifts, manlifts \$120.00.

2. Additional charges for devices equipped with the following features as follows:

- i. Oil buffers (charge per oil buffer) \$ 40.00;
- ii. Counterweight governor and safeties \$ 80.00;
- iii. Auxiliary power generator \$150.00.

5:23-12.6 Licensing

(a) All elevator subcode officials and inspectors shall be licensed according to N.J.A.C. 5:23-5.5.

(b) Any person aggrieved by any decision of the Department under these rules shall be entitled to a hearing pursuant to N.J.A.C. 5:23-5.2.

(c) A licensed elevator subcode official or inspector shall be responsible for completing any continuing educational requirements imposed by the Department pursuant to this chapter prior to license renewal pursuant to N.J.A.C. 5:23-5.

5:23-12.7 Alterations, replacements, damages, increases in size, changes in use group, ordinary repairs

(a) In complying with this chapter, calculations concerning alterations, replacements, damages, increases in size and changes in use

group, in N.J.A.C. 5:23-2, shall be performed using data for entire structures. The calculations in N.J.A.C. 5:23-2 shall not be applied to individual elevator devices.

(b) Alterations of elevator devices are those defined in the current ANSI/ASME A17.1 standard or other applicable standard referenced in the State Uniform Construction Code. Alteration provisions as defined in whole structures in N.J.A.C. 5:23-2 shall not be applied to elevator devices.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF PARKS AND FORESTRY

Endangered Plant Species List

Proposed Amendments: N.J.A.C. 7:5C-1.4, 3.1, and 5.1

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

Authority: N.J.S.A. 13:1B-1 et seq., particularly 13:1B-15.146 through 13:1B-15.150 and 13:1B-15.151 through 13:1B-15.158; and 13:1D-9.

DEP Docket Number: 008-91-02.

Proposal Number: PRN 1991-136.

Submit written comments by May 17, 1991 to:

Samuel A. Wolfe, Esq.
 Administrative Practice Officer
 Department of Environmental Protection
 CN 402
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) proposes to amend N.J.A.C. 7:5C in order to make several minor revisions to the Endangered Plant Species Program Rules, to add 22 plant species to the State Endangered Plant Species List (List), and to delete one species from the List.

On June 4, 1990, the Department adopted the first official list of endangered plant species native to the State, as required by the Endangered Plant Species List Act (Act), N.J.S.A. 13:1B-15.151 through 13:1B-15.158 (see 22 N.J.R. 1743(a)). The List is composed of plant species native to New Jersey which are endangered within the State or nation as a result of habitat destruction, overcollection, pollution or other factors, natural or man-made (see N.J.S.A. 13:1B-15.154). The Department may designate a native plant species to the List if it satisfies one or more of the criteria at N.J.A.C. 7:5C-2.2.

N.J.A.C. 7:5C-2.1(c) specifies that the Department will, on the basis of new or updated information in the Natural Heritage Database, review the Endangered Plant Species List at least annually to determine if additions or deletions to the List are needed based on the criteria listed at N.J.A.C. 7:5C-2.2. After this annual review, the Department may propose and adopt, pursuant to the Administrative Procedure Act, revisions to the List. However, the Department may not propose to remove species designated to the List pursuant to N.J.A.C. 7:5C-2.2(a)2 unless they are no longer listed, proposed, or under review by the Federal government (see N.J.S.A. 13:1B-15.153 and N.J.A.C. 7:5C-2.1(c)).

Based on comments received during the rulemaking for the first List and other information incorporated into the Natural Heritage Database since January 16, 1990, the Department has determined that 22 native plant species now qualify for addition to the List (see 22 N.J.R. 1743(a)). A basis and background document containing detailed information on the suitability of each of the 22 species proposed for inclusion on the List has been filed with the Office of Administrative Law as part of the proposal. This document is available for inspection at the Office of Administrative Law, and at the Office of Natural Lands Management, 501 E. State Street, Trenton, New Jersey.

The Department is proposing to delete *Cardamine palustris* var. *pratensis*, or cuckoo flower, from the List because field work conducted in 1990 has determined that this species is more frequent than previously documented in the Natural Heritage Database. Because more than five occurrences of this species are now documented in the Natural Heritage

Database, it no longer qualifies as endangered under N.J.A.C. 7:5C-2.2(a)4, the original basis for its listing. Further, the Department has determined that this species does not qualify for listing as endangered under any other criteria at N.J.A.C. 7:5C-2.2.

In addition to the above changes to the List, the Department is proposing to amend N.J.A.C. 7:5C-3.1 to rename its working list of State plant species not on the List from "Additional plant species of concern" to "Plant species of concern."

The Department is also proposing the following changes to the definitions at N.J.A.C. 7:5C-1.4:

1. In order to clarify the N.J.S.A. 13:1B-15.153 and N.J.A.C. 7:5C-1.4 definition of "endangered species," the Department is proposing to add to these rules a definition of the term "extant populations." The Act and the rules defined "endangered species" to include "any native plant species whose survival in the State or nation is in jeopardy" because it has "five or fewer extant populations within the State." The Department considers "extant populations" to be those populations documented in the Natural Heritage Database to exist at a particular location. The Department used this concept of "extant populations" when it formulated the first List for proposal, and now proposes to codify this definition in order to eliminate any confusion that may exist about the Department's methodology (see 22 N.J.R. 1743(a), comments 9, 23-25, and 63).

2. In order to clarify the N.J.S.A. 13:1B-15.153 and N.J.A.C. 7:5C-1.4 definition of "plant," the Department is proposing to add to these rules a definition of "Plant Kingdom." The Act and the rules define "plant" in part as "any member of the Plant Kingdom." The Department considers the Plant Kingdom to be comprised of those organisms contained in the phylum Bryophyta and phylum Tracheophyta. This includes bryophytes and vascular plants but does not include algae, fungi, or lichens (see 22 N.J.R. 1743(a), comment 42).

3. The Department is proposing to correct the N.J.A.C. 7:5C-1.4 definition of "under review by the Federal government as endangered or threatened" by removing references to plant species already listed or proposed for listing on the Federal threatened or endangered species list. The term "under review" was intended to apply only to plant species listed within the status categories of 1 and 2 in the most recent Notice of Review published in the Federal Register by the United States Fish and Wildlife Service (see 22 N.J.R. 1743(a), comment 74).

Social Impact

The proposed amendments are expected to have a positive social impact by increasing awareness of and concern by the general public and land use planners and managers for the status of the State's floral diversity. Adoption of the proposed amendments will have positive consequences for that segment of the population involved in conservation, land management and planning decisions by focusing their attention and efforts on an updated list of endangered plant species. In addition, the new and revised definitions are expected to render these rules more specific and more understandable.

Economic Impact

The proposed amendments do not contain direct regulatory requirements or impose fees and, therefore, will not have any direct economic impact on citizens of the State. Adoption of these amendments to the Endangered Plant Species List may have a positive economic impact on local and State government planning functions by increasing the efficiency by which endangered plant species are considered in the planning process.

Environmental Impact

Adoption of these amendments and an updated Endangered Plant Species List will have a long term positive environmental impact because research, investigations, and public education on endangered plant species will more accurately reflect the endangered status of the State's native flora. This will enhance the Department's efforts to maintain the State's flora diversity, thereby contributing to the stability and viability of ecosystems. Because many endangered plant species occupy specialized and often harsh habitats, such as sand dunes, rock faces, bogs, and mountain tops, their preservation will aid in soil development, in preventing wind and water erosion, and in promoting water retention. In addition, maintaining a diverse flora within the State is essential to the conservation of wildlife. All of these factors will result in an overall enhancement of the environment and the quality of life for State citizens.

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 the proposed amendments will not impose reporting, recordkeeping, or other com-

pliance requirements on small businesses since the proposed amendments impose regulatory requirements on the Department but not on members of the general public.

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

7:5C-1.4 Definitions

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

...
"Extant populations" means those populations documented in the Natural Heritage Database to exist at a particular location.
 ...

...
"Plant Kingdom" means those organisms contained in the phylum Bryophyta and phylum Tracheophyta.
 ...

...
 "Under review by the Federal government as endangered or threatened" means plant species listed within [the] status categories [of LE, LT, PE, PT,] 1 and 2 in the most recent Notice of Review published in the Federal Register by the United States Fish and Wildlife Service.

SUBCHAPTER 3. [ADDITIONAL] PLANT SPECIES OF CONCERN

7:5C-3.1 [Additional plant] **Plant** species of concern

[(a)] The Department will maintain a list of [additional] plant species **of concern** for the purpose of monitoring the status of the State's flora and to serve as a working list for transition of species to and from the Endangered Plant Species List. The list of [additional] plant species **of concern** will be composed of those species not listed as endangered at N.J.A.C. 7:5C-5.1 and whose [occurrences] **populations** are monitored by the Natural Heritage Database.

7:5C-5.1 Endangered Plant Species List

(a) The following plant species are designated as endangered plant species:

1. Scientific Name	Common Name
... [<i>Cardamine pratensis</i> var. <i>palustris</i>	cuckoo flower]
... Carex formosa	handsome sedge
... Castanea pumila	Allegheny chinquapin
... Claytonia sp.	Hammond's yellow spring beauty
... Isanthus brachiatus	false pennyroyal
... Liatris borealis	northern blazing star
... Penstemon laevigatus	smooth beard tongue
Phlox divaricata var divaricata	wild blue phlox
... Platanthera hookeri	Hooker's orchid
... Potamogeton confervoides	algae-like pondweed
... Potamogeton robbinsii	Richard's pondweed
... Rudbeckia fulgida	orange coneflower
... Sphagnum augustifolia	sphagnum
Sphagnum austinii	sphagnum
Sphagnum centrale	sphagnum
Sphagnum contortum	sphagnum
Sphagnum macrophyllum var. floridanum	sphagnum
Sphagnum platyphyllum	sphagnum

Sphagnum riparium	sphagnum
Sphagnum strictum	sphagnum
Sphagnum subsecundum	sphagnum
...	
Viola septentrionalis	northern blue violet
...	
Zigadenus leimanthoides	oceanorus

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT**Hazardous Waste Fees****Proposed New Rule: N.J.A.C. 7:26-4A.5****Proposed Amendment: N.J.A.C. 7:26-4A.3**

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

Authority: N.J.S.A. 13:1B-3, 13:1D-2 and 13:1E-1 et seq., particularly 13:1E-6, 13:1E-18, 13:1E-42.2, 13:1E-60d, and 13:1E-87.

DEP Docket Number: 010-91-02.

Proposal Number: PRN 1991-140.

Submit comments, identified by the Docket Number given above, by May 17, 1991 to:

Samuel A. Wolfe
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) is proposing to amend the hazardous waste fee schedule at N.J.A.C. 7:26-4A.3. This amendment will affect generators and transporters of hazardous waste and hazardous waste treatment, storage and disposal (TSD) facilities. The Department is also proposing a severability section at N.J.A.C. 7:26-4A.5 which clarifies that if any provision of this subchapter is invalidated by a court of competent jurisdiction, all remaining provisions not specifically invalidated continue in full force and effect.

On March 6, 1989, then-Governor Kean enacted P.L. 1989 c.34. A provision of this law, Section 28, amended N.J.S.A. 13:1E-18 to remove the \$500.00 fee cap the Department could assess under the Solid Waste Management Act (SWMA), N.J.S.A. 13:1E-1 et seq., and to allow the Department to assess annual or periodic fees for the services it performs. The fees established pursuant to N.J.S.A. 13:1E-18 must reasonably reflect the duration or complexity of the service rendered; the fees established by this amendment satisfy that requirement. The proposed hazardous waste fee schedule, therefore, imposes fees on the regulated hazardous waste community which will reflect the cost to the Department of providing permitting and oversight services for hazardous waste activity in New Jersey. The fees represent the average time factor for each task, derived from data encompassing the last several years, at the current budgetary requirements of the Division of Hazardous Waste Management. The proposed hazardous waste fee schedule is essential to the continued performance of hazardous waste permitting and oversight activities since the General Fund budget of the Department has been greatly reduced for this fiscal year. In fiscal year (FY) 1990, general revenues supported 99 positions in the hazardous waste program; in FY 1991 general revenues will support only 22 positions. Revenues collected under this fee schedule will ensure the Department has the necessary funds to continue effective operation of the hazardous waste management program. Furthermore, all revenues collected pursuant to the fee schedule will be dedicated to providing hazardous waste management services in New Jersey.

The Department anticipates revenues from the revised fee schedule to be approximately \$9,000,000. Not all existing fees will be affected. Fees for hazardous waste vehicle registration and major hazardous waste facility inspections will remain the same. Fees will be unchanged or decreased for generator annual report reviews. Fees are being increased for hazardous waste facility inspections (other than major facilities), hazardous waste generator inspections, hazardous waste transporter inspections, and waste classifications.

In addition to the revised fees, fees will be established for closure inspections, delisting inspections, compliance inspections and compliance reviews. Compliance inspections and compliance reviews are necessary when the initial inspection finds non-compliance with the Department's rules.

This amendment will also establish a fee for the processing of each completed manifest. In-State generators will be billed directly on a periodic basis, the maximum frequency being quarterly, if there is sufficient activity in a quarter to warrant a billing. For out-of-State generators, the fee will be assessed to the New Jersey hazardous waste facility that accepts waste from the out-of-State generator. The Department anticipates that those facilities which accept waste from out-of-State generators will pass this cost on to out-of-State generators.

The fees for permitting activities will be significantly modified with most fees being increased. N.J.A.C. 7:26-4A.3(e), as proposed, removes the distinction between "major" hazardous waste facilities and "non-major" hazardous waste facilities for purposes of the permit application fee. Also included in this category will be a facility expansion to add a new type of hazardous waste facility activity, for example, a permitted incinerator adding a land disposal operation.

In the case of existing status facilities, N.J.A.C. 7:26-4A.3(e)3 establishes fees for facilities which have obtained existing status and filed a Part B facility permit application prior to the effective date of the amendments. These fees are essentially the fees for new facilities established at paragraph (e)1, as discussed above, less the Department's costs for performing an administrative review of the application to determine if the submittal is complete. Existing facility applicants will have to submit the required fee within 120 days of the effective date of the amendments or on public notice of the draft permit issuance/denial, whichever is earliest. Furthermore, this category is limited to only those facilities which have filed their Part B facility application prior to the effective date of the amendments. Facilities which are required to file a Part A application to obtain existing facility status subsequent to the effective date of this amendment, or who are currently existing status but fail to file a Part B, will be subject to the fee schedule for new facilities at N.J.A.C. 7:26-4A.3(e)1. Therefore, on the effective date of the amendment, only those active Part B applications on file with the Department will be eligible for the existing facility fee schedule at N.J.A.C. 7:26-4A.3(e)3. This category will become a closed class on the effective date of the amendment.

The fees for permit review, closure approval and facility annual report review are being increased. The fee for permit application revision is being eliminated.

Fees will be established for permit renewal, review of existing facility changes, review of ownership changes, permit modification requests, RD&D permit review, generator accumulation in tank review, treatability studies review, and permit exemption qualification determinations.

Social Impact

There will be a positive social impact from the proposed hazardous waste fee system. The system will impose increased costs on many aspects of the hazardous waste industry, such as the generation of waste and hazardous waste facility permitting and oversight. This increased cost, due to its potential impact on a generator's profits, may encourage the reduction of waste at the source, and thus assist in preventing pollution. The fees collected will allow the Department to maintain its hazardous waste program, which is essential to protect human health and the environment as mandated under State and Federal law. In addition, those responsible for generating and handling hazardous waste will pay a greater share of the cost of hazardous waste regulation rather than placing that burden on the general public.

Economic Impact

The Department anticipates the proposed hazardous waste fee system will annually cost the regulated community approximately \$9,000,000. This fee system is necessary to recoup the costs of the various activities associated with the regulation of hazardous waste in New Jersey, since General Fund revenues used to help fund the program have continued to be reduced. The revenues obtained pursuant to this fee system will support 130 full-time positions, or full-time equivalents (FTEs). The current hazardous waste fee rule was intended to support 44 positions and a portion of 54 positions funded through General Fund revenues. The additional 32 FTEs to be supported by fee revenues are necessary to provide adequate support for the basic program elements. The additional FTEs supported by fee revenues do not represent new positions; rather, the funding source for present positions is being shifted from

General Fund revenues to fee revenues. The anticipated increase in fee revenues reflects not only the decrease in General Fund revenues but also the increase in the amount of revenue needed to support an FTE. Staff salaries, indirect costs, fringe benefits, and non-labor or operating expenses have all increased over the last two years. Based on the Department's previous general appropriations, total Departmental cost to maintain each FTE in 1988 averaged approximately \$60,000 and this year will average approximately \$70,000. In addition to staff salaries, this includes costs for rent, telephone services, insurance, postage, plant operation and maintenance, employee benefits, equipment, training, and printing.

The proposed fee system reflects the Department's costs in performing various tasks. Each fee has been calculated in a manner which represents the duration and complexity of the respective tasks that the Department performs. The fees collected for each task will support the Department's budget requirements for performing the particular task. Until the Legislature amended N.J.S.A. 13:1E-18 to remove the \$500.00 cap the Department could assess for most of the services it performed in this area, the Department had to rely on general appropriations to fund its hazardous waste management activities under the Solid Waste Management Act. The removal of the fee cap was intended to allow the Department to recoup the costs for the services it performs from the parties for whom the services are being performed. This section outlines each of the areas where a fee is established or amended and the Departmental personnel the fee revenue will support. The Department's costs for maintaining each FTE in the categories of manifesting, waste classification, inspection, and permitting is also provided.

Fees for waste classifications will be increasing from \$250.00, \$350.00 and \$500.00 to \$500.00, \$1,000 and \$2,500. The fee for review of sampling plans submitted in support of waste classifications will be increasing from \$200.00 to \$1,000. The fee for review of delisting petitions will be increasing from \$1,500 to a maximum of \$14,000 for a complete delisting.

However, the annual reporting fee for generators manifesting from 1.33 tons to 10 tons of hazardous waste annually will be decreased from \$200.00 to \$125.00; fees for generators manifesting from 10 to 100 tons of hazardous waste annually will be decreased from \$300.00 to \$180.00; fees for generators manifesting from 100 to 150 tons of hazardous waste annually will be decreased from \$400.00 to \$300.00. An additional category of generators, those that manifest greater than 150 tons of waste annually, will be created, and the reporting fee will be \$400.00.

The fee for the processing of completed manifests is \$11.10 per manifest. Based on current data available on the average number of manifests per generator, the fee should range from approximately \$50.00 annually for generators of relatively small quantities of hazardous waste to approximately \$1,000 annually for large generators. The manifest processing fee assessed to hazardous waste facilities which accept waste from out-of-State generators is anticipated to range from approximately \$1,000 to \$100,000 annually. Thirteen facilities, based on 1989 data, would be charged between \$10,000 and \$100,000 annually, with most of the facilities in the range of \$20,000 to \$45,000.

The inspection fee for a major hazardous waste facility will not be affected. The inspection fee for a non-major commercial TSD will be increased from \$500.00 to \$960.00. The inspection fee for a non-commercial TSD will be increased from \$500.00 to \$2,040. The inspection fee for a generator will be increased from \$500.00 to \$1,370. The inspection fee for a transporter will be increased from \$500.00 to \$1,370. Fees will also be established for closure inspections (\$1,100), delisting inspections (\$660.00), compliance inspections (\$700.00), and compliance reviews (\$660.00).

The permit application fee for a land disposal facility is decreased from \$84,000 to \$77,000. The application fee for a storage facility is increased from \$23,000 to \$38,000; for an incineration facility with a trial burn from \$65,000 to \$83,000; and for an incineration facility without a trial burn from \$40,000 to \$54,000.

The fee for permit review for an existing facility is being significantly increased from \$500.00 to \$58,000 for a land disposal facility, to \$30,000 for a storage facility, to \$73,000 for an incineration facility with a trial burn, and to \$44,000 for an incineration facility without a trial burn. These fees are based on the total cost to the Department for an application review less the cost for administrative review of the application for completeness. These fees represent the cost to the Department for technical review, permit review and follow-up activity such as assuring compliance with permit conditions and review of submittals required by the permit. The Department will also apply the same standard to review of permit renewal applications. Thus, the fees for existing facility permit review and permit renewals are the same. In the case of permit renewals,

the Department believes that its outreach efforts in assisting applicants through the renewal process results in complete submittals. Therefore, the Department can usually proceed to the technical review of the permit renewal application. The reduced fee for review of permit renewal applications reflects this effort.

The fee for issuance of closure approval is being increased from \$500.00 to \$10,000 for a closure with soil sampling and to \$6,000 for a closure without soil sampling. New fees will be established for the following activities: review of existing facility changes, \$3,000; review of ownership changes, \$3,000; permit modifications, minor \$1,750, major, \$3,500; RD&D permit review, \$38,000; generator accumulation in tanks review, \$1,200; treatability studies review, \$600.00; permit exemption qualification determination, \$600.00. The fee for the facility annual report review is increased from \$500.00 to \$800.00.

The breakdown of the 130 FTEs to be funded by fee revenues is as follows. The fees for the generator annual report review and for manifest forms will be used to support 35 FTEs required for administration, review and evaluation of annual reports and for processing of associated manifest data from approximately 6,000 generators and 100 TSD facilities with an anticipated total of 140,000 manifests being processed. Direct labor costs account for 27 FTEs with eight FTEs required for indirect or support costs. The average Department cost per FTE in this category is \$64,907 which represents:

Salary	\$30,991	
Fringe benefits	\$8,879	(28.65 percent of salary)
Indirect	\$13,037	(32.7 percent of salary plus fringe benefits)
Operating	<u>\$12,000</u>	(postage, telephone, supplies, travel, data system management, etc.)
Total per FTE	\$64,907	
	x35	
Category Total	<u>\$2,271,745</u>	

Fees for waste classification and delisting reviews will be used to fund seven FTEs; three are direct labor and four are support. It is anticipated that 600 waste classifications, 20 sampling plan reviews and five delisting reviews will be performed annually. The average Department cost per FTE in this category is \$72,356 which represents:

Salary	\$35,354	
Fringe benefits	\$10,129	(28.65 percent of salary)
Indirect	\$14,873	(32.7 percent of salary plus fringe benefits)
Operating	<u>\$12,000</u>	(postage, telephone, supplies, travel, data system management, etc.)
Total per FTE	\$72,356	
	x7	
Category Total	<u>\$506,492</u>	

Fees for inspections, compliance reviews and vehicle registrations will be used to fund 57 FTEs, of which 41 are direct labor and 16 are support. These FTEs will be used to register approximately 10,000 hazardous waste vehicles and conduct the following inspections: weekly inspections (468) at nine major TSD facilities; 500 inspections at 18 non-major commercial TSD facilities; 150 inspections at non-commercial TSD facilities; 650 generator inspections; 50 transporter inspections; 25 closure inspections; 108 delisting inspections; 500 compliance inspections; and 350 compliance reviews. The average Department cost per FTE in this category is \$72,422 which represents:

Salary	\$35,393	
Fringe benefits	\$10,140	(28.65 percent of salary)
Indirect	\$14,889	(32.7 percent of salary plus fringe benefits)
Operating	<u>\$12,000</u>	(postage, telephone, supplies, travel, data system management, etc.)
Total per FTE	\$72,422	
	x57	
Category Total	<u>\$4,128,054</u>	

There are 31 FTEs associated with hazardous waste permitting activities; 18 are direct labor and 13 are indirect or support. There are 27 TSD facility Part B applications under review, and 28 TSD facility permits are expected to be acted on in FY 1991. Also, 34 closure plans are expected to be reviewed and approved. The other permitting activities, which include review of ownership/operation control changes, permit modifications, generator accumulation in tanks, treatability studies and

permit exemption qualifications, come from the approximately 6,000 regulated generators and 100 TSD facilities. The average Department cost per FTE in this category is \$69,031 which represents:

Salary	\$35,750	
Fringe benefits	\$10,242	(28.65 percent of salary)
Indirect	\$15,039	(32.7 percent of salary plus fringe benefits)
Operating	<u>\$8,000</u>	(postage, telephone, supplies, travel, data system management, etc.)
Total per FTE	\$69,031	
	x31	
Category Total	<u>\$2,139,961</u>	

Therefore, the total budget requirement for the 130 FTEs broken down as described above is:

Manifest	\$2,271,745
Waste Classification	\$ 506,492
Inspection	\$4,128,054
Permitting	<u>\$2,139,961</u>
TOTAL	\$9,046,252

The Department anticipates the following annual revenues to be generated by the revised fee system:

Manifest forms	\$ 200,000
Manifest processing	\$1,554,000
Annual reporting	\$ 517,765
Waste classification and delisting	\$ 506,500
Vehicle registration	\$1,200,000
Inspections/Compliance	\$2,930,380
Permitting activities	<u>\$2,140,000</u>
TOTAL	\$9,048,645

Environmental Impact

Proper management of hazardous waste in New Jersey is essential to the health, safety and welfare of New Jersey's residential and business communities. The proposed amendment will provide adequate funds so that the Department can ensure that hazardous waste in New Jersey is managed in an environmentally sound manner. In addition, increasing certain hazardous waste fees will encourage industry to minimize the amount of hazardous waste generated, thereby decreasing potential risk to the environment. The increased revenues dedicated to supporting the activities as outlined in this proposal will allow the Department to continue to protect human health and the environment through its hazardous waste permitting and oversight activities. Failure to implement this fee system, to replace reduced General Fund revenues, would result in a reduction of the current hazardous waste management program and would not allow the Department to adequately protect human health and the environment from the risks associated with the handling and disposing of hazardous waste.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendment will impose new or increased compliance costs and requirements on small businesses as defined by the Regulatory Flexibility Act.

While the proposed amendment applies to hazardous waste generators, transporters, and TSD facilities, the areas where the greatest impacts occur, large generators of waste and TSD facilities, should not significantly impact small businesses since large generators and TSD facilities generally do not meet the definition of a small business. Costs of compliance for a small business are expected to range from \$50.00 to \$1,370 annually for manifest processing, inspection, and annual reporting with most small businesses at the \$50.00 level. While there is potential for significant financial impact to businesses as a result of this revised fee system, small businesses are generally not involved with hazardous waste facility permitting activities, where the impact will be the greatest.

In developing this amendment, the Department has balanced the need to protect human health and the environment against the economic impact of the rule as proposed and has determined that further reducing the requirements of the rules for small businesses would unacceptably endanger the environment. In addition, through the use of Federal Grant money and with the aid of New Jersey Institute of Technology (NJIT), the Department has initiated a Technical Assistance Program (TAP)

housed at NJIT. This program is designed to help small businesses find innovative solutions in achieving waste reduction. There is no exemption from coverage included in these amendments unless otherwise provided for in the existing rules.

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

7:26-4A.3 Fee schedule for hazardous waste facilities, generators, and transporters

[(a) The fee schedule for hazardous waste facilities is as follows:

1. Annual reporting fee: \$500.00;
2. Fee for inspection of hazardous waste activities, other than major hazardous waste facilities as defined at N.J.S.A. 13:1E-42.1, per inspection: \$500.00;

3. Fee for inspection of major hazardous waste facilities, as defined at N.J.S.A. 13:1E-42.1, will be determined on an annual basis by the following formula:

F = Fee

T = Inspection time (expressed as a percentage of the Department's total annual inspection time for all major facilities)

W = Total quantity of hazardous waste generated and manifested off-site and hazardous waste manifested into the facility (expressed as a percentage of total hazardous waste generated and received annually from off-site for all major facilities)

I = Total annual cost for major inspections

F = (T + W)/2 x I

4. Fees for review of permit applications for new major hazardous waste facilities, as defined at N.J.S.A. 13:1E-51, and expansions of 50 percent or more at major hazardous waste facilities, shall be paid at the time of application submission, and are as follows:

- i. Land disposal: \$84,000.00;
- ii. Storage (including treatment): \$23,000.00;
- iii. Incineration with trial burn: \$65,000.00; and
- iv. Incineration without trial burn: \$40,000.00

5. Fees for review of permit applications and issuance of permits for hazardous waste facilities, other than major hazardous waste facilities as defined at N.J.S.A. 13:1E-51, which are required to be permitted pursuant to N.J.A.C. 7:26-12, are as follows:

- i. Fee for permit application review: \$500.00

(1) The permit application review fee shall be paid at the time of each submission of a permit application;

- ii. Fee for permit issuance: \$500.00

(1) The permit issuance fee shall be paid at the time of public notice of the draft permit, including draft permits for permit modifications;

iii. Fee for each modification of a permit or reissuance of a permit pursuant to N.J.A.C. 7:26-12.6, except that there shall be no fee assessed for permit revisions that are minor according to the criteria at N.J.A.C. 7:26-12.8(b): \$500.00

(1) The permit modification or reissuance fee shall be paid at the time of submission of a request for a modification or reissuance;

- (2) No fee is required for permit modifications that are mandatory under State of Federal statute or regulation; and

- iv. Fee for issuance of closure approval: \$500.00

(1) The fee for issuance of closure approval shall be paid at the time of submission of the application for closure.

(b) The fee schedule for hazardous waste generators is as follows:

1. Annual reporting fees are as follows. Annual reporting fees shall be based on manifest information and/or annual reports for the previous calendar year:

- i. Hazardous waste generators manifesting 1.33 or more tons but less than 10 tons of hazardous waste annually: \$200.00;
- ii. Hazardous waste generators manifesting 10 or more tons but less than 100 tons of hazardous waste annually: \$300.00; and
- iii. Hazardous waste generators manifesting 100 or more tons of hazardous waste annually: \$400.00;

2. Fee for inspection of hazardous waste generator, per inspection: \$500.00;

3. Fees for waste classification and delisting are as follows. Fees for waste classification shall be paid upon submission of each request for classification. A fee is due for each separate waste classification requested:

i. The fee for the classification of the following wastes is \$500.00 per classification:

- (1) Manufacturing process waste streams;
- (2) Wastes for which the source of the contamination is unknown; and

(3) Wastes for which an analytical assessment of the presence of substances listed at N.J.A.C. 7:26-8.13 through 8.16 is required;

ii. Fee for the classification of wastes where the source of contamination is known and an analytical assessment of the potential presence of wastes or waste constituents listed at N.J.A.C. 7:26-8.13 through 8.16 is not required, and the total volume of waste to be classified is greater than or equal to 200 cubic yards of solids or 500 gallons of liquids, per classification: \$350.00;

iii. Fee for the classification of wastes where the source of contamination is known and an analytical assessment of the potential presence of wastes or waste constituents listed at N.J.A.C. 7:26-8.13 through 8.16 is not required, and the total volume of waste to be classified is less than 200 cubic yards of solids or less than 500 gallons of liquids, per classification: \$250.00;

iv. Fee for review of sampling plans submitted in support of waste classification requests, for each plan submitted: \$200.00;

v. Fees for evaluating site specific waste streams for delisting pursuant to N.J.A.C. 7:26-8.17 shall be paid upon submission of the document, and are as follows:

- (1) Review of delisting petition: \$500.00;
- (2) Development, monitoring, and review of the sampling plan: \$500.00; and
- (3) Development and publication of each public notice in the New Jersey Register: \$500.00; and

vi. The fee for Hazardous Waste Manifest forms is \$10.00 for a package of 10 forms and shall accompany the request for forms.]

(a) Hazardous waste generator annual reporting fees are as follows. Annual reporting fees shall be based on manifest information and/or annual reports for the previous calendar year:

- 1. Hazardous waste generators manifesting 1.33 or more tons but less than 10 tons of hazardous waste annually: \$125.00
- 2. Hazardous waste generators manifesting 10 or more tons but less than 100 tons of hazardous waste annually: \$180.00
- 3. Hazardous waste generators manifesting 100 or more tons but less than 150 tons of hazardous waste annually: \$300.00
- 4. Hazardous waste generators manifesting 150 or more tons of hazardous waste annually: \$400.00

(b) The manifest processing fee for generators and hazardous waste facilities is as follows:

- 1. Generators located in the State of New Jersey: \$11.10 per manifest.
- 2. Hazardous waste facilities: \$11.10 per manifest for waste received from generators located outside of the State of New Jersey. A hazardous waste facility will not be assessed a manifest processing fee for waste received from New Jersey generators.

(c) Fees for conducting inspections and compliance reviews for transporters, generators and facilities are as follows:

1. Inspection fee for a major hazardous waste facility, as defined at N.J.S.A. 13:1E-42.1, will be determined on an annual basis by the following formula:

$$F = \text{Fee}$$

$$T = \text{Inspection time (expressed as a percentage of the Department's total annual time for all major facilities)}$$

$$W = \text{Total quantity of hazardous waste generated and manifested off-site and hazardous waste manifested into the facility (expressed as a percentage of total hazardous waste generated and received annually from off-site for all major facilities)}$$

$$I = \text{Total annual cost for major inspections}$$

$$F = (T + W)/2 \times I$$

2. Inspection fee for a commercial hazardous waste facility, other than a major hazardous waste facility as defined at N.J.S.A. 13:1E-42.1, per inspection: \$960.00.

3. Inspection fee for a non-commercial hazardous waste facility: \$2,040.

- 4. Inspection fee for a generator: \$1,370.
- 5. Inspection fee for a transporter: \$1,370.

- 6. Inspection fee for closure inspection: \$1,100.
- 7. Inspection fee for delisting inspection: \$660.
- 8. Inspection fee for compliance inspection: \$700.
- 9. Fee for compliance reviews: \$660.

(d) Fees for waste classification and delisting are as follows. Fees for waste classification shall be paid upon submission of each request for classification. A fee will be assessed for each separate waste classification requested. Fees for each step in the delisting process shall be submitted prior to the commencement of review/action by the Department:

1. The fee for the classification of the following wastes is \$1,500 per classification:

- i. Manufacturing process waste streams;
- ii. Wastes for which the source of contamination is unknown;
- iii. Wastes for which an analytical assessment for the presence of substances listed at N.J.A.C. 7:26-8.13 through 8.16 is required;

2. Fee for the classification of wastes where the source of contamination is known and an analytical assessment for the potential presence of wastes or waste constituents listed at N.J.A.C. 7:26-8.13 through 8.16 is not required, and the total volume of waste to be classified is greater than or equal to 200 cubic yards of solids or 500 gallons of liquids, per classification: \$1,000;

3. Fee for the classification of wastes where the source of contamination is known and an analytical assessment for the potential presence of wastes or waste constituents listed at N.J.A.C. 7:26-8.13 through 8.16 is not required, and the total volume of waste to be classified is less than 200 cubic yards of solids or less than 500 gallons of liquids, per classification: \$500.00;

4. Fee for the review of sampling plans submitted in support of waste classification requests, for each plan submitted: \$1,000;

5. Fees for evaluating site specific waste streams for delisting pursuant to N.J.A.C. 7:26-8.17 shall be paid upon submission of the document, or in the case of the New Jersey Register notices, prior to the preparation of the notice, and are as follows:

- i. Review of delisting petition: \$6,500;
- ii. Development, monitoring, and review of sampling plan: \$1,000;
- iii. Development and publication of public notice in the New Jersey Register: \$6,400;

(e) Fees for permitting/review activities are as follows:

1. Fees for review of a permit application for a new hazardous waste facility, expansion of 50 per cent or more at a major hazardous waste facility, as defined at N.J.S.A. 13:1E-51, and expansion of any facility that includes a new type of facility among those listed below shall be paid at time of application submission and are as follows:

- i. Land disposal (without storage) \$77,000
- ii. Storage (including treatment) \$38,000
- iii. Incineration with trial burn \$83,000
- iv. Incineration without trial burn \$54,000

2. Fees for review of permit renewal application shall be paid at time of renewal application submission and are as follows:

- i. Land disposal (without storage) \$58,000
- ii. Storage (including treatment) \$30,000
- iii. Incineration with trial burn \$73,000
- iv. Incineration without trial burn \$44,000

3. Fees for permit issuance/denial for a facility with "existing facility status" prior to (effective date of rule to be inserted) shall be paid by (120 days after the effective date of the rule to be inserted) or at the time of public notice of the draft permit/denial, whichever is earliest, and are as follows:

- i. Land disposal (without storage) \$58,000
- ii. Storage (including treatment) \$30,000
- iii. Incineration with trial burn \$73,000
- iv. Incineration without trial burn \$44,000

4. Fees for the issuance of a closure plan approval shall be paid at time of submission of the application for closure and are as follows:

- i. Closure with soil sampling plan \$10,000
- ii. Closure without soil sampling plan \$6,000

5. The fee for the approval/denial of existing facility changes pursuant to N.J.A.C. 7:26-12.3(c) shall be paid at time of submission of request for change and is \$3,000.

6. The fee for the approval/denial of ownership or operational control changes shall be paid at the time of submission of the request and is \$3,000.

7. The fee for permit modifications shall be paid at time of modification request and are as follows:

- i. Minor modification: \$1,750;
- ii. Major modification: \$3,500.

8. The fee for facility annual report shall be paid at time of submission of report and is \$800.00.

9. The fee for a RD&D permit shall be paid at time of application for permit and is \$38,000.

10. The fee for generator accumulation of waste in tank review shall be paid at time of submission of request and is \$1,200.

11. The fee for treatability study approval/denial shall be paid at time of submission of application and is \$600.00.

12. The fee for permit exemption qualification determinations shall be paid at time of submission of request and is \$600.00.

(f) The fee for Hazardous Waste Manifest forms is \$10.00 for a package of 10 forms and shall accompany the request for forms.

[(c)](g) The fee schedule for hazardous waste transporters is as follows:

1. (No change.)

i-iv. (No change.)

[2. Fee for inspection of transporter facilities, per inspection: \$500.00.]

7:26-4A.5 Severability

If any court or other tribunal determines that any provision of this subchapter is invalid, unconstitutional or unenforceable, such determination shall be confined in its operation to the provision directly involved in the controversy in which such determination shall have been rendered, and shall not affect or impair the remainder of this subchapter or the application thereof, and the remainder of this subchapter shall remain in full force and effect.

(a)

DIVISION OF ENVIRONMENTAL QUALITY Toxic Catastrophe Prevention Act Program Fees

Proposed Amendments: N.J.A.C. 7:31-2.16

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

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1K-19 et seq., and 26:2C-1 et seq., specifically N.J.A.C. 26:2C-8.

DEP Docket Number: 009-91-02.

Proposed Number: PRN 1991-138.

A public hearing concerning this proposal will be held on:

April 23, 1991, beginning at 10:00 A.M.

New Jersey Records Storage Center

Conference Room

2300 Stuyvesant Avenue

Trenton, New Jersey 08625

Submit written comments by May 3, 1991 to:

Samuel A. Wolfe, Esquire

Office of Legal Services, TCPA File

New Jersey Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Toxic Catastrophe Prevention Act (TCPA) was adopted by the Legislature and signed into law by Governor Kean as L.1985, C.403, effective January 8, 1986. TCPA was adopted during a period of special concern for public safety created by several releases of hazardous substances in New Jersey during the fall of 1984 and early 1985. Also, in December 1984, methyl isocyanate was released with catastrophic results in Bhopal, India. More than 2,500 people were killed and at least 10,000 injured. These incidents represented cases of industrial facilities releasing toxic substances to the atmosphere principally because key

elements of risk management programs did not exist or, where existing, were not implemented. During its investigation of facilities responsible for the toxic releases in New Jersey from 1980 to 1986, the Department gathered important information on deficiencies of risk management programs. As a result of the investigations, the Department and the Legislature identified the need to define more fully the elements of risk management programs. These programs, when implemented, would require more thorough analytical techniques and preventive measures by owners or operators of facilities handling extraordinarily hazardous substances (EHSs) in the State.

Based on these considerations, rules were adopted and became effective on June 20, 1988 and August 1, 1988. The rules (N.J.A.C. 7:31) established a program which has been extremely successful in reducing the risk of catastrophic accidents through the reduction of hazardous chemical inventories and the switching to less toxic materials. In the case of chlorine, one of the most common hazardous chemicals, approximately 375 water treatment facilities out of an original 575 have lowered the quantity of chlorine on hand to less than the TCPA registration quantity. Approximately 100 other water treatment facilities have ceased the use of chlorine all together. An additional 58 of 225 chemical facilities have deregistered chlorine. As the TCPA program identifies the risk of accidental releases at each individual facility, additional water treatment and chemical facilities will choose to cease using or to deregister chlorine. For all facilities remaining in the program, risk reductive methods of handling chlorine have improved dramatically due to the implementation of previously neglected details now included in the regulatory requirements. Statewide chlorine inventories in registered facilities have decreased from about 10,250 tons to 7,675 tons.

Similar inventory reductions to reduce risk have occurred for many other substances regulated by TCPA. Statewide inventories of these other substances have been reduced from about 54,000 tons registered originally to about 44,400 tons registered in 1991. Registered facilities with these substances have decreased from 287 to 233. While this is a resource consuming task on the part of the regulated community and the Department, the end result is that significant risk reductions are being achieved through the implementation of risk reduction measures or the elimination of the use of extraordinarily hazardous substances.

As a result of the success of the TCPA program, the anticipated revenue collected from fees has decreased by almost 60 percent since 1988 and TCPA revenue is projected to decline another 10 percent in the coming year. At the same time, the effect of inflation on program operating costs is to reduce the amount of services that can be provided by existing fees. Additionally, the program is being assessed increasingly higher administrative costs with further impact on available funds. In an attempt to extend the current revenue of the TCPA program, four staff positions have been eliminated and three staff members that have vacated positions have not been replaced. These seven positions include two chemical safety engineers, one principal environmental engineer, one senior environmental engineer, one principal environmental specialist, and two senior environmental specialists. Although this effort to reduce costs by streamlining the program has been made, an increase in fees is necessary in order to continue to carry out the responsibilities of the TCPA program. Later in 1991 the Department will propose substantive amendments to the TCPA rules. An explanation of the proposed fees changes follows.

At N.J.A.C. 7:31-2.16(a), the words "owner or operator of a site required to register pursuant to N.J.A.C. 7:31-2.5" were added to specify the Department's intent that persons who are handling equal to or greater than the registration quantity of an EHS but have not yet officially registered with the Department are also responsible for the annual fee.

Also at N.J.A.C. 7:31-2.16(a), the phrase "The fees shall be computed in accordance with (i) through (m) below, and billed and remitted in accordance with (f) through (h) below" was added to make the rule read more clearly to the registered community.

N.J.A.C. 7:31-2.16(b) and (c) have been deleted since the dates referred to are past and are therefore no longer applicable.

N.J.A.C. 7:31-2.16(d) and (e) have been changed so that the owner or operator of an EHS facility submits the annual fee only after the Department bills that facility. This change is necessary since the Department's collection system requires the billing invoice to be generated before a fee can be accepted and credited to the facility's account. This collection system was designed by the Office of Telecommunications and Information Services to reduce erroneous billings and to improve efficiency.

N.J.A.C. 7:31-2.16(e) has been changed by adding the words "or increasing the EHS inventory or both" in order to emphasize that this change also requires a fee payment.

N.J.A.C. 7:31-2.16(h), in which a late fee is to be assessed, has been added to encourage timely remittance of the fee. During the past two years, one-quarter of the registrants did not pay by the February 28th due date. A "late fee" of 25 percent would be automatically added to the "past due" bill.

At N.J.A.C. 7:31-2.16(j), the words "or" and "or both" replace "and" as a clarification of what the fee applies to, and the revised base fee is shown.

The revised base fee is also shown in N.J.A.C. 7:31-2.16(k), and the revised inventory derived fee is shown in N.J.A.C. 7:31-2.16(l)3.

N.J.A.C. 7:31-2.16(m) is revised to reflect the new subsection (n).

N.J.A.C. 7:31-2.16(n) has been added since the amount of work the Department would have to do for a facility that has been granted an exemption would be much less than that of a facility required to develop a full risk management program.

Former subsections (n) and (o) now become (o) and (p), respectively, due to the addition of new subsection (n).

Social Impact

The social impact of the TCPA rules (N.J.A.C. 7:31) has been very positive. The number of sites using significant quantities of Extraordinarily Hazardous Substances (EHSs), and therefore covered by the TCPA program, has decreased from 775 facilities in 1986 to 255 facilities in 1991. The inventories of EHS stored in the State have been reduced to those levels actually essential for the industrial operations involved. The reductions in inventories of EHSs during this period resulted in a substantially decreased risk of an accidental release of Extraordinarily Hazardous Substances and significantly reduced the potential for permanent disability and death. Thus, New Jersey citizens have greatly benefited from these regulatory initiatives to reduce risk and protect human health. By amending the rules to fully address the increased cost to administer the TCPA program, the Department will have the necessary financial resources to continue this highly effective program. Citizens will continue to benefit from a fully implemented program with no reduction in services, as well as from anticipated further reduction in number of facilities handling extraordinarily hazardous substances.

Economic Impact

The proposed amendment will increase registration fees paid by 204 businesses which use EHSs, at or above registration quantities, beginning in January 1992. The average increase per registered business will be approximately \$4,500, ranging from \$2,500 to \$100,000, for a total increase of \$924,000.

The existing fees do not cover all of the expenses currently incurred by the TCPA program. If the proposed fee increases are adopted, it will allow the Department to maintain its services.

In conjunction with this proposed amendment, the Department has taken steps to contain and reduce TCPA program costs. The Department has scaled down the scope of the program and planned expansion in order to reflect the reduction in the number of registrants from a maximum of 628 in 1986 to the present 204. Twelve additional positions originally projected in 1988 as being necessary were never created. Four staff positions have been eliminated and three vacated positions have not been filled. Work has been consolidated wherever possible. In addition, the Bureau of Release Prevention has reduced administrative overhead and operating expenses to levels proportional to the reduced scope of the program.

Under the existing fee collection schedule, the Department has a negative cash flow. The Department collects TCPA fees on a calendar year basis, but operates on a July to June fiscal year basis. In calendar year 1991, \$1,400,000 in revenue will be collected. The total cost to operate the TCPA Program in DEP fiscal year 1990-91 (FY 1991) will be \$2,234,000. The projected cost to operate the program in FY 1993 is \$2,667,000.

The current fees have not been adjusted since the program's registration fees began in 1988. However, inflation and the cost of living adjustments have led to a shortfall of \$1,000,000 in FY 1991. Adjusting for contracted civil service salary increases, current indirect and fringe benefit costs and operating cost inflation, an average annual increase of 9.3 percent in both the base fee and EHS fee for the period 1988-1993 is necessary to meet current and future expenses. This number must be adjusted to the year 1993 and must compensate for the negative cash flow which began to occur in 1990 and will continue through 1991 and thereafter. Additionally, an inflation factor of 5.5 percent per year for operating expenses must also be taken into account. Taking all factors into account, a base fee of \$6,500 and an EHS fee of \$9.20 per hazard unit is the minimum

required to meet the fiscal requirements and continue the program at the current reduced levels.

The Act (N.J.S.A. 13:1K-19 et seq.) establishes at N.J.A.C. 13:1K-31 that the regulated community should bear the burden of the costs of ensuring their facilities are safe for the surrounding community. The Department has evaluated these expenses and has determined that by imposing registration fees as provided in the proposed amendment, the costs will be borne fairly by all segments of the regulated community. The base fee and fee per hazard unit were computed such that the percentage of total fees is distributed the same as before: 72.7 percent industrial; 9.2 percent potable water; and 18.1 percent wastewater. In addition, the rule revision provides a potential means of lessening economic impact for smaller businesses by reducing subsequent annual fees to 25 percent of the base fee for equipment exempted under N.J.A.C. 7:31-2.19. The revision is intended to encourage risk reduction through such means as inventory reduction. The increase in fees is expected to further reduce the number of registered EHS facilities, which are projected to stabilize at approximately 175.

Environmental Impact

This amendment is anticipated to further decrease the potential for an environmental impact from accidentally released extraordinarily hazardous substances. This benefit will be a direct result of fee increases, which will encourage a reduction in facilities handling potentially catastrophic quantities of EHSs. This was evident in the first two months after the first billing in July 1988, when the number of facilities decreased from 775 to about 400. The TCPA has already proven successful in reducing the potential for environmental impact of single-incident large quantity releases. This benefit is seen not only in the significant reduction of the number of facilities and the overall inventory reduction, but also in the establishment of TCPA's comprehensive risk management programs. Since 1986, total facilities with potentially catastrophic quantities have decreased from 775 to 255. Total EHS inventories have decreased from about 64,000 tons to 52,000 tons. At the same time, 122 approved risk management programs have been established. To insure the continued success of the TCPA program, however, continued vigilance is needed to further reduce the risk of accidental releases, and to reduce the usage of extraordinarily hazardous substances in the State.

Regulatory Flexibility Analysis

This rule amendment would apply to all facilities which handle, use, manufacture, store, or generate extraordinarily hazardous substances at or above the registration quantities established for the EHS in N.J.A.C. 7:31-2.3. It is estimated that of the approximately 200 facilities presently impacted by the Act, 20 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These small businesses are affected by the existing TCPA rules, and will be impacted by the rule amendment.

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

In order to comply with these rules as amended, the small businesses will have to prepare or present to the Department for review a copy of their facilities risk management program which meets the requirements for the safe handling, use, manufacturing, storage, or generation of EHSs in order to prevent the accidental release of the EHS into the environment. In doing so, it is likely that small businesses will need to hire professional safety and environmental consultants, to appoint a contact person for environmental affairs, to implement changes in their facilities' operations or to design to prevent or mitigate the consequences of an accidental release, and to pay fees for registration and yearly review of their risk management program.

It is expected that the annual costs of compliance for each small business could range from approximately \$7,500 to \$50,000 depending on the type of business and on the types and quantities of EHSs involved. Small businesses are encouraged by the Department, however, to review actual inventory needs and to eliminate, if possible, these additional costs by reducing site inventories to below the registration quantities. In many cases these lower inventories will have little effect on facility operations. For businesses that cannot deregister in this way, the rule revision provides a means of reducing the annual fee to 25 percent of the base fee for pieces of equipment exempted in accordance with N.J.A.C. 7:31-2.19.

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

7:31-2.16 Fees

(a) Each registrant or owner or operator of a site required to register pursuant to N.J.A.C. 7:31-2.5 shall pay an annual fee to the Department. **The annual fee shall be computed in accordance with (i) through (m) below, and billed and remitted in accordance with (f) through (h) below.**

(b) [Each registrant with an EHS on Part I of Table I of N.J.A.C. 7:31-2.3 shall submit a fee for calendar year January 1, 1988 to December 31, 1988 by no later than August 19, 1988. The fee for calendar year 1988 shall be computed in accordance with (i) through (m) below and prorated and calculated from May 22, 1988.] **(Re-served)**

(c) [Each registrant with an EHS on Part II of Table I of N.J.A.C. 7:1-2.3 shall begin paying annual fees in calendar year 1989. The fees shall be computed in accordance with (i) through (m) below, and billed and remitted in accordance with (f) through (h) below.] **(Re-served)**

(d) Each owner or operator of a new EHS facility at a site with no EHSs registered who registers an extraordinarily hazardous substance with the Department [subsequent to the dates specified in (b) and (c) above.] shall submit the annual fee for that calendar year computed in accordance with (i) through (m) below [with the registration forms] **in accordance with the bill received from the Department.**

(e) Each registrant registering a new EHS facility or increasing the **EHS inventory or both** at a site with previously registered EHSs shall submit the inventory derived fee for the incremental EHS inventory, computed in accordance with (i), (l) and (m) below, [with the amended registration forms] **in accordance with the bill received from the Department.**

(f) (No change.)

(g) Except for the fees [due for calendar year 1988 which shall be submitted in accordance with (b) above and the fees] submitted pursuant to (d) and (e) above, the Department, during the month of January, will send each registrant a bill stating the fee for that calendar year.

1. (No change.)

(h) Each registrant shall pay its fee by check or money order, payable to "Treasurer, State of New Jersey" prior to February 28 of the year in which it is billed. **Any registrant which has not paid its annual fee by the due date will be assessed a 25 percent late fee.** The check or money order shall be submitted to:

New Jersey Department of Environmental Protection
Bureau of Revenue
Division of Financial Management, Planning and General Services
CN 402
Trenton, New Jersey 08625

(i) (No change.)

(j) Each registrant of a water treatment system [and] or wastewater treatment system **or both** shall pay a base fee of [~~\$4,000~~] **\$6,500** per system annually plus an EHS inventory derived fee; except

1. Registrants with a water treatment system or wastewater treatment system **or both** located on a site which is also covered by (k) below shall only pay the fee required by that subsection.

(k) All other registrants not included in (j) above shall pay one base fee of [~~\$4,000~~] **\$6,500** per site annually plus an EHS inventory derived fee.

(l) The inventory derived fee at each site, water treatment system and wastewater treatment system is determined in the following manner:

1.-2. (No change.)

3. The number of hazard units for each EHS is multiplied by [~~\$5.75~~] **\$9.20** per hazard unit to determine the fee for each EHS.

(m) The annual fee for each registrant shall be the sum of the base fee and the sum of each EHS inventory derived fee **except for (n) below.**

(n) **The annual fee for each registrant that does not have to comply with N.J.A.C. 7:31-3 for the site, subsequent to the granting of an**

exemption pursuant to N.J.A.C. 7:31-2.19, shall be 25 percent of the regular base fee.

Recodify existing (n) and (o) as **(o) and (p)** (No change in text).

HEALTH

(a)

PARENTAL AND CHILD HEALTH SERVICES

Birth Defects Registry

Live Births; Reporting Requirements

Proposed Amendment: N.J.A.C. 8:20-1.2

Authorized By: Frances Dunston, M.D., M.P.H., Commissioner,
Department of Health.

Authority: N.J.S.A. 26:8-40 et seq., specifically 26:8-40.26.

Proposal Number: PRN 1991-137.

Submit comments by April 17, 1991 to:

Barbara Kern, Director
Special Child Health Services
New Jersey Department of Health
CN 364
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 26:8-40.20 et seq., the Department of Health is required to establish and maintain a birth defects registry which shall contain a confidential record of all birth defects that occur in New Jersey. It shall also contain any other information that the Department deems necessary and appropriate in order to conduct thorough and complete epidemiological surveys of birth defects that occur in the State, and to plan for services needed by the children and their families. Although some birth defects can be attributed to specific factors, such as genetics, infections, and medications taken during pregnancy, the vast majority of birth defects are of unknown etiology. There has been, and continues to be, a growing Statewide and national concern about the possible reproductive effects of occupational and environmental exposures in the etiology of birth defects. In New Jersey, awareness of these issues led to the introduction of legislation by the then State Senator Daniel Dalton requiring the establishment of a birth defects registry. The legislation was signed into law by Governor Thomas Kean on August 4, 1983. The law, N.J.S.A. 26:8-40.20 et seq., revised and strengthened the State's commitment to collect data on children with birth defects and to develop a system for the surveillance of adverse reproductive outcomes, and thus plan for services needed by the children and their families.

Through investigative research conducted by the Centers for Disease Control, it has been identified that there are certain conditions present at birth, which, although deemed congenital birth defects, do not pose a significant public health problem. The removal of the requirement to report certain congenital anomalies will enable the Department to concentrate on those significant anomalies which have a serious impact on the child and the child's family unit. The proposed amendment will identify to those registering congenital birth defects the conditions which do not require registering, and will clarify the reporting process, thus providing a process for a more accurate reporting and recording of congenital birth defects.

Pursuant to N.J.S.A. 26:8-40.20 et seq., the Department of Health is required to establish and maintain a birth defects registry, which contains a confidential record of all birth defects that occur in New Jersey. N.J.A.C. 8:20, which contains the requirements for the maintenance of the Registry, became effective March 4, 1985 and incorporated by reference, a listing of reportable conditions, portions of the International Classification of Diseases (see 16 N.J.R. 3118 (a) and 17 N.J.R. 591 (a)). The chapter was amended by R.1987 d.361, effective September 8, 1987, which added a requirement for the reporting of congenital anomalies and other conditions not included in Diagnostic Codes 740.00 to 759.90 of the International Classification of Diseases, Clinical Modification (see 21 N.J.R. 3636 (a), 22 N.J.R. 1134 (c)).

Social Impact

It is estimated that three percent of infants born each year in this State have a birth defect. Approximately 2,000, or two percent of infants, are expected to have a defect which affects the survival or physical well-being

of the affected children. Birth defects are the second most common cause of infant deaths in the State and the leading cause of death, next to accidents, in children age one to four years.

With the growing public concern about birth defects and questions about possible environmental causes, a complete and accurate birth defects registry will enable the Department to monitor rates of birth defects that occur in this State and, when indicated, to conduct epidemiological surveys in order to effectively address this public health problem.

Effects of birth defects are not limited only to deaths in early childhood; there are lifelong health effects among those children who survive. The Birth Defects Registry enables the Department to provide for timely identification of affected children, and to promptly plan for and provide services to these children and their families. Children who have a birth defect are frequently in need of special health and educational services which can assist them to develop to their fullest potential as productive members of society.

The timely, accurate and consistent reporting of birth defects is vital to the Department's work and to those individuals directly affected. The amendment to N.J.A.C. 8:20-1.2 makes clear which defects must be reported and which defects are not to be reported. The data thus obtained is expected to have a positive social impact on specific individuals, who can be assisted with early intervention programs offered through various sources.

Economic Impact

The economic value of the Birth Defects Registry should be measured according to its impact on the lives and health of the residents of this State. The Registry serves as a tool for the search of etiology of birth defects, the study of mechanism to prevent and treat those malformations. Early identification of affected children through the Birth Defects Registry ensures the provision of appropriate health care and other support services for these children. Appropriate and prompt medical treatment can prevent the development of complications, longterm illness, disability or death which, economically, are unfavorable outcomes.

Administrative costs for the operation of the Birth Defects Registry have been budgeted at \$250,000 per year. The proposed amendment, adopted, would not cause any significant financial burden to the State or health care system. To the contrary, early identification and intervention strategies can lead to significant savings in public health and family dollars. The specific amount saved cannot be determined, due to the multiplicity of factors involved.

Regulatory Flexibility Analysis

The proposed amendment will affect numerous small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Physicians, dentists, certified nurse midwives, and certain health care facilities and clinical laboratories will be affected by the reporting and recordkeeping requirements of the rules. The amendment specifies the manner in which the defects shall be reported and requires recordkeeping which conforms to a prescribed standard and is maintained in a confidential manner. While the costs of these requirements on the regulated small businesses cannot be specifically determined, the Department does not consider the expense onerous, particularly in light of the potential benefit to specific individuals and to the general public. The Department does not consider it appropriate to establish differential standards based on business size, since consistent reporting is essential in the implementation of the law on which these rules are based.

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

8:20-1.2 Reporting requirements

(a) Any infant who is born to a resident of the State of New Jersey, or who becomes a resident of the State before one year of age, and who [shown evidence of] is **diagnosed as having** a birth defect, either at birth or any time during the first year of life, shall be reported to the State Department of Health, Special Child Health Services as follows:[.]

1. [For reporting purposes, the] **The** conditions listed as Congenital Anomalies (Diagnostic Codes 740.00 through [759.00] **759.90**) in the most recent revision of the International Classification of Diseases, Clinical Modification, shall [constitute reportable defects], **except as specified in (a)ii below, be reported to the Special Child Health Services.** In addition, there are several other conditions considered to be defects that are not listed under Diagnostic Codes 740.00 through [759.00] **759.90** which describe Congenital Anomalies. The

[following birth defects are also required to] **birth defects listed in (a)ii below shall also, in every case, be reported to the Special Child Health Services. The minor conditions listed in (a)iii below shall not be reported to the Special Child Health Services in every case, but only as required in (a)iii, iv and v below.**

i. Congenital anomalies, including, **but not limited to, the following:**

- (1)-(20) (No change.)
- [ii. Other conditions, including:]
- Recodify existing (1)-(9) as **(21)-(29)** (No change in text.)
- ii. **Minor conditions, as follows:**
- Accessory auricle**
- Accessory nipple (supernumerary nipple, or skin tag)**
- Anal fissure—never a defect**
- Anal tags**
- Bat ear**
- Bell's Palsy**
- Bent nose, deviation of septum**
- Big lips**
- Blue sclera (babies < 2500 grams)**
- Brachial palsy**
- Breast Hypertrophy—never a defect**
- Cafe-au-lait spots (register if five or more)**
- Caput succedaneum**
- Cardiac murmur¹**
- Cauliflower ear**
- CNS hemorrhage**
- Cephalhematoma—never a defect**
- Cervical rib**
- Chalasia (gastroesophageal reflux)—never a defect**
- Clinodactyly (incurving of fifth finger)**
- Congenital hydrocele**
- Conjunctivitis—never a defect**
- Cryptorchidism (undescended testicle)²**
- Darwin's tubercle**
- Diastasis recti—never a defect**
- Downward eyeslant (antimongoloid)**
- Ear tags, preauricular tags**
- Elfin ear**
- Epicanthal folds**
- Epulis—never a defect**
- Erb's palsy**
- Erythema toxicum**
- Esotropia**
- Exotropia**
- Facial palsy**
- Flammeus nevus or port wine stain (< four inches in diameter)**
- Flat bridge or nose**
- Fontanel (large or small)**
- Fractured clavicle**
- Fused eyelids (not a defect if birth weight is < 1001 grams)**
- Gastroesophageal reflux—never a defect**
- Gum cysts—includes epulis, ranula, mucocele—never a defect**
- Hemangioma—< four inches in diameter³**
- Hepatomegaly**
- Hipclick—without follow-up or therapy—not a defect**
- Hydrocele**
- Hydrocephaly; acquired**
- Hymenal tags**
- Hypoglycemia, idiopathic**
- Hypoplastic scrotum**
- Imperforate hymen**
- Incurving finger (clinodactyly)**
- Inguinal hernia in male (Note: do not report in females)**
- Infant of a diabetic mother; asymptomatic**
- Intussusception**
- Lanugo, excessive or persistent**
- Large fontanel**
- Laryngomalacia or tracheomalacia—never a defect**
- Long fingers and/or toes**
- Lop ear**

Low set ears
 Macrocheilia (big lips)
 Meckel's diverticulum
 Meconium peritonitis
 Meconium plug
 Meconium stained skin or nails—never a defect
 Metatarsus adductus—never a defect
 Metatarsus varus
 Microcheilia (small lips)
 Mongolian spots
 Mucocele—never a defect
 Nasal lacrimal duct obstruction
 Nail defects
 Natal teeth
 Neonatal acne—never a defect
 Nystagmus
 Orthopedic positional anomalies¹
 Overlapping toes
 Overriding (overlapping) sutures—never a defect
 Partial syndactyly second and third toes—web extends < one-third length of second toe
 Patent ductus arteriosus (PDA) in infants < 2500 grams or resolved prior to or at discharge
 Patulous lips (wide lips)
 Persistent fetal circulation
 Petechiae—never a defect
 Phimosis—never a defect
 Pilonidal dimple
 Pilonidal cyst
 Tibial torsion
 Tongue-tie
 Torsion of spermatic cord
 Torsion of testes
 Tracheomalacia—never a defect
 Umbilical cord atrophy
 Umbilical hernias (completely covered by skin)
 Undescended testicle²
 Upturned nose
 Upward eyeslant (mongoloid)
 Vaginal cysts
 Vaginal tags
 Webbing of neck
 Wide nasal bridge
 Widely spaced nipples
 Widely spaced first and second toes

¹Do not register innocent or functional murmurs: register only if there is a definitive cardiac anomaly or register as a rule out condition if the cause of murmur is not identified at the time of discharge.

²Register only if there is clinical evidence of congenital absence.

³Register cavernous hemangiomas and multiples of five or more.

⁴Do not register if defect can be corrected passively and does not require casting or bracing.

iii. If a condition or defect listed in (a)lii above appears as a single defect, a registration form shall not be completed.

iv. If two or more of the conditions listed in (a)lii above appear, a registration form shall be completed.

v. If a condition or defect listed in (a)lii above accompanies a condition or defect listed in either Diagnostic Codes 740.00 through 759.90 in the most recent revision of the International Classification of Diseases, Clinical Modification, or in (a)li above, a registration form shall be completed.

(b)-(j) (No change.)

(a)

DIVISION OF HEALTH PLANNING AND RESOURCE DEVELOPMENT

Certificate of Need; Trauma Centers

Designation of Additional Level II Trauma Centers

Proposed Amendments: N.J.A.C. 8:33P-2.1 and 2.4

Authorized By: Frances J. Dunston, M.D., M.P.H.,

Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2K-35 et seq. and 26:2H-1 et seq.

Proposal Number: PRN 1991-153.

Submit comments by April 17, 1991 to:

John J. Gontarski, Chief
 Health Systems Review, Room 604
 New Jersey Department of Health
 CN 360
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

Emergency medical services (EMS) are provided to patients with severe, life-threatening, or potentially disabling conditions that require immediate intervention. One important EMS objective of the Department of Health is to integrate hospital trauma center services into a coordinated network of EMS care in New Jersey. This network includes Basic Life Support ambulance service; Advanced Life Support Mobile Intensive Care Units; helicopter air ambulance services; local emergency room services; and emergency communication and dispatch, in addition to Level I and Level II trauma centers.

The Department of Health adopted new certificate of need rules, effective March 19, 1990, regarding designation of hospitals as Level I or Level II trauma centers (see 21 N.J.R. 3889(a), 22 N.J.R. 983(c)). These rules were first applied to review of certificate of need applications for trauma center designation filed in April 1990. Based upon initial experience with the rules and information developed during this review process, the Department is now proposing an amendment to the need criteria provisions of the rules.

In the current rules, the total number of trauma centers designated in the State is strictly limited by a formula based on the population of each of four planning regions. This proposal would amend this need criterion for Level II trauma centers by adding language which would permit the Commissioner of Health to approve a maximum of two additional Level II centers, beyond the number calculated by the current formula, where he or she finds compelling evidence that such approval is necessary to assure timely access to trauma services in the applicant's geographic area.

The proposed language provides for an applicant seeking approval pursuant to N.J.A.C. 8:33P to make a written waiver request to the Health Systems Agency (or Local Advisory Board, if designated) for the area. The HSA or LAB would then make a written recommendation on this request.

The proposed amendment to N.J.A.C. 8:33P-2.4 specifies the types of evidence which the applicant must present, and the HSA (LAB) and the Commissioner must consider, in determining whether there is an access deprivation that warrants designation of a Level II trauma center in the area. Included are travel times to existing designated trauma centers (there are now three designated Level I trauma centers and five designated Level II trauma centers in New Jersey), emergency medical services already available in the area, the incidence of major trauma cases in the area, the potential impact on patient volume at previously designated trauma centers, and cost of implementation and operation. The purpose of this amendment is to enable the Commissioner of Health to ensure that all areas of the State have timely access to a qualified Level I or Level II trauma center.

The proposal amends the need criteria section of the current rules. The new language specifically provides that all requirements for Level II trauma center designation in the rules other than the need formula, must be satisfied. These other requirements, which remain unchanged from the current rules, include numerous 24 hour clinical staffing and equipment standards, quality assurance criteria, and a minimum volume requirement. With regard to volume, Level II applicants are required to make a reasonable projection that their caseload will reach or exceed 350 trauma cases by the end of the second year following designation. The

amended rules would not permit approval of an applicant which failed to comply with the clinical standards, even if that applicant could demonstrate an access problem. Thus, the amendment would not lower or change any standards for trauma center designation related to quality of care.

In addition, the proposal changes the 1991 submission date for certificate of need applications from April 1 to July 1, with the review cycle beginning August 15 rather than May 15. This review cycle, the only one scheduled in 1991, will thus occur three months later than under the existing rule. This change is being made to allow sufficient time for the amendment to N.J.A.C. 8:33P-2.4 to complete the rule making process and be adopted and published, so that applicants will have notice of the rule amendments prior to filing applications. The submission dates for years after 1991 have not been changed.

Social Impact

N.J.S.A. 26:2H-1 recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospitals and health care services, and health facility cost containment programs . . ."

In accordance with this State policy, the criteria and standards contained in N.J.A.C. 8:33P are designed to promote high quality, accessible, and responsive specialized services for trauma patients, which are provided at a reasonable cost. The regionalization and coordination of Level I and Level II trauma center services as part of an integrated statewide EMS network have the documented potential for saving lives by improving the timeliness and effectiveness of treatment intervention. The proposed amendment is designed to assure that all geographic areas of the State will have timely access to services at a designated trauma center.

Economic Impact

By assuring that trauma centers will be operating at a reasonable minimum volume, these amended certificate of need criteria will promote efficiency through economies of scale and thereby contribute to containing unit costs and charges. This is accomplished by requiring that trauma centers cover an area and a population that will generate an appropriate level of demand.

Regulatory Flexibility Statement

Only large businesses, that is, hospitals having over 100 employees, would be capable of qualifying for a certificate of need for trauma center designation. The amendments place no recordkeeping, reporting, or other compliance requirements upon small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

8:33P-2.1 Submission dates for certificate of need applications

(a) Applications for designation as a Level I or a Level II trauma center shall be competitively reviewed at each level pursuant to batching procedures set forth in N.J.A.C. 8:33-1.5. The following schedule shall apply for the submission of certificate of need applications for trauma center designation during calendar years 1990 and 1991:

Deadlines for Submission	Cycle Begins
March 1, 1990†	April 15, 1990†
April 1, 1990†	May 15, 1990†
[April] July 1, 1991	[May] August 15, 1991

†For one time only, applications for designation as a Level I Trauma Center in EMS Region II as shown in Attachment A, which is identical to HSA Region IV as shown in Attachment B, shall be submitted on March 1, 1990 rather than April 1, 1990. Level II applications shall be submitted on April 1, 1990.

(b) (No change.)

8:33P-2.4 Need criteria

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

(c) **Where the Commissioner of Health finds compelling evidence that factors unique to a service area create access deprivations in certain regions which require him or her to exceed the need criteria specified in (b) above, in order to accommodate the public need for timely access to trauma care, he or she may approve additional Level II trauma centers in specific regions where applicants satisfy the remaining requirements of this chapter, including minimum volume requirements as well as clinical and quality assurance requirements; provided that the total number of Level II trauma centers designated in the State does not exceed seven. Any applicant for an additional Level II trauma center shall request in writing a waiver from the need criteria in (b) above, which request shall be recommended for approval or denial in writing by the HSA (or Local Advisory Board, if designated) for the area. In the review of the waiver request, the applicant shall present, and the HSA (LAB) and the Commissioner shall consider, specific evidence regarding access problems, including, but not limited to, the following:**

1. Travel times from the proposed Level II trauma center area, compared to travel times to trauma centers in other geographic areas in the State, for EMS transport of major trauma victims by ground or air to other designated trauma centers outside the area;
2. Other EMS services already available in the area;
3. The incidence of major trauma within the area;
4. The potential adverse impact on patient volume at previously designated trauma centers; and
5. Cost of implementation and operation.

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

(a)

**ALCOHOLISM AND DRUG ABUSE
Reopening of Comment Period
Controlled Dangerous Substances
N.J.A.C. 8:65**

Take notice that the comment period for the proposed re-adoption of N.J.A.C. 8:65, published in the October 15, 1990 issue of the New Jersey Register at 22 N.J.R. 3190(a), has been reopened.

Submit comments by April 17, 1991 to:

Lucius A. Bowser, R.P., M.P.H., Chief
Office of Drug Control
Department of Health
CN 362
Trenton, N.J. 08625

INSURANCE

(b)

**DIVISION OF ADMINISTRATION
New Jersey Property-Liability Insurance Guaranty
Association
Proposed Repeal and New Rules: N.J.A.C. 11:1-6**

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

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

Proposal Number: PRN 1991-144.

Submit comments by April 17, 1991 to:

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

The agency proposal follows:

Summary

N.J.S.A. 17:30A-1 et seq. (effective April 11, 1974) created the New Jersey Property-Liability Insurance Guaranty Association (Association) to provide a mechanism for the payment of covered claims under specified insurance policies, to avoid excessive delay in payment, and to avoid

financial loss to claimants or policyholders due to the insolvency of an insurer.

N.J.S.A. 17:30A-8(3) provides that the Association shall assess its member insurers in amounts necessary to satisfy its obligations to pay covered claims of insolvent insurers and other expenses associated with handling covered claims. Beginning in 1975, the Association began assessing member insurers pursuant to that statute. Pursuant to N.J.S.A. 17:30A-16, the Commissioner of Insurance (Commissioner) is required to promulgate rules by which member insurers may recoup assessments paid to the Association by way of a surcharge on premiums. In accordance with this statute, the former Commissioner promulgated N.J.A.C. 11:1-6 (effective July 1, 1975 and as subsequently amended) which permitted insurers to add a surcharge of .5 percent (one half of one percent) of direct written premiums on all policies for all kinds of insurance to which N.J.S.A. 17:30A-1 et seq. applies. After determining that the surcharge was no longer necessary, the former Commissioner suspended the operation of the rule and directed insurers to cease collecting the surcharge for policies issued or renewed on or after August 1, 1981. No additional assessments have been made on member insurers pursuant to N.J.S.A. 17:30A-8(3) since that time.

The Department is aware, however, that the Association intends to assess its members pursuant to N.J.S.A. 17:30A-8(3) beginning on or about March 1, 1991. Accordingly, the Department is required to establish procedures permitting insurers to recoup said assessments. The Department has determined that substantial revisions to the recoupment procedures set forth in N.J.A.C. 11:1-6 are necessary, and thus proposes to repeal the current N.J.A.C. 11:1-6 in its entirety and propose new rules permitting insurers to recoup assessments imposed by the Association pursuant to N.J.S.A. 17:30A-8(3) by way of a surcharge on premiums.

The proposed new rules differ from the current rules in several respects. First, the proposed rules provide that the imposition of the surcharge and the amount thereof shall be established by the Commissioner by Order upon a determination that a surcharge is necessary to enable insurers to recoup assessments paid pursuant to N.J.S.A. 17:30A-8(3). This mechanism provides the Commissioner with flexibility to permit the imposition of the surcharge, order its termination or vary the surcharge amount, as warranted. Second, the proposed rules do not require that surcharges collected be remitted to the Association. Rather, surcharges collected shall be retained by the insurer. Third, the rules require insurers to file an annual reconciliation form showing assessments paid and surcharges collected during the calendar year. Fourth, the proposed rules reflect the current statutory prohibition against insurers recouping assessments paid to the Association pursuant to N.J.S.A. 17:30A-8(9) as set forth in N.J.S.A. 17:30A-16, as amended by the Fair Automobile Insurance Reform Act of 1990. Finally, the proposed rules provide that upon a finding by the Commissioner that the surcharge is no longer necessary to enable insurers to recoup assessments, he or she shall order that collection of the surcharge be terminated.

Proposed N.J.A.C. 11:1-6.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:1-6.2 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:1-6.3 provides for the establishment of the Association assessment surcharge, and the manner by which assessments and surcharges are to be treated for accounting purposes.

Proposed N.J.A.C. 11:1-6.4 sets forth annual reporting requirements.

Proposed N.J.A.C. 11:1-6.5 sets forth the penalties for violation of the subchapter.

Social Impact

The proposed new rules provide procedures by which insurers may recoup assessments imposed by the Association pursuant to N.J.S.A. 17:30A-8(3) as required by N.J.S.A. 17:30A-16. As set forth below, the impact of the proposed new rules is economic. There is no discernable social impact.

Economic Impact

Policyholders will be required to pay any applicable surcharge on the premium for certain insurance policies pursuant to N.J.S.A. 17:30A-16 in the amount established by the Commissioner as necessary to permit insurers to recoup assessments imposed pursuant to N.J.S.A. 17:30A-8(3) over a reasonable time. Insurers will be required to bear the costs of collecting any applicable surcharge and the costs associated with filing the annual reconciliation form required by the proposed rules. The Department, however, believes that these costs are minimal. Finally, Department staff will be required to review the annual forms filed pursuant to these proposed new rules.

Regulatory Flexibility Analysis

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

The proposed new rules will apply to small businesses which are member insurers of the Association and insureds which purchase a kind of insurance to which N.J.S.A. 17:30A-1 et seq. applies. Small businesses which are insureds will be required to pay any applicable premium surcharge pursuant to N.J.S.A. 17:30A-16 in the amount established by the Commissioner deemed necessary to permit insurers to recoup assessments imposed pursuant to N.J.S.A. 17:30A-8(3) over a reasonable period of time. Small businesses which are insurers will be required to bear any costs associated with collecting applicable surcharges and with filing required forms. The Department, however, believes these costs to insurers to be minimal. To the extent that the proposed new rules apply to small businesses, they may impose a greater impact on small businesses, especially small businesses which are insurers, in that they will have to devote proportionately more financial resources to pay applicable administrative costs.

As indicated previously, N.J.S.A. 17:30A-16 requires the Commissioner to promulgate rules permitting insurers to recoup assessments imposed by the Association pursuant to N.J.S.A. 17:30A-8(3). The statute provides no different compliance requirements regarding surcharges based on business size. Uniform application of the regulatory requirement is necessary to ensure proper reconciliation of surcharges collected to the assessments imposed. Accordingly, the proposed new rules provide no differentiation in compliance requirements based on business size. The Department notes, however, that although differentiation in compliance requirements is not specifically provided, pursuant to N.J.S.A. 17:30A-16, the rules permit an insurer to omit collecting a surcharge if the expense of collection exceeds the surcharge amount.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:1-6.

Full text of the proposed new rules follows:

SUBCHAPTER 6. NEW JERSEY PROPERTY-LIABILITY INSURANCE GUARANTY ASSOCIATION ASSESSMENT PREMIUM SURCHARGE

11:1-6.1 Purpose and scope

(a) This subchapter provides for the recoupment by member insurers of the Association of assessments paid pursuant to N.J.S.A. 17:30A-8(3).

(b) This subchapter applies to all member insurers which have paid an assessment to the Association pursuant to N.J.S.A. 17:30A-8(3). This subchapter does not apply to any assessments imposed on member insurers pursuant to N.J.S.A. 17:30A-8(9).

11:1-6.2 Definitions

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

"Association" means the New Jersey Property-Liability Insurance Guaranty Association established pursuant to N.J.S.A. 17:30A-1 et seq.

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

"Department" means the New Jersey Department of Insurance.

"Member insurer" is as defined in N.J.S.A. 17:30A-5f.

11:1-6.3 Establishment of Association assessment premium surcharge

(a) Upon a determination by the Commissioner that a surcharge on premiums is necessary to permit member insurers to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-8(3), he or she shall order that a surcharge be imposed on net direct written premiums for policies to which N.J.S.A. 17:30A-1 et seq. applies.

(b) The amount of a surcharge shall be established by the Commissioner by Order. In determining the amount of a surcharge the Commissioner shall consider:

1. The amount of any assessment on member insurers imposed by the Association pursuant to N.J.S.A. 17:30A-8(3);

2. The surcharge amount necessary in the Commissioner's opinion to permit member insurers to recoup any assessment paid to the Association pursuant to N.J.S.A. 17:30A-8(3) over a reasonable time; and

3. The net direct written premiums for all lines of insurance to which N.J.S.A. 17:30A-1 et seq. applies.

(c) A surcharge imposed pursuant to this subchapter shall apply to all policies for all kinds of insurance, except life insurance, accident and health insurance, workers' compensation insurance, title insurance, annuities, surety bonds, credit insurance, mortgage guaranty insurance, municipal bond coverage, fidelity insurance, investment return assurance, ocean marine insurance and pet health insurance.

(d) A surcharge imposed pursuant to this subchapter and by applicable Orders of the Commissioner shall be identified to the insured as "New Jersey Property-Liability Insurance Guaranty Association Surcharge" and shall be shown as a separate item on the premium bill in dollars and cents. The surcharge amount shall not be treated as premium for accounting purposes, but must be coded and reported in accordance with instructions issued by the statistical agents under the direction of the Commissioner.

(e) Any change in premium by endorsement subsequent to the effective date of the policy shall reflect the appropriate change in the surcharge. In the case of flat cancellations, the entire surcharge amount shall be returned to the policyholder.

(f) All assessments imposed on member insurers by the Association pursuant to N.J.S.A. 17:30A-8(3) shall be considered a receivable by the insurer for accounting purposes. Any surcharges on policies as established by this subchapter shall be considered an offset to the receivable by the insurer for accounting purposes. If an insurer ceases to write all lines of business to which N.J.S.A. 17:30A-1 et seq. applies for any reason, the receivable shall be cancelled to the extent it has not been offset by any surcharges collected and the assessment shall be treated as an expense by the insurer for accounting purposes.

(g) Surcharges on premiums for multi-year policies, including perpetual insurance policies, shall be billed annually pursuant to the procedures established by this subchapter and applicable Orders of the Commissioner.

(h) Surcharges collected by an insurer pursuant to this subchapter are not taxable premiums for the purposes of determining the insurer's tax liability pursuant to N.J.S.A. 54:18A-1 et seq.

(i) An insurer shall not be required to collect a surcharge if the expense of collecting the surcharge exceeds the amount of the surcharge.

(j) A surcharge established pursuant to this subchapter shall provide recoupment to insurers for any assessment imposed pursuant to N.J.S.A. 17:30A-8(3). Such assessments shall not be considered obligations within the context of the retaliatory provisions set forth in N.J.S.A. 17:32-15.

(k) Upon a finding by the Commissioner that the surcharge is no longer necessary to permit member insurers to recoup assessments paid to the Association pursuant to N.J.S.A. 17:30A-8(3), he or she shall order that imposition of the surcharge be terminated. Upon termination of the surcharge, any debit or credit balance shown on that year's reconciliation form shall remain on the insurer's books to be applied in the annual reconciliation form filed the following year and each year thereafter.

11:1-6.4 Reporting requirements

(a) All insurers collecting a surcharge established pursuant to this subchapter shall file by March 1 of each year a reconciliation form on a form to be provided by the Commissioner. The form shall show the assessments paid to the Association and the surcharges collected by the insurer, if any, during the calendar year immediately preceding.

11:1-6.5 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as authorized by law, including, but not limited to, penalties set forth in N.J.S.A. 17:33-2.

(a)

DIVISION OF ADMINISTRATION

Fees

Proposed New Rules: N.J.A.C. 11:1-32

Proposed Amendment: N.J.A.C. 11:10-1.4

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

Authority: N.J.S.A. 17:1-8, 17:1-8.1 and 17:1C-6(e).

Proposal Number: PRN 1991-145.

Submit comments by April 17, 1991 to:

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

The agency proposal follows:

Summary

N.J.S.A. 17:33-1 and N.J.S.A. 17B:21-7 set forth specific fees charged insurers for various services provided and acts performed by the Department. These services include those in connection with processing various filings by an insurer (for example, filing a certificate of incorporation, a certificate of consolidation and merger, an annual statement, etc.); providing documents to insurers (for example, a certificate of the condition or qualification of an insurer, copies of any paper filed with the Department, a certificate of valuation of life insurance policies, etc.); and miscellaneous services provided to both the public and insurers (for example, service of process upon the Commissioner as attorney, certifying copies of papers filed with the Department, etc.). Fees for specified acts or services are also set forth in various provisions of Subtitle 3 of Titles 17 and 17B of the Revised Statutes.

The majority of statutorily imposed fees have not been increased since 1971. In fact, several statutory fees predate the Second World War. While these statutory fees may have then reflected the costs to the Department for performing specified acts or services, they are no longer adequate. N.J.S.A. 17:1-8, however, provides a mechanism by which these fees may be adjusted from time to time. This statute states: "The Commissioner shall charge for a license and for all services performed by him the fees provided in this Title, or in lieu thereof, or where not so provided, such fees as he shall prescribe by rule or regulation" (emphasis supplied). The Legislature thus recognized that fees set by statute, while adequate at the time of enactment, could become inadequate.

Pursuant to N.J.S.A. 17:1-8, the Department proposes these new rules which set forth revised fees for specified services. The revised fees more accurately reflect Department costs to provide these services. The Department proposes to increase fees for specified services, including, but not limited to, the following:

1. Filing a certificate of incorporation;
2. Filing a certificate of an increase in capital stock;
3. Filing a certificate of consolidation and merger;
4. Certifying copies of papers filed with the Department; and
5. Filing an Annual Statement.

The Department believes that the proposed fees are reasonable, reflect appropriate current costs and are comparable to fees charged by other states for similar services.

In addition, there are numerous services provided by the Department for which no fee is specifically imposed. For example, no fees are specifically imposed for reviewing and processing policy forms; rate filings; applications for surplus lines insurer eligibility; annual statement filings by surplus lines insurers, risk retention groups and purchasing groups; and applications from insurers to withdraw from this State. Department staff devote substantial amounts of time reviewing these submissions. It is therefore appropriate that insurers bear the reasonable costs associated with providing these specified services. Accordingly, pursuant to N.J.S.A. 17:1-8, the Department proposes to impose specific fees for certain services for which no fees are currently provided. The Department believes that these fees are reasonable, appropriate, and accurately reflect the costs to the Department associated with providing these specified services. The Department notes, however, that insurers transacting private passenger automobile insurance in this State are subject to additional expenses through the imposition of surtaxes pursuant to N.J.S.A. 17:33B-49, and

through additional filing, reporting and compliance requirements. Accordingly, the Department believes it appropriate to exempt private passenger automobile insurers at this time from the fees for processing rate, underwriting rule and policy form filings for private passenger automobile insurance in this State.

The Department has also determined it appropriate to impose a "maintenance fee" and a "complaint processing fee" on insurers. The maintenance fee would be imposed on a licensed insurer which writes little or no business in this State. An insurer which is licensed but writes little or no business in this State requires an expenditure of the Department's financial resources in the maintenance of files, and in review and processing of financial reports and other required filings. The State, however, receives little or no revenue through premium taxes from such an insurer due to its small amount of premium writings. The Department recognizes, however, that this fee could place an inordinate burden upon a newly formed or newly admitted insurer due to the time necessary for such an insurer to generate a book of business. Accordingly, newly formed domestic or newly admitted foreign or alien insurers are exempt from the fee for a period of two years from the date of licensing. Further, a licensed insurer which writes no direct premiums in this State or any other jurisdiction (a "pure reinsurance company") is also exempt from this fee.

The Department also proposes that a "complaint processing fee" be imposed on insurers against which an excessive number of complaints have been filed during a calendar year. An extraordinary amount of complaints against an insurer produces an inordinate drain on the Department's resources which prevents the Department from attending to other tasks. The complaint processing fee from insurers which generate an inordinate number of complaints is intended to defray these costs.

The Department believes that the increased and additional fees imposed by the proposed new rules are appropriate, equitable and necessary to ensure that an appropriate monetary amount is charged which reflects the costs expended by the Department for providing specified services or performing specified acts. Further, it is appropriate and consistent with the fee structure currently established by the laws of this State that the recipient of a service or act bear the reasonable costs of providing such service or performing such act.

The Department also proposes to amend N.J.A.C. 11:10-1.4, which sets forth the fee for renewal of a certificate of authority to transact business as a dental plan organization, to reference the new fee established by these proposed rules.

Proposed N.J.A.C. 11:1-32.1 sets forth the purpose and scope of these rules.

Proposed N.J.A.C. 11:1-32.2 sets forth the definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:1-32.3 provides general requirements for the payment of fees.

Proposed N.J.A.C. 11:1-32.4 provides general fees imposed on insurers.

Proposed N.J.A.C. 11:1-32.5 sets forth fees imposed on life and health insurers.

Proposed N.J.A.C. 11:1-32.6 sets forth fees imposed on property and casualty insurers.

Proposed N.J.A.C. 11:1-32.7 sets forth fees imposed on surplus lines insurers, risk retention groups and purchasing groups.

Proposed N.J.A.C. 11:1-32.8 sets forth fees for applications to withdraw and transfer business.

Proposed N.J.A.C. 11:1-32.9 sets forth miscellaneous fees.

Proposed N.J.A.C. 11:1-32.10 provides for the applicability of other fees imposed by the laws of this State.

Proposed N.J.A.C. 11:1-32.11 sets forth the penalties for violation of the subchapter.

Social Impact

Insurers and any person for whom services are provided will be required to pay applicable fees imposed by these new rules. These fees more accurately reflect the actual costs to the Department of providing specified services or performing specified acts. The recipient of a service or act provided by the Department will bear the appropriate expenses to the State of providing the service or performing the act. Accordingly, these expenses will no longer impose a drain on the general revenue of this State.

Economic Impact

Insurers and any other person for whom a specified service is provided will be required to pay the required fee set forth in these new rules. The Department believes, however, that the fees set forth in these proposed new rules are appropriate, equitable, and reflect costs associated with

providing services to insurers or the public. This, in turn, should reduce the drain on the general revenue of this State.

Regulatory Flexibility Analysis

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

The proposed new rules will apply to the following, which may be small businesses: insurers licensed or eligible in this State, risk retention groups or purchasing groups registered in this State, fraternal benefit societies, dental plan organizations, dental service corporations, reciprocal insurance exchanges, and other persons to whom a service is provided. All small businesses subject to these rules will be required to pay the fee set forth in these rules. To the extent that the proposed new rules apply to small businesses, they will impose a greater economic burden on small businesses in that they will have to devote proportionately more financial resources to pay the fees set forth in these rules.

The proposed new rules provide no different compliance requirements for small businesses. The expenses incurred by the Department and the staff time devoted to processing various filings and information requests does not vary based on business size. Further, the fees currently imposed by the insurance statutes and regulations of this State do not vary based on business size. In the interests of consistency and uniformity in collection of appropriate fees to reflect Department costs, no differentiation in compliance requirements is provided based on business size.

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

SUBCHAPTER 32. FEES

11:1-32.1 Purpose and scope

(a) **This subchapter sets forth specific fees charged for various services provided by the Department. For services not included in this subchapter, the Department shall charge such other fees as may be provided by applicable statute or rule.**

(b) **This subchapter applies to insurers licensed to transact business in this State, eligible surplus lines insurers, dental plan organizations, dental service corporations, fraternal benefit societies, reciprocal insurance exchanges, risk retention groups, purchasing groups, and to any other person to whom a service is provided as set forth in this subchapter.**

11:1-32.2 Definitions

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

"Annuity" is defined in N.J.S.A. 17B:17-5.

"Certificate of eligibility" means a certificate issued to an unauthorized insurer by the Commissioner pursuant to N.J.S.A. 17:22-6.45 evidencing that it is an eligible surplus lines insurer in this State.

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

"Contract on a variable basis" is as defined in N.J.S.A. 17B:28-1.

"Credit health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specified loan or other credit transaction while the debtor is disabled.

"Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other transaction.

"Dental plan organization" means any person who undertakes to provide directly or to arrange for or administer one or more dental plans providing dental services pursuant to N.J.S.A. 17:48D-1 et seq.

"Dental service corporation" is as defined in N.J.S.A. 17:48C-2(a).

"Department" means the New Jersey Department of Insurance.

"Domestic insurer" means an insurer formed under the laws of this State pursuant to N.J.S.A. 17:17-1 et seq., 17:46A-1 et seq., 17:46B-1 et seq. and 17B:18-1 et seq.

"Fraternal benefit society" is as defined in N.J.S.A. 17:44A-1.

"Form A filing" means a statement filed by every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of a New Jersey stock insurance company or who is a director or officer of such a company, in the acquisition of control of or merger with a domestic insurer pursuant to N.J.S.A. 17:27A-1 et seq.

"Health insurance" is as defined in N.J.S.A. 17B:17-4.

"Life and health insurer" means an insurer authorized or admitted pursuant to the provisions in Title 17B of the Revised Statutes to transact solely the business of life insurance, health insurance or annuities in this State.

"Life insurance" is as defined in N.J.S.A. 17B:17-3.

"Private passenger automobile insurance" means direct insurance on private passenger insurance as defined in N.J.S.A. 39:6A-2.

"Property and casualty insurer" means an insurer authorized or admitted to transact the kinds of insurance specified in N.J.S.A. 17:17-1, 17:46A-2 and 17:46B-1.

"Purchasing group" is as defined in 15 U.S.C. 3901(a)(5).

"Reciprocal insurance exchange" means an individual, partnership, trustee, or corporation authorized to exchange reciprocal or inter-insurance contracts pursuant to N.J.S.A. 17:50-1 et seq.

"Risk retention group" is as defined in 15 U.S.C. 3901(a)(4).

"Special risks" is as defined in N.J.S.A. 17:29AA-4.

"Surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40.

11:1-32.3 General procedures

(a) All fees set forth in this subchapter, excluding the fees set forth in N.J.A.C. 11:1-32.9, shall be paid at the time of the filing or application or the request for service.

(b) All fees set forth in this subchapter shall be paid by check and made payable to the State Treasurer of New Jersey.

11:1-32.4 Fees; general

(a) On filing with the Department any certificate specified in this section by an insurer, fraternal benefit society or dental plan organization authorized to transact business in this State, there shall be paid to the Commissioner fees as follows:

1. Filing a certificate of incorporation of a domestic insurer—\$1,500;
2. Filing a certificate of an increase of capital stock of a domestic insurer—\$250.00;
3. Filing a certificate of consolidation and merger of insurers—\$2,500;
4. For each Form A filing in connection with the acquisition or control of a domestic insurer—\$2,500;
5. Upon the scheduling of a hearing in connection with a Form A filing—\$2,500;
6. Filing a certificate of dissolution of insurer, change of name, change of nature of business, amended certification of incorporation (other than those authorizing increase in capital stock), decrease of capital stock, or increase or decrease of par value of shares—\$250.00;
7. Processing application and renewal of certificate of authority to transact business as a dental plan organization—\$1,000; and
8. All certificates not otherwise provided for—\$50.00.

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

1. Filing each annual statement of an insurer—\$100.00;
2. Providing certificate of valuation of policies (life and health insurers only)—\$25.00;
3. Providing certificate of the condition or qualification of an insurer—\$25.00; each additional copy for same company—\$5.00;
4. Filing service of lawful process upon the Commissioner as attorney—\$30.00;
5. Providing copy of Statutory Annual Statement pages (11 × 21)—\$2.00 per page;
6. Certifying copy of any paper filed with the Department—\$5.00; certifying a company document—\$50.00;
7. Providing copy of any paper filed with the Department (except Statutory Annual Statements)—\$0.50 each for the first 10 pages; \$0.25 each for the next 10 pages; \$0.10 per page thereafter;
8. Filing each annual statement of a fraternal benefit society formed pursuant to N.J.S.A. 17:44A-1 et seq.—\$100.00;
9. Filing each annual statement of a dental plan organization—\$100.00;
10. Filing each annual statement of a dental service corporation—\$100.00; and
11. Filing an application for a certificate of authority to transact business as a dental service corporation—\$25.00.

11:1-32.5 Fees; life and health insurers

(a) The following fees shall be paid for services provided by the Commissioner regarding submissions by life and health insurers in addition to any other applicable fees imposed by this subchapter:

1. Processing application for a certificate of authority to transact business in this State—\$5,000; application to extend existing authority to other lines of business—\$2,500;
2. Reviewing policies, including premium rate revisions, except for contracts on a variable basis and credit life or health insurance—\$200.00;
3. Reviewing policies, including review of separate account agreements and premium rate revisions for contracts on a variable basis and credit life or health insurance—\$300.00;
4. Reviewing all riders, endorsements and applications, except for contracts on a variable basis and credit life or health insurance—\$50.00; and
5. Reviewing riders, endorsements and applications for contracts on a variable basis and credit life or health insurance—\$75.00.

11:1-32.6 Fees; property and casualty insurers

(a) The following fees shall be paid for services provided by the Commissioner regarding submissions by property and casualty insurers in addition to any other applicable fees imposed by this subchapter as follows:

1. Processing application to extend existing certificate of authority to other lines of business—\$500.00. The Commissioner may waive this fee if the extension of authority is required by statute to permit an insurer to continue to transact a line of business previously authorized;
2. Processing personal lines and commercial lines filings, excluding private passenger automobile insurance filings, as follows:
 - i. Each policy form submission—\$250.00;
 - ii. Each rate filing submission—\$250.00;
 - iii. Each underwriting rule submission—\$250.00;
 - iv. Each combined form and rate filing submission—\$500.00;
 - v. Each combined rule and rate filing submission—\$500.00;
 - vi. Each combined rule and form submission—\$500.00; and
 - vii. Each combined form, rule and rate filing submission—\$500.00.
3. Reviewing consent to higher rate filings submitted pursuant to N.J.A.C. 11:4-7 and 11:13-5—\$250.00; and
4. Reviewing all submissions and filings relating to special risks—\$250.00.

11:1-32.7 Fees; surplus lines insurers, risk retention groups and purchasing groups

(a) The following fees are imposed for services provided by the Commissioner regarding submissions by surplus lines insurers, risk retention groups and purchasing groups:

1. Processing application for a Certificate of Eligibility—\$1,000;
2. Filing each Annual Statement filed by an eligible surplus lines insurer—\$100.00;
3. Filing each Annual Statement filed by a risk retention group—\$100.00; and
4. Registration of new risk retention group or new purchasing group—\$100.00.

11:1-32.8 Fees; withdrawals, transfer of business

(a) Upon application of an insurer to withdraw or transfer its business, the following fees be paid:

1. Processing application for withdrawal from an insurer with 1,000 or more policies currently in force—\$10,000;
2. Processing application for withdrawal from an insurer with at least one but no more than 999 policies currently in force—\$5,000;
3. Processing application to transfer business from an insurer in the amount of 1,000 policies or more—\$5,000;
4. Processing application to transfer business from an insurer in an amount of less than 1,000 policies—\$2,500;
5. Processing application to withdraw from an insurer that has had no policies in force during the three years immediately preceding the date of its application—\$1,000; and
6. Processing application to withdraw only a rating plan—\$500.00.

11:1-32.9 Miscellaneous fees

(a) In addition to any other fees imposed by this subchapter, Subtitle 3 of Title 17 and Title 17B of the Revised Statutes or Title 11 of the

New Jersey Administrative Code, all insurers shall pay a maintenance fee within 30 days of receipt of notice that such fee is due calculated as follows:

1. Any insurer which has direct written premiums in this State in an amount less than \$100,000 as of the end of the calendar year immediately preceding the date the fee is due shall pay a fee of \$1,000.

2. Any insurer which has no direct written premiums in this State, but has direct written premiums in one or more jurisdictions as of the end of the calendar year immediately preceding shall pay a fee of \$2,500.

3. Notwithstanding the provisions of (a)1 and 2 above to the contrary, any insurer which is licensed or authorized to transact business in this State on or after January 1, 1991 shall not pay any fee imposed by (a)1 and 2 above for a period of two years from the date of the issuance of a certificate of authority to transact business in this State.

4. Any insurer which has no direct written premiums in this State and all other jurisdictions in which it is authorized to transact business as of the end of the calendar year immediately preceding shall not pay a fee pursuant to (a)1 and 2 above.

(b) In addition to any other fees imposed by this subchapter, Subtitle 3 of Title 17 and Title 17B of the Revised Statutes, and Title 11 of the New Jersey Administrative Code, all insurers shall pay a complaint processing fee within 30 days of the receipt of notice that the fee is due as follows:

1. For an insurer that has less than \$25,000,000 of direct written premiums in this State for the calendar year immediately preceding, a fee of \$50.00 for each consumer complaint submitted to the Department and assigned to that insurer which is in excess of 50 as of the end of the calendar year immediately preceding.

2. For an insurer that has at least \$25,000,000, but not greater than \$250,000,000 of direct written premiums in this State for the calendar year immediately preceding, a fee of \$50.00 for each consumer complaint submitted to the Department and assigned to that insurer which is in excess of 250 as of the end of the calendar year immediately preceding.

3. For an insurer that has in excess of \$250,000,000 of direct written premiums in this State for the calendar year immediately preceding, a fee of \$50.00 for each consumer complaint submitted to the Department and assigned to that insurer which is in excess of 500 as of the end of the calendar year immediately preceding.

11:1-32.10 Applicability of fees imposed by insurance laws of this State

(a) The fees set forth in this subchapter supersede fees set forth in N.J.S.A. 17:33-1, 17B:21-7, 17:48-14, 17:44A-34, 17:48C-23 and 17:50-4, to the extent such fees are inconsistent with the fees set forth herein. The fees set forth in this subchapter are in addition to the following fees imposed by the laws and regulations of this State:

1. Admission application for foreign or alien insurers (N.J.A.C. 11:1-10.6);

2. Application for formation of a domestic insurer (N.J.A.C. 11:1-28.5);

3. Application and renewal for certificate of self-insurance of motor vehicles (N.J.S.A. 39:6-52, N.J.A.C. 11:3-30);

4. Application for hospital workers' compensation group self-insurance (N.J.A.C. 11:15-1.3);

5. Producer licensing and insurance education program fees (N.J.A.C. 11:17)

6. Custodial deposit fees (N.J.S.A. 17:20-3.1 and 17B:18-39.1, and N.J.A.C. 11:2-32)

7. Health service corporation fees (N.J.S.A. 17:48E-38);

8. Hospital service corporation fees (N.J.S.A. 17:48-14);

9. Medical service corporation fees (N.J.S.A. 17:48A-21);

10. General supervisory fee for dental service corporations (N.J.S.A. 17:48A-23);

11. All fees set forth in N.J.S.A. 17:33-1 and 17B:21-7 to the extent such fees are not inconsistent with the fees set forth in this subchapter; and

12. Any and all fees which may be imposed by the laws and regulations of this State in the future.

(b) Notwithstanding anything in (a) above to the contrary, to the extent that the laws of any other State or foreign country impose fees

for services specified in this subchapter upon domestic insurers or reciprocal insurance exchanges which are in excess of the fees set forth in this subchapter, such fee shall be imposed upon the insurer or reciprocal exchange of such other state or foreign country doing business in New Jersey, pursuant to N.J.S.A. 17:32-15 and 17B:23-5, as applicable.

11:1-32.11 Penalties

(a) Failure to pay an applicable filing or application fee at the time of filing or application may result in the filing or application being rejected as incomplete.

(b) Failure to pay the applicable fee at the time of making a request for service may result in the Department's refusal to provide such service.

(c) Failure to pay the fees set forth in N.J.A.C. 11:1-32.9 within 30 days of receipt of notice that the fee is due may result in the imposition of penalties as authorized by law.

11:10-1.4 General rules

(a) (No change.)

(b) To renew its certificate of authority, a DPO shall remit the [\$100.00] renewal fee as set forth in N.J.A.C. 11:1-32.4(a)7 to the Commissioner 30 calendar days prior to the renewal date.

(c) (No change.)

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

Micro-Loan Program

Proposed Amendments: N.J.A.C. 12A:31-1

Authorized By: New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Yvonne Bonitto-Doggett, Chairman.

Authority: N.J.S.A. 34:1B-47, specifically N.J.S.A. 34:1B-50(t).
Proposal Number: PRN 1991-131.

Submit comments by April 17, 1991 to:

Mark L. Quinn

New Jersey Development Authority for Small Businesses,
Minorities' and Women's Enterprises

20 West State Street

CN 836

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Amendments to N.J.A.C. 12A:31-1, Micro-Loan Program, are being proposed to implement the programs of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises.

The key provisions of the proposed amendments are as follows:

1. N.J.A.C. 12A:31-1.2 is amended to define the Loan Review Committee and expand the definition of a micro-loan to include a line of credit and other financing instruments.

2. N.J.A.C. 12A:31-1.3 is amended to correct an apparent discrepancy regarding the time frame of financial projections to be included in the application.

3. N.J.A.C. 12A:31-1.6 is amended to state the role of the Loan Review Committee in the application evaluation process.

4. N.J.A.C. 12A:31-1.7 is amended to change certain reporting requirements of borrowers from three months to annually, and to provide that the Authority will accept financial statements prepared by a public accountant.

5. N.J.A.C. 12A:31-1.9 is repealed and a new rule proposed which elaborates on the confidentiality of information in the possession of the Authority.

Social Impact

The social impact of these proposed amendments should be positive

in nature. These amendments will facilitate the application and reporting requirements of prospective borrowers and borrowers.

Economic Impact

The economic impact of these amendments should be positive in nature. These amendments will reduce the costs to borrowers and prospective borrowers to access Authority funds. The cost to the State and the Authority to implement these amendments will not change.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14b-16 et seq. The amendments make technical, clarifying changes to the rules, establish the role of the Loan Review Committee and revise the confidentiality of information rule. The reporting requirement for loan recipients under N.J.A.C. 12A:31-1.7 is substantially reduced. Therefore, a regulatory flexibility analysis is not required.

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

SUBCHAPTER 1. MICRO-LOAN PROGRAM

12A:31-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the **New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises** to implement a micro-loan program for eligible businesses to use for working capital, contract financing or the acquisition of fixed assets.

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

12A:31-1.2 Definitions

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

...
"Loan Review Committee" means a committee established by the **Chairman of the Board, consisting of not more than four board members, which shall review applications.**

"Micro-loan" or "ML" means a short term loan **or line of credit, or other non-grant financing instrument or structure approved by the Board** and advanced by the Authority to an eligible business for the purpose of fixed asset acquisition, working capital or contract financing.

...
 "Women" means [a] females, regardless of race.

12A:31-1.3 Application for a micro-loan

(a) (No change.)

(b) Each application for a ML shall be accompanied by written evidence that the applicant has been unable to acquire [similar] financing [as] **similar to** that sought from the Authority.

(c) Each application for a ML shall be accompanied by a business plan, **including financial projections**, for three years or for the term of the loan, whichever is less, provided in a format as determined by the Authority.

(d) Each application for a ML shall be accompanied by the following items:

1.-3. (No change.)

4. The financial and operating statements of the applicant for the past three years and the financial statements of the principals of the applicant business for the past three years [All financial and operating statements submitted must be 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.] 5. Any proof of certification by a public entity which certifies that the business is at least 51 percent beneficially owned by and [in which] that the majority of the management are minorities or women; and

[7.] 6. Any other information that the Authority **and/or the Executive Director may, in the exercise of their discretion, deem[s]** necessary.

12A:31-1.4 [Micro-Loan] Allocation of micro-loan assistance [available from the Authority]

(a) [Financial] **Of the 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 **all such funds** shall be invested in accordance with geographic restrictions established by that act.

(b) [Financial] **Of the 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) (No change.)

12A:31-1.6 Evaluation of applications for micro-loans

(a) The Executive Director shall evaluate each application for a ML considering the following factors:

1.-3. (No change.)

4. The length of time that the applicant has been in existence as well as the success and growth **potential** of the applicant.

(b) After evaluation of the application by the Executive Director, the Executive Director shall forward the application to the Loan Review Committee for its consideration.

[(b)] (c) After evaluation of the application by the [Executive Director] **Loan Review Committee**, the [Executive Director] **Loan Review Committee** shall forward the application to the Board for their consideration.

[(c)] (d) The Authority shall have 120 days in which to review the application and advise the applicant that:

1.-3. (No change.)

4. The application is continuing to be considered pending receipt of additional information [being received].

[(d)] (e) 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 of **the total amount of the micro-loan which has been approved by the Board** or \$100.00, whichever is greater and a closing fee of one-half of one percent of **the total** amount of the micro-loan which has been approved by the Board. **In the case of a line of credit, the fees shall be computed based on the maximum amount of the line of credit.**

12A:31-1.7 Reporting and compliance

(a) Upon receipt of a ML from the Authority, the loan recipient shall be required to submit a report to the Authority every [three months] **year** which shall include the following:

1.-3. (No change.)

4. Any other information which the Authority **and/or the Executive Director may, in the exercise of their discretion, require.**

(b) Upon receipt of a ML from the Authority, the loan recipient shall be required to submit an annual audit prepared by a [certified] public accountant utilizing GAAP.

(c) (No change.)

12A:31-1.8 Rescission of a micro-loan

(a) The Authority may, at its discretion, rescind all or part of an ML **commitment prior to closing** when it has become reasonably evident that:

1. (No change.)

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.

4. The loan recipient is [found] not [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 ML shall be rescinded, the Authority shall send a certified letter, return receipt requested, to the loan recipient informing [them] it of the rescission.

12A:31-1.9 Information confidentiality

(a) [All information and documents submitted to the Authority as part of a ML application relating to the financial status of the applicant or which is given with the expressed or implicit expectation of confidentiality shall only be disclosed with the permission of the applicant and at the discretion of the Executive Director.] **All records of the Authority such as minutes, annual reports, program guidelines, regulations, applications for financial assistance and other information not classified as non-public information shall be deemed public information available for examination and copying upon request. If the above information is requested by the public and is not readily available and must be photocopied or otherwise reproduced by the Authority, the Authority shall charge a fee of \$.50 for pages 1 to 10, \$.25 for pages 11 to 20 and \$.10 for pages 21 and above. The public may obtain general information concerning Authority programs by contacting the Executive Director of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprise at the Mary G. Roebling Building, 20 West State Street, CN 836, Trenton, New Jersey 08625.**

(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.] **The following shall not be deemed to be public records subject to inspection, examination and available for copying pursuant to N.J.S.A. 47:1A-1 et seq.:**

1. All confidential reports, executive memoranda and evaluations submitted to the Authority, the directors, or to any other state agency or instrumentality;
2. All personnel records;
3. All records concerning applications for employment with the Authority;
4. All records concerning financial or proprietary information submitted by applicants for Authority assistance;
5. All records concerning financial or proprietary information submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Authority;
6. All reports, correspondence and other documents or data provided or discussed in executive session at a meeting held by the Board of Directors, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be non-public records within the scope of this section; and
7. Any other reports, correspondence or other documents or data which the Authority in its discretion deems to be non-public pursuant to N.J.S.A. 47:1A-1 et seq.

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

Loan Guarantee Program

Proposed Amendments: N.J.A.C. 12A:31-2

Authorized By: New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Yvonne Bonitto-Doggett, Chairman.

Authority: N.J.S.A. 34:1B-47, specifically N.J.S.A. 34:1B-50(t).
 Proposal Number: PRN 1991-132.

Submit comments by April 17, 1991 to:
 Mark L. Quinn, Executive Director
 New Jersey Development Authority for
 Small Businesses, Minorities' and Women's Enterprises
 20 West State Street, CN 836
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

Amendments to N.J.A.C. 12A:31-2, Loan Guarantee Program, are

being proposed to implement the programs of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises. The provisions of these rules establish a loan guarantee program eligible to defined eligible businesses.

The key provisions of the proposed amendments are as follows:

1. N.J.A.C. 12A:31-2.2 is amended to define the Loan Review Committee.
2. N.J.A.C. 12A:31-2.3 is amended to correct an apparent discrepancy regarding the time frame of financial projections to be included in the application.
3. N.J.A.C. 12A:31-2.6 is amended to state the role of the Loan Review Committee in the application evaluation process.
4. N.J.A.C. 12A:31-2.7 is amended to change certain reporting requirements of borrowers from three months to annually, and to provide that the Authority will accept financial statements prepared by the public accountant.
5. N.J.A.C. 12A:31-2.8 is added to state when the Authority may rescind a loan guarantee.
6. N.J.A.C. 12A:31-2.9 is repealed and a new rule proposed which elaborates on the confidentiality of information in the possession of the Authority.

Social Impact

The social impact of these proposed amendments should be positive in nature. These amendments will facilitate the application and reporting requirements of prospective borrowers and borrowers. The addition of the power to rescind a loan guarantee enables the Authority to, when justified, reallocate its financial resources to the most productive use.

Economic Impact

The economic impact of these amendments, including the addition of the power to rescind a loan guarantee, should be positive in nature. These amendments will reduce the cost to borrowers and prospective borrowers to access Authority funds. The cost to the State and the Authority to implement these amendments will not change.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments make technical, clarifying changes to the rules, establish the role of the Loan Review Committee and revise the confidentiality of information rule. The reporting requirement for guarantee recipients under N.J.A.C. 12A:31-2.7 is substantially reduced. The bases for loan guarantee rescission are established at N.J.A.C. 12A:31-2.8. Therefore, a regulatory flexibility analysis is not required.

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

SUBCHAPTER 2. LOAN GUARANTEE PROGRAM

12A:31-2.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the **New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises** to implement a 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)-(c) (No change.)

12A:31-2.2 Definitions

(a) The words and terms in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

...
 "Loan guarantee" means a guarantee for the repayment of commercial private source loans, which guarantee does not exceed 90 percent of the **outstanding** loan [amount] **balance**.
 ...

"Loan Review Committee" means a committee established by the **Chairman of the Board consisting of not more than four Board members, which shall review applications**.
 ...

"Women" means [a] females, regardless of race.
 ...

12A:31-2.3 Application for loan guarantee

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

(c) Each application for a loan guarantee shall be accompanied by a business plan, **including financial projections**, for three years or for the term of the loan, whichever is less, provided in a format as determined by the Authority.

(d) Each application for a loan guarantee shall be accompanied by the following items:

1.-3. (No change.)

4. The financial and operating statements of the applicant for the past three years and the financial statements of the principals of the applicant business for the past three years. All financial and operating statements submitted must be 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.]5. Any proof of certification by a public entity which certifies that the business is beneficially owned by, and [in which] that the majority of the management are, minorities or women; and

[7.]6. Any other information that the Authority **and/or the Executive Director may, in the exercise of their discretion, deem[s]** necessary.

12A:31-2.4 [Loans] **Allocation of loan guarantee assistance**
[available from the Authority]

(a) [Financial] **Of the 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 **all such funds** shall be invested in accordance with geographic restrictions established by the act.

(b) [Financial] **Of the 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] **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 **balance**, whichever is less.

2. [Loan guarantees from the Authority for] **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 **balance**, whichever is less.

12A:31-2.6 Evaluation of applications for loan guarantees

(a) The Executive Director shall evaluate each application for a loan guarantee considering the following factors:

1.-3. (No change.)

4. The length of time that the applicant has been in business as well as the success and growth **potential** of the applicant.

(b) After evaluation of the application by the Executive Director, the Executive Director shall forward the application to the [Board] **Loan Review Committee** for their [consideration] **review**.

(c) **After review of the application by the Loan Review Committee, the Loan Review Committee shall forward the application to the Board for its consideration**

[(c)](d) The Authority shall review the application and advise the applicant that:

1.-3. (No change.)

4. The application is continuing to be considered pending **receipt** of additional information [being received].

[(d)](e) No loan guarantee approved by the Authority shall be [disbursed] **granted** to an eligible business until it has forwarded to the Authority a commitment fee of one-half of one percent of the **total** amount of the loan guarantee and a guarantee fee of one half

of one percent of the **total** 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] **year** which shall include the following:

1.-3. (No change.)

4. Any other information which the Authority **and/or the Executive Director may, in the exercise of their discretion, 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) (No change.)

12A:31-2.8 Rescission of a loan guarantee

(a) **The Authority may, at its discretion, rescind all or part of a loan guarantee commitment prior to closing when it has become reasonably evident that:**

1. **Other commitments of financial resources made to the loan guarantee recipient have been withdrawn or have been amended in such a manner so as to undermine the ability of the loan guarantee recipient to utilize the loan guarantee in the manner it proposed to the Authority;**

2. **The loan guarantee recipient is no longer capable of meeting any financial obligations made to the Authority;**

3. **The loan guarantee recipient has supplied false or incorrect information, or has misrepresented information on a material matter, whether written or oral, upon which the Authority relied when issuing the loan guarantee; or**

4. **The loan guarantee recipient is not of good moral character. Lack of good moral character shall include, but is not limited to, convictions of offenses or crimes.**

(b) **Upon determination by the Authority that a loan guarantee shall be rescinded, the Authority shall send a certified letter, return receipt requested, to the loan recipient informing it of the rescission.**

12A:31-[2.8]2.9 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 only be disclosed with the permission of the applicant or at the discretion of the Executive Director.] **All records of the Authority such as minutes, annual reports, program guidelines, regulations, applications for financial assistance and other information not classified as nonpublic information shall be deemed public information available for examination and copying upon request. If the above information is requested by the public and is not readily available and must be photocopied or otherwise reproduced by the Authority, the Authority shall charge a fee of \$.50 for pages 1 to 10, \$.25 for pages 11 to 20 and \$.10 for pages 21 and above. The public may obtain general information concerning Authority programs by contacting the Executive Director of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprise at the Mary G. Roebling Building, 20 W. State Street, CN 836, Trenton, New Jersey 08625.**

(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 loan guarantee.] **The following shall not be deemed to be public records subject to inspection, examination and available for copying pursuant to N.J.S.A. 47:1A-1 et seq.:**

1. **All confidential reports, executive memoranda and evaluations submitted to the Authority, the directors, or to any other state agency or instrumentality;**

2. **All personnel records;**

3. **All records concerning applications for employment with the Authority;**

4. **All records concerning financial or proprietary information submitted by applicants for Authority assistance;**

5. **All records concerning financial or proprietary information submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Authority;**

6. All reports, correspondence and other documents or data provided or discussed in executive session at a meeting held by the Board of Directors, except that any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be nonpublic records within the scope of this section; and

7. Any other reports, correspondence or other documents or data which the Authority in its discretion deems to be nonpublic pursuant to N.J.S.A. 47:1A-1 et seq.

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

Direct Loans

Proposed Amendments: N.J.A.C. 12A:31-3

Authorized By: New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, Yvonne Bonitto-Doggett, Chairman.

Authority: N.J.S.A. 34:1B-47, specifically N.J.S.A. 34:1B-50(t). Proposal Number: PRN 1991-133.

Submit comments by April 17, 1991 to:

Mark L. Quinn
New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises
20 West State Street
CN 836
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Amendments to N.J.A.C. 12A:31-3, Direct Loans, are being proposed to implement the programs of the Development Authority for Small Businesses, Minorities' and Women's Enterprises.

The key provisions of the proposed amendments are as follows:

1. N.J.A.C. 12A:31-3.2 is amended to define the Loan Review Committee and expand the definition of a direct loan to include a line of credit and other financing instruments.
2. N.J.A.C. 12A:31-3.3 is amended to correct an apparent discrepancy regarding the time frame of financial projections to be included in the application.
3. N.J.A.C. 12A:31-3.6 is amended to state the role of the Loan Review Committee in the application evaluation process.
4. N.J.A.C. 12A:31-3.7 is amended to change certain reporting requirements of borrowers from three months to annually, and to provide that the Authority will accept financial statements prepared by an accountant on a review basis.
5. N.J.A.C. 12A:31-3.9 is repealed and a new rule proposed which elaborates on the confidentiality of information in the possession of the Authority.

Social Impact

The social impact of these proposed amendments should be positive in nature. These amendments will facilitate the application and reporting requirements of prospective borrowers and borrowers.

Economic Impact

The economic impact of these amendments should be positive in nature. These amendments will reduce the cost to borrowers and prospective borrowers to access Authority funds. The cost to the State and the Authority to implement these amendments will not change.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14b-16 et seq. The amendments make technical, clarifying changes to the rules, establish the role of the Loan Review Committee and revise the confidentiality of information rule. The reporting requirement for loan recipients under N.J.A.C. 12A:31-7 is substantially reduced. Therefore, a regulatory flexibility analysis is not required.

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

SUBCHAPTER 3. DIRECT LOANS

12A:31-3.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the **New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises** to implement a direct loan program for eligible businesses to use for real estate acquisition, fixed asset acquisition or working capital.

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

12A:31-3.2 Definitions

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

...
"Direct loan" means a loan, **line of credit, or other non-grant financing instrument or structure approved by the Board**, advanced by the Authority to an eligible business for the purpose of real estate acquisition, fixed asset acquisition, or working capital.

...
"Loan Review Committee" means a committee established by the **Chairman of the Board, consisting of not more than four Board members, which shall review applications.**

...
"Women means [a] females, regardless of race.

12A:31-3.3 Applications for a direct loan.

(a) (No change.)

(b) Each application for a direct loan shall be accompanied by written evidence that the applicant has been unable to acquire [similar] financing [as] **similar to** that sought from the Authority.

(c) Each application for a direct loan shall be accompanied by a business plan, **including financial projections**, for three years or for the term of the loan, whichever is less, provided in a format as determined by the Authority.

(d) Each application for a direct loan shall be accompanied by the following items:

1.-3. (No change.)

4. The financial and operating statements of the applicant for the past three years and the financial statements of the principals of the applicant business for the past **three** years [in addition to any business financial and operating statements. All financial and operating statements submitted must be a compilation statement prepared by an accountant (either CPA or PA)]; **and**

[5. The projected financial and operating statements of the applicant for the next three years; and]

[6.] **5.** Any proof of certification by a public entity which certifies that the business is at least 51 percent beneficially owned by, and [in which] **that** the majority of the management are, minorities and women; and

[7.] **6.** Any other information that the Authority **and/or the Executive Director may, in the exercise of their discretion, deem[s] necessary.**

12A:31-3.4 [Direct] **Allocation of direct** loan assistance [available from the Authority]

(a) [Financial] **Of the 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 **all such funds** shall be invested in accordance with geographic restrictions established by that act.

(b) [Financial] **Of the 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] **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 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] **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.

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.-4. (No change.)

5. The length of time that the applicant has been in business as well as the success and growth **potential** of the business.

(b) After the evaluation of the application by the Executive Director, the Executive Director will forward the application to the [Board] **Loan Review Committee** for their consideration.

(c) **After evaluation of the application by the Loan Review Committee, the Loan Review Committee shall forward the application to the Board for their consideration.**

[(c)] (d) The Authority shall **have 120 days in which to review the application and advise the applicant that:**

1.-3. (No change.)

4. The application is continuing to be considered pending **receipt of additional information [being received].**

[(d)] (e) 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 **approved by the board** and a closing fee of one-half of one percent of the **total amount of the [direct] loan approved by the Board. In the case of a line of credit, the fees shall be computed based on the maximum amount of the line of credit.**

12A:31-3.7 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] **year** which shall include the following:

1.-2. (No change.)

3. Any other information which the Authority **and/or the Executive Director may, in the exercise of their discretion,** 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) (No change)

12A:31-3.8 Rescission of a direct loan

(a) The Authority may, at its discretion, rescind all or part of a direct loan **commitment prior to closing** when it has become reasonably evident that:

1. (No change)

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] **the 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] **it** 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 only be disclosed with the permission of the applicant or at the discretion of the Executive Director.] **All records of the Authority such as minutes, annual reports, program guidelines, regulations, applications for financial assistance and other information not classified as non-public information shall be deemed public information available for examination and copying upon request. If the above information is requested by the public and is not readily available and must be photocopied or otherwise reproduced by the Authority shall charge a fee of \$.50 for pages 1 to 10, \$.25 for pages 11 to 20 and \$.10 for pages 21 and above. The public may obtain general information concerning Authority programs by contacting the Executive Director of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprise at the Mary G. Roebling Building, 20 West State Street, CN 836, Trenton, New Jersey 08625.**

(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.] **The following shall not be deemed to be public records subject to inspection, examination and available for copying pursuant to N.J.S.A. 47:1A-1 et seq.**

1. **All confidential reports, executive memoranda and evaluations submitted to the Authority, the directors, or to any other state agency or instrumentality;**

2. **All personnel records;**

3. **All records concerning applications for employment with the Authority;**

4. **All records concerning financial or proprietary information submitted by applicants for Authority assistance;**

5. **All records concerning financial or proprietary information submitted by individuals, corporations, partnerships and other entities doing or seeking to do business with the Authority;**

6. **All reports, correspondence and other documents or data provided or discussed in executive session at a meeting held by the Board of Directors, except than any action taken or other information required to be disclosed to the public pursuant to N.J.S.A. 10:4-6 et seq. shall not be deemed to be non-public records within the scope of this section; and**

7. **Any other reports, correspondence or other documents or data which the Authority in its discretion deems to be non-public pursuant to N.J.S.A. 47:1A-1 et seq.**

LAW AND PUBLIC SAFETY

(a)

STATE BOARD OF MEDICAL EXAMINERS

Fee Schedule

Proposed Amendment: N.J.A.C. 13:35-6.13

Authorized By: New Jersey State Board of Medical Examiners,

Charles A. Janousek, Executive Director.

Authority: N.J.S.A. 45:1-3.2 and 45:9-19.15.

Proposal Number: PRN 1991-141.

Submit written comments by April 17, 1991 to:

Charles A. Janousek, Executive Director

Board of Medical Examiners

28 West State Street

Trenton, New Jersey 08608

The agency proposal follows:

Summary

This rule proposal would amend the Board's fee schedule by increasing the biennial registration fee for physicians, podiatrists, bioanalytic laboratory directors, nurse mid-wives, and orthoptists. Those fee increases are calculated to provide the Board with adequate funding to staff and service the Medical Practitioner Review Panel created pursuant to P.L. 1989, c.300, (N.J.S.A. 45:9-19) and implement such other reforms mandated by that legislation. This revised fee schedule would also provide for a reduced fee for licensees over the age of 65 who have no affiliation status

with a health care facility or health maintenance organization. Also a portion of the fee increase is to be dedicated to the creation of a program to provide focused re-education to licensees whose skills or fund of knowledge have been found to be deficient.

In February of 1991, the newly created Medical Practitioner Review Panel began fulfilling its responsibilities under the statute. It is the frontline recipient of reports of hospital privilege actions pursuant to N.J.S.A. 26:2H-12.2 and medical malpractice reports pursuant to N.J.S.A. 17:30D-17. Additionally, it is expected that the Board may refer other matters to the panel for the purpose of a preliminary review (N.J.S.A. 45:9-19.9(b)). Practitioners who are the subject of such referrals are to be notified of the panel reviews in most circumstances. The panel can direct investigation of the information and schedule a hearing (N.J.S.A. 45:9-19.9(c)). Thereafter, the panel is to prepare a report for the Board recommending a disposition (N.J.S.A. 45:9-19.9(d)). After Board review of those reports, licensees are to be notified of the panel recommendation and the Board determination. It is anticipated that these new procedures as well as the staffing of the panel will involve substantial costs, which will be defrayed with the funds derived from licensure fees.

Through this increase the Board will also be devoting monies to the creation of a focused reeducation program for physicians whose practice reveals deficiencies. The model which the Board intends to implement would establish a program to assess and analyze physician practice, delineate educational goals and objectives, and design a program tailored to meet those needs. The Board expects to establish that program in the university setting, using volunteer licensees to monitor after program completion. This mechanism would provide a non-punitive approach to those physicians in need of remediation, an approach that may also prove useful to hospitals and peer review organizations.

Social Impact

In creating the Medical Practitioner Review Panel, the Legislature has sought to achieve a more efficient system of medical regulation. The establishment of a screening body to evaluate and make recommendations relating to information from hospital and insurance companies will assist the Board in expeditiously dealing with incompetent and impaired licensees in a format designed to afford the practitioner a fair opportunity to know of and respond to the information presented.

The implementation of a focused reeducation program will give a remedy to the Board to address those problems identified by the panel. Certainly, if incompetency and its causes can be identified, the physician community and the public at large should reap the benefits of a mechanism to assure that practitioners are retrained in a manner specific to the deficiencies noted. While the Board, over time, has recognized that disciplined physicians and their patients would benefit from tightly supervised reeducation, it has been forced to forego this option or rely on the physicians to devise a plan of reeducation. Not only have such plans been of varying quality, but their ultimate success has been difficult to gauge. A university based program with appropriate follow-up monitoring, will, in the Board's view, prove to be a valuable tool in discharging its obligations to the public to assure that licensees practice with reasonable skill and safety.

Economic Impact

While, obviously, any increase imposes a burden on those who will have to pay higher fees, the fees as set forth in this schedule will remain reasonable. The annual fee for a physician will be increased from \$80.00 to \$110.00. That fee has remained unchanged since 1984. The fees for specified limited licensees will also be increased, though by a proportionately smaller sum.

The revenues to be generated through this increase have been calculated to be the amount necessary to defray all proper expenses incurred by the Board in establishing and operating the Medical Practitioner Review Panel and a focused reeducation program.

In accordance with N.J.S.A. 45:1-3.2, the sums raised are estimated to be not in excess of the amount required.

Regulatory Flexibility

Since this amended rule does not impose reporting, recordkeeping, or other compliance requirements on small businesses, the analysis mandated by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. is not required. License fees are imposed upon individuals, not business entities.

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

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1. Medicine and Surgery (M.D. or D.O. license)	
i.-vi. (No change.)	
vii. Biennial registration	[160.00] 220.00
viii. Biennial registration for licensee over 65 without health care facility or HMO affiliation.	110.00
2. Chiropractic (license)	
i. Examination	150.00
ii. Re-examination	50.00
iii. Endorsement	150.00
iv. Biennial registration	120.00]
3.]2. Podiatry (license)	
i.-iii. (No change.)	
iv. Biennial registration	[120.00] 170.00
4.]3. (No change in text.)	
5.]4. Bio-analytical laboratory directorship, specialty license	
i.-iii. (No change.)	
iv. Biennial registration	[120.00] 170.00
6.]5. Midwifery (license)	
i.-iii. (No change.)	
iv. Biennial registration	[120.00] 170.00
7.]6. Certified Nurse Midwifery (registration)	
i.-iii. (No change.)	
iv. Biennial registration, C.N.M.	[120.00] 170.00
8.]7. (No change in text.)	
9.]8. Orthoptist (registration)	
i. (No change.)	
ii. Biennial registration	[120.00] 170.00
Recodify existing 10. and 11. as 9. and 10. (No change in text.)	

LABOR (a)

DIVISION OF WORKERS' COMPENSATION

Rules of the Division of Workers' Compensation

Proposed Readoption with Amendments: N.J.A.C. 12:235.

Authorized By: Raymond L. Bramucci, Commissioner,
Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12(b) and (c) and 34:15-64.

Proposal Number: PRN 1991-139.

Submit comments by April 17, 1991 to:

Linda Flores
Special Assistant for External and Regulatory Affairs
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:235, the Rules of the Division of Workers' Compensation, are scheduled to expire on May 5, 1991. The Department has reviewed these rules and has determined them to be reasonable, necessary and adequate for the purposes for which they were originally promulgated, as required by the Executive Order. Therefore, the Department is now proposing these rules for re-adoption, with certain amendments.

The rules have been amended throughout to capitalize Judge of Compensation, Director and Division. Additionally, the entire chapter has been amended to be gender-neutral.

N.J.A.C. 12:235-1, General Provisions, sets forth the purpose and scope of the chapter; specifically, to establish rules to carry out the responsibilities of the Division of Workers' Compensation ("Division") under the Act, N.J.S.A. 34:15-1 et seq. The subchapter has been amended to delete superfluous sections, but no substantive changes have been made. N.J.A.C. 12:235-1.6, Workers' Compensation benefits rates, has

been deleted as these rates are statutorily set every year, and the Division did not feel it would be necessary to repeat the rates in the rules.

N.J.A.C. 12:235-2 is a definitions subchapter. The subchapter has been amended to add the definition of Chief Judge. No substantive changes have been proposed.

N.J.A.C. 12:235-3 addresses the conduct of Judges of Compensation. There have been minor changes suggested in N.J.A.C. 12:235-3.1 through 3.10, none of which is substantive in nature.

At N.J.A.C. 12:235-3.11 through 3.23, the rules concerning the conduct and discipline of Judges of Compensation were declared invalid in a recent court case as a result of improper secondary notice of its proposal (see 23 N.J.R. 207(a)). These rules are being proposed as new rules to allow the regulated public ample opportunity to make comments on the content of the rule. The text is taken directly from *Pressler*, N.J. Court Rules—Rules Governing Appellate Practice, Rule 2:15-1 et seq., which establishes an Advisory Committee on Judicial Conduct for Superior Court Judges.

Generally, N.J.A.C. 12:235-3.11 concerning the Commission of Judicial Performance ("Commission") provides for a Commission to be established to review complaints made against Judges of Compensation. The Commission is empowered to investigate these claims and make recommendations to the Commissioner of Labor concerning its findings.

N.J.A.C. 12:235-3.12, Physical capacity to preside, and 3.13, Mental capacity to preside, have been deleted. The general requirement that a Judge be mentally and physically capable of presiding has been incorporated at N.J.A.C. 12:235-3.11(b)7, and the Department considered it unnecessary to detail these requirements in a separate section. Additionally, the Department did not wish to retain the requirement that a Judge of Compensation consult with the Employee Advisory Service at the discretion of the Director.

N.J.A.C. 12:235-3.17 has been amended to reflect the fact that Judges shall not be suspended without pay during the resolution of removal proceedings. The current rule permits the Commissioner to suspend a Judge with or without pay; the Department believes that a Judge should be entitled to pay pending removal proceedings, and thus the change has been made to reflect this policy.

N.J.A.C. 12:235-3.18, minor discipline, has been amended to treat any action, other than an action for removal, in which the penalty sought will result in suspension of a Judge for any length of time will be processed in the same fashion as a cause for removal. Currently, if the penalty sought in a disciplinary action is a suspension of five days or less, the action does not have to be processed in the same manner as an action for removal. The Department made this change because it believes that any action that will result in a suspension of any length of time is serious enough to warrant maximum due process protection.

N.J.A.C. 12:235-3.20, Confidentiality, has been changed to substitute the word "disciplinary" for "personnel" with regard to disclosure of information. The Department felt Judges would be better protected by specifying that all disciplinary matters should be confidential, as opposed to personnel matters, because personnel matters may not be considered to include disciplinary actions. Furthermore, the Department did not feel that all personnel proceedings had to be confidential; for example, the designation of a Judge as a Supervising Judge should not have to be a confidential matter.

N.J.A.C. 12:235-3.23, Separability, has been deleted.

N.J.A.C. 12:235-4 concerns the supervision of Judges of Compensation. No substantive changes have been proposed upon re-adoption.

N.J.A.C. 12:235-5, sets forth the provisions for formal claims. Specifically, the subchapter discusses initial pleadings, motions for temporary disability and/or medical benefits, other motions, third-party joinder by respondents, discovery, interrogatories, testimony by depositions, certification of pre-existing conditions, pre-trial conferences, and formal hearings. Several changes have been made to the existing text.

Specifically, N.J.A.C. 12:235-5.1, initial pleading, has been amended at subsection (a) to increase the amount by which a fee can be reduced for knowingly filing an incomplete or inaccurate claim petition. Currently, the rule requires a 15 percent reduction of the fee; the amendment changes the mandatory requirement to a discretionary reduction of 15 percent or \$200, whichever is greater.

N.J.A.C. 12:235-5.2, concerning motions for temporary disability and/or medical benefits, the amount of the penalty which may be assessed against an attorney for knowingly filing an incomplete, inaccurate or misleading notice of motion for benefits has been increased from \$50.00 to \$200.00. This increase has been proposed because of the excessive number of motions which are being filed incorrectly. However, while the

amount of the penalty has been increased substantially, it is still within the discretion of the presiding Judge to penalize the attorney at all.

N.J.A.C. 12:235-5.3(b), which required a checklist to be appended at the foot of an order relating to the filing of answers, has been deleted. This has not been the practice within the Division for some time, as the filing of answers is accompanied by a specific form and is noted in the computer system.

N.J.A.C. 12:235-5.9(a), pre-trial conference, has been amended to further clarify the procedures to be followed at a pre-trial conference. Specifically, the Judge and the attorneys are to agree upon the type of medical examinations required, and the issues to be tried shall be limited. At N.J.A.C. 12:235-5.4, the filing by the respondent's attorney of an incomplete, inaccurate or frivolous motion for third-party joinder may result in a counsel fee of up to \$500.00 being awarded to opposing counsel, at the discretion of the Judge.

N.J.A.C. 12:235-5.9(b) has been added to require all attorneys requesting an adjournment for medical examinations to provide the name of the examining physician and the date of the examination before an adjournment is granted.

N.J.A.C. 12:235-5.10(b) has been amended to remove the restriction that no person convicted of a crime involving moral turpitude shall be permitted to appear in a representative capacity. The Department is of the opinion that if an attorney is licensed to practice law in the State of New Jersey, no further qualifications shall be imposed.

N.J.A.C. 12:235-5.10(f)1, which permits the bifurcation of a trial, has been deleted. Because of the enormous caseload in the Workers' Compensation system, the Division believes that a case should be tried to conclusion to avoid unnecessary backlogs.

N.J.A.C. 12:235-5.10(j) has been amended to specify that briefs filed shall be in the form of post-trial briefs. In Workers' Compensation court, trial briefs are not submitted as a matter of practice. The only time briefs may be needed is at the close of the case, in an effort to clarify one's position or to endeavor to bring a novel issue of law to the Judge's attention prior to the decision being rendered.

N.J.A.C. 12:235-5.10(l) has been deleted and replaced with language requiring physicians who regularly examine petitioners to adhere to the vacation schedule established by the Director. If a medical expert is not available, the Judge may direct the party for whom the witness is to appear to arrange for an alternate medical expert. Additionally, a definition of medical expert has been added to define what is meant by a physician who regularly examines petitioners to determine the extent of disability.

N.J.A.C. 12:235-5.10(n) has been changed to more accurately specify the procedures to be followed with regard to the retention of exhibits. The Division felt that this section needed clarification to ensure that important documents and exhibits would be properly retained and/or microfilmed.

Finally, N.J.A.C. 12:235-5.10(r) has been amended to give Judges 30, rather than 15, days to complete their reserved decisions, and a new subsection (u) has been added, which subsection clarifies the date of entry for a final judgement.

N.J.A.C. 12:235-6 addresses informal hearings. The informal process is not expressly discussed in the Act; rather, it is a service provided by the Division to effectuate the amicable adjustment of controversies between injured or disabled workers and their employers involving their respective rights under the Act.

The subchapter contains information concerning the filing of an application of an informal hearing, the content requirements of an application, the scheduling of informal hearings, attendance at hearings, who may represent an employer or carrier and the registration of those individuals with the Court, the representation of a claimant, the solicitation of compensation claim, insurance procedures, attorney fees, the commencement of informal hearings, determination of issues, acceptance of settlement recommendations and the entry of informal awards, fees for physicians, the denial of compensability or refusal to accept the finding of informal hearings, the failure of the employer or carrier and adjournments.

N.J.A.C. 12:235-6.10 concerning the appearance by persons convicted of a crime, has been deleted as the Department did not believe this would necessarily affect a person's representative ability in Workers' Compensation Court. No other substantive changes have been made.

N.J.A.C. 12:235-7 concerns Second Injury Fund Cases. Specifically, the subchapter sets forth the procedures to be followed when filing a claim for benefits payable from the Second Injury fund pursuant to N.J.S.A.

34:15-95. The subchapter discusses hearings, payment of benefits, and the filing of petition for benefits.

N.J.A.C. 12:235-7.1(a) has been deleted and combined with more explicit language at subsection (b). This subsection has been amended to establish the procedure to be followed when a settlement cannot be effected. Specifically, the rule outlines the manner in which a trial should be listed and how to deal with a Second Injury Fund application.

N.J.S.A. 12:235-7.3(b)1, has been added to require the Fund to reimburse an employer who has paid excess benefits.

N.J.A.C. 12:235-7.3(e), requiring the employer to continue to pay benefits when the application for Fund benefits has been denied, has been deleted because it is not proper to require the employer to continue to indefinitely make payments.

N.J.A.C. 12:235-8 concerns the commutation of an award and sets forth what must be contained in an application form for commutation and the procedure for approval or disapproval of the application. The subchapter has been amended to require the Judge who initially entered the award sought to be commuted to hear the application. Currently, it is the responsibility of the Division to review such an application.

N.J.A.C. 12:235-9 concerns discrimination complaints. The subchapter provides information concerning the procedures to be followed when filing a discrimination complaint, the Department's duty to investigate complaints, and action by the Commissioner. The only changes made to the chapter are at N.J.A.C. 12:235-9.4, which involve extending, from 30 to 90 days, the time given to Departmental investigators to complete an investigation, and forwarding the results to the Director. The Department realizes that this time extension lengthens the complaint resolution period, but believes this extra time is required to enable a more thorough investigation and more extensive internal review procedure.

N.J.A.C. 12:235-10 addresses accident reports; specifically, the employers' first report of accidental injury or occupational disease, the insurers' initial notice of accident, insurers' final report of accident and report of death. Amendments to the subchapter include deleting repetitive language and eliminating the form numbers for the forms required. No substantive changes have been proposed.

N.J.A.C. 12:235-11, Standard forms, and 12:235-12, Sample forms, remain unchanged.

N.J.A.C. 12:235-13, concerning Surcharge Collection Procedures remains the same.

N.J.A.C. 12:235-14 addresses the Uninsured Employers' Fund. Several changes have been made to the chapter. Specifically, the rule has been amended at N.J.A.C. 12:235-14.1 to add subsection (c), which provides that no judgment or order for the payment of benefits shall be entered against the Fund. This statement clarifies the statute, which provides that judgments shall be entered specifically against uninsured employers. N.J.A.C. 12:235-14.2 has been amended to detail the steps involved in joining the Fund. Subsection (d) has been deleted, as the Fund, not petitioner's attorney, now subpoenas respondents when necessary. N.J.A.C. 12:235-14.3 addresses the certification, and has been amended to require petitioner's attorney to advise the Fund who has paid medical expenses to date and whether the petitioner is receiving Social Security benefits. Subsections (b) and (c), concerning additional information and sanctions for failure to disclose pertinent information, have been deleted as the Division feels that subsection (b) is superfluous and subsection (c) is not, in practice, followed.

N.J.A.C. 12:235-14.4 has been amended to delete reference to the Bureau of Risk Management's medical fee schedule. The Judge of Compensation makes a preliminary determination of reasonableness. If costs seem excessive, the bills are sent to an outside consultant for review, at the direction of the Judge of Compensation. The Risk Management fee schedule is not used by the Fund in any event. Under subsection (b), changes have been made concerning the type of information requested of a physician in an independent medical examination, as it is often desirable to know the anticipated date for return to work and whether the petitioner needs further treatment. Subsection (e) has been deleted because it is superfluous as any party retains the right to produce expert testimony.

N.J.A.C. 12:235-14.6, concerning payments from the Fund, has replaced the existing section concerning attorney fees. The new section states that payments from the Fund shall be made only in accordance with N.J.S.A. 34:15-120.4.

Finally, a new section, N.J.A.C. 12:235-14.7, entitled attorney fees has been added. The section provided that attorney fees may be payable from the Fund when the petitioner is found eligible for Fund benefits by the Commissioner, and addresses the procedures to be followed by the peti-

tioner's attorney when applying for payment of the attorney fee by the Fund. Such application is to be accompanied by an affidavit of provider services.

Social Impact

The rules proposed for readoption will have a significant positive impact on both employers and employees, as the rules provide for a court system which resolves workers' compensation disputes. The rules establish a system by which benefits are paid to employees during a time of need, and place responsibility on the employer to provide such benefits. The Department will benefit by the readoption of these rules as it will be assured of having a Workers' Compensation system which is capable of efficiently determining benefit eligibility, which, in turn, benefits the working people in the State of New Jersey. The substantive changes to the rules will require those appearing in workers' compensation court to follow somewhat more specific rules concerning filings, Second Injury Fund procedures, and Uninsured Employers' Fund procedures, and the overall impact will result in a more orderly system which delivers benefits in a more efficient manner.

Economic Impact

The rules proposed for readoption are not expected to have any real economic impact on employers, employees or the Department. The rules have been modified slightly during readoption but as written are designed only to govern the orderly functioning of the Workers' Compensation Court system. They do not provide for any new programs or methodologies which would result in the expenditure of money. The existing rules result in virtually no economic impact on attorneys, except for the penalties involved for not properly filing motions. Similarly, the proposed readoption affects attorneys only with regard to these penalties. Claimants are positively affected economically in the sense that this is a system designed to provide them benefits. The proposed readoption continues in this endeavor.

Regulatory Flexibility Analysis

The rules for readoption do impose reporting, recordkeeping and compliance requirements on attorneys, some of which can be considered as small businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Small businesses must file claim petitions, motions for medical and/or temporary benefits, Second Injury Fund applications and Uninsured Employers' Fund certifications in order to obtain benefits for their clients. The filing of these papers is a precedent to the collection of benefits, and no exception can be made for small businesses. It is necessary for all adversary parties, regardless of size, to file all required forms and pleadings in an effort to ensure the orderly, efficient functions of the Workers' Compensation system. Regarding the reporting requirements on the small business employer, any administrative costs associated with the filing of accident reports (see N.J.A.C. 12:235-10), will have to be borne by the employer. Additionally, small businesses must retain records in accordance with the record retention laws of the State of New Jersey. The Department does not anticipate the need for any individuals to require outside professional assistance or consultants to be able to comply with the rules proposed for readoption.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:235.

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

12:235-1.1 [Title and citation

This chapter shall be known and may be cited as N.J.A.C. 12:235, Workers Compensation Procedures.

12:235-1.2 Authority

These rules are promulgated pursuant to the authority of Workers' Compensation Law, N.J.S.A. 34:15-1 et seq.

12:235-1.3] Purpose; scope

(a) The purpose of this chapter is to establish rules to carry out the responsibilities of the Division of Workers' Compensation under the Act.

[12:235-1.4 Scope]

(b) This chapter shall apply to all persons subject to the Workers' Compensation Law, N.J.S.A. 34:15-1 et seq.

12:235-1.[5]2 Construction (No change.)

12:235-1.6 Workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being \$370.00 per week.

(b) This maximum compensation shall be effective as to injuries occurring in the calendar year 1990.

12:235-1.7. Documents referred to by references

The availability of documents referred to in this chapter is explained in N.J.A.C. 12:235-11.

12:235-1.8. Validity

Should any section, paragraph, sentence or word of this chapter be declared invalid, it shall not affect the remaining portions of this chapter.]

12:235-2.1 Definitions

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

"Chief Judge" means the Chief Judge of the Division.

"Commissioner" means the Commissioner of Labor or his or her designee.

["Shall" means a mandatory requirement.]

12:235-3.1 Promptness

(a) [A judge] **Judges** of [compensation] **Compensation** shall be prompt in the performance of all [his] duties, including[:], but not limited to:

1. Convening hearings at the time [scheduled] and in the manner established by the [director] **Director**.

2. (No change.)

3. Completing and forwarding to the [director] **Director** at regular intervals [a] performance records and other data relating to judicial performance in a manner established by the [director] **Director**.

12:235-3.2 Courtesy and civility

(a) [A judge] **Judges** of [compensation] **Compensation** shall be impartial and courteous to parties, counsel, and all others appearing or concerned with the administration of justice in the court.

(b) [The judge] **Judges** of [compensation] **Compensation** shall require, so far as [his] **their** power extends, that those individuals assisting [him] **the Judge** in the administration of the function of the court extend the same civility and courtesy to counsel and all others having business in the court.

(c) The conduct of a [judge] **Judge** of [compensation] **Compensation** shall be free from impropriety and the appearance of impropriety. [His] **Their** personal demeanor, not only on the bench and in the performance of [his] **their** judicial duties, but also in [his] **their** everyday life, shall be beyond reproach. [He] **Judges** shall be temperate, attentive, patient, and impartial.

12:235-3.3 Conduct of attorneys

(a) [A judge of compensation shall require professional conduct by attorneys.] **Attorneys shall conduct themselves in a professional manner at all times.**

(b) [A judge] **Judges** of [compensation] **Compensation** shall report to the **Supervising Judge and Director** all instances of **unprofessional, unethical or illegal practices** by attorneys [to the supervising judge and the director].

12:235-3.4 Conduct of witnesses and others having business [with] before the court

(a) **Witnesses and others having business before the court shall conduct themselves in a proper manner.**

(b) [A judge] **Judges** of [compensation] **Compensation** shall [have the duty to] report to the **Supervising Judge and Director** all instances of **improper, unethical or illegal practices** by any [lay, professional or] expert witness, interpreter, court reporter, or party before [him] **the Judge** [to the supervising judge and the director].

12:235-3.5 Kinship or influence: disqualification

(a) [A judge] **Judges** of [compensation] **Compensation** shall not act upon or hear a controversy, or a portion thereof where a relative

of [himself] **the Judge** or [his] **the Judge's** spouse within the third degree of relationship to either is a party before [him] **the Judge**.

(b) If a relative of [himself] **the Judge** or [his] **the Judge's** spouse within the third degree of relationship to either, former partner, business associate, or personal friend is scheduled to appear before a [judge] **Judge** of [compensation] **Compensation**, the [judge] **Judge** shall [conditionally] disqualify himself or herself [to] from hearing the matter and promptly notify the [supervising] **Supervising** [judge] **Judge** and the [director] **Director** for rescheduling of the matter.

(c) [A judge] **Judges** of [compensation] **Compensation** shall disqualify [himself] **themselves** from all other matters in which [he is] **they are** unable to conduct a fair and unbiased hearing.

12:253-3.6 Conflict of interest

(a) [A judge] **Judges** of [compensation] **Compensation** shall not:

1. Engage in any activity which requires the performance of duties inconsistent with [his] **their** position of authority; or

2. Incur any obligation, pecuniary or otherwise, which would in any way interfere or appear to interfere with [his] **their** duty to effectuate the proper administration of [his] **their** official functions.

12:235-3.7 Partisan politics

(a) [A judge] **Judges** of [compensation] **Compensation** shall be entitled to entertain [his] personal views of political questions, and, while [he is] **they are** not required to surrender [his] **their** rights or opinions as [a] citizens, it is inevitable that suspicions of being influenced by political bias will attach to an individual who becomes an active promoter of the interests of a political party.

(b) [A judge] **Judges** of [compensation] **Compensation** shall not:

1.-7. (No change.)

12:235-3.8 Self-interest

[A judge] **Judges** of [compensation] **Compensation** shall abstain from performing or taking part in an official act by which [his] **their** personal interests would be affected.

12:235-3.9 Gifts and favors

(a) [A judge] **Judges** of [compensation] **Compensation** shall not solicit or accept any gifts, favors, or gratuities of any form or pecuniary value from:

1. Litigants, attorneys, physicians, or witnesses regularly appearing before the [division] **Division**; or

2. (No change.)

12:235-3.10 Medical reports

Any [judge] **Judge** of [compensation] **Compensation** who has reason to believe that a medical report, medical bill for services, or medical finding has been altered, falsified, or withheld by a licensed physician, dentist, chiropractor, osteopath, optometrist, physical therapist, medical technician, attorney, or a representative of an insurance carrier or self-insured shall notify the [director] **Director**.

[12:235-3.11 Commission of Judicial Performance

(a) Pursuant to this subchapter, a Commission of Judicial Performance (Commission) is established.

1. The Commission shall consist of seven members. The Director shall designate one member to serve as Chairman and another member to serve as Vice Chairman. At least two members shall be judges of compensation, not less than three members shall be members of the Bar, and not more than four members shall be laymen who do not hold public office of any nature. The members shall be appointed by the Director, and shall serve at the pleasure of the Director. Membership on the Commission shall terminate if a member is appointed or elected to public office or to any position considered by the Director to be incompatible with such service.

2. A quorum shall consist of four members of the Commission. No action of the Commission shall be valid unless concurred in by a majority of its membership; provided, however, that if the Commission finds sufficient cause therefor, and recommends to the Director the institution of formal proceedings which may lead to censure, suspension, or removal of a judge of compensation, such recommendation shall be made only on the affirmative vote of four members of the Commission who have considered the record and at least two

of whom were present at any hearing at which oral testimony was produced.

3. Whenever in the judgment of the Commission it shall appear necessary or expedient to do so, the Chairman of the Commission may establish and designate three-member panels to conduct any investigation or any hearing contemplated by this subchapter. At the conclusion thereof, the panel shall make a report or recommendation to the Commission, which shall review the report or recommendation in accordance with (a)2 above.

4. The function of the Commission shall be to give advisory opinions, recommendations and reports to the Director.

(b) The Commission shall make a preliminary investigation to determine what, if any, action should be taken, upon receiving a written statement or criticism or complaint, not obviously unfounded or frivolous, or relating to a matter solely subject to an appeal from the criticized conduct or action, alleging facts indicating that a Judge of Compensation may be suffering from a mental or physical disability which is disabling him or her and may continue to disable him or her indefinitely or permanently from the performance of his or her duties, or is guilty of:

1. Misconduct in office;
2. Willful failure to perform his or her duties;
3. Incompetence;
4. Habitual intemperance;
5. Violations of any law, rule, regulation, policy or procedure of the Division, the Department of Labor or the State of New Jersey; or

6. Conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(c) The Commission may make a preliminary investigation of any Judge of Compensation on its own motion without receiving a statement, criticism or complaint as set forth in (b) above.

(d) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the person submitting the statement, criticism or complaint shall be so notified.

1. If the judge of compensation involved is aware of the statement, criticism or complaint, he or she should be notified of the Commission's finding and action;

2. If the judge has not been made aware of the statement, criticism or complaint, the Commission in the exercise of its discretion in the particular circumstances may furnish information to him or her or withhold information from him or her as to the action taken.

(e) If the preliminary investigation indicates that further inquiry into the matter is necessary, the Commission shall:

1. Require the complainant to file a verified complaint against the judge unless the circumstances render it necessary;

2. Notify the judge of the nature of the charge, the name of the person making it, and that the judge has the opportunity to present within such reasonable time as the Commission shall fix, such matters as he or she may choose with respect to it, including, on his or her request, the right to appear before the Commission, on notice to the complaining party, and to make such statement under oath as he or she deems appropriate. If the judge does make a statement before the Commission, on request, the complainant shall be permitted to make further statement as he or she deems material. Such statements may be taken stenographically or by a sound recording device, in the discretion of the Chairman.

i. The notice to the judge referred to in (e)2 above shall specify in ordinary and concise language the charges against him or her and the alleged facts upon which they are based.

(f) All Division personnel shall cooperate fully with the investigation and shall provide all such information to the Commission as may be deemed necessary by the Director or Chief Judge.

(g) Upon completion of the preliminary investigation, the Commission may:

1. Dismiss the charges and notify the parties of the action taken if it finds that the charges are without merit. If the matter has been made public, the Commission may, at the request of the judge involved, issue a short statement of clarification and correction;

2. Issue a short explanatory statement, if a judge is publicly charged with having engaged in grievous reprehensible conduct or

having committed a serious offense, and if after the preliminary investigation it is decided that there is no basis for further proceedings or recommendation respecting the issuance of a formal complaint;

3. Request the judge to appear at a time and place designated for an informal discussion of the matter if the investigation reveals some departures by the judge from common standards of judicial propriety, such as discourtesy, rudeness, disparagement of witnesses or attorneys and the like, or other conduct or demeanor which would reflect unfavorably upon the functions of the Division and administration of justice if persisted in or were to become habitual or more substantial in character. After making the judge aware of the objectionable conduct, and becoming satisfied that it was temporary in nature and not likely to become habitual, the Commission may dismiss the complaint, and advise the parties of the action taken, and the reasons for the dismissal.

i. Conferences may be recorded, in the discretion of the Chairman, by a qualified reporter or by a sound recording device and a transcribed record, if made, and all the papers in the proceeding shall be filed with the Commission.

(h) Whenever the Commission concludes from the preliminary investigation that the circumstances may call for censure, suspension or removal of the judge, and that formal proceedings to that end should be instituted, the Commission shall promptly file a copy of the recommendation and the record of the Commission with the Director of the Division of Worker's Compensation. The Commission shall issue also without delay and serve upon the judge a notice advising him or her that it has filed such a recommendation with the Director.

(i) After the Director has received reports and recommendations from the Commission, the Director shall take such action as is deemed appropriate.

12:235-3.12 Physical capacity to preside

(a) Judges of compensation shall necessarily be in good health to execute the rigorous duties of their office.

(b) When judges of compensation are unable to carry out the duties of their office for an indefinite period of severe incapacitating disease or severe, incapacitating injury, the Commissioner may grant an indefinite leave, with or without pay, until the afflicted individuals are capable of resuming their duties.

(c) The Director may, upon recommendation of the Commission or for good cause, require a judge to submit to a medical examination.

12:235-3.13 Mental competency to preside

(a) Judges of compensation shall be of sound mind in order to execute the duties of their office.

(b) In the event that a complaint alleging mental incompetency to perform the duties of the office is made by affidavit and filed with the Division, or on the recommendation of the Commission or for good cause, the Director shall have the power to:

1. Require the judge in question to consult with the Employee Advisory Services, and abide by their recommendations; or

2. Order the judge in question to submit to a psychiatric examination.

i. The examination shall be by two psychiatrists selected by the Commissioner; and

ii. The psychiatric examination shall be for the purpose of determining whether or not the judge is afflicted with any mental illness that would impair that individual from performing the duties of office.

12:235-3.14 Removal from office

(a) Judges of compensation may be removed from office if it is found by clear and convincing proof that:

1. They have violated any provision of this subchapter;

2. They have been convicted for the commission of any indictable offense;

3. They have been found to be incompetent or incapable of executing the duties of their office;

4. They have committed an enumerated offense pursuant to N.J.S.A. 2C:51-2, which details the circumstances for forfeiture of public office; or

5. They have accumulated two or more unsatisfactory, or the equivalent, evaluations from the Director, within a five year period, including evaluations from both interim or annual reviews pursuant to the merit evaluation system established by the Division or the Department of Labor.

12:235-3.15 Institution of removal proceedings

A proceeding for removal for cause may be instituted by the filing of a misconduct complaint with the Commissioner by the Director.

12:235-3.16 Prosecution of removal proceeding

The Attorney General or a designated representative shall prosecute the removal proceedings unless the Commissioner, with the express consent of the Attorney General, designates an attorney for that purpose.

12:235-3.17 Suspension pending resolution of the proceeding

(a) The Commissioner may suspend judges of compensation from office or from performing his or her regular duties, with or without pay, prior to the resolution of the proceeding.

(b) If judges accused of misconduct are reinstated to the prior position held, and have been denied salary during suspension, then restitution for the period of the suspension, which exceeded the period of the penalty, shall be made.

12:235-3.18 Right to counsel

The accused in a hearing for removal shall be given a reasonable time to prepare a defense and shall be entitled to counsel retained and paid for by the accused.

12:235-3.19 Formal hearing for suspension or removal

(a) A formal hearing shall be conducted at the request of the Director before the Commissioner or a representative designated by the Commissioner.

(b) The hearing shall commence within 30 days of the filing of such a complaint and shall be tried on a continuous basis to conclusion.

12:235-3.20 Minor discipline

(a) Any action other than an action for removal in which the penalty sought will result in suspension of judges for more than five days will be processed in the same fashion as a cause for removal.

(b) Any action in which the penalty sought will not result in a suspension of more than five days shall be heard by the Commissioner or a designated representative who may be the Director, Chief Judge or any other individual designated by the Commissioner and shall be conducted in a summary manner after the accused has been given formal notification of the charges, and afforded an opportunity to be heard. The decision of the Commissioner or his or her designated representative shall be final.

12:235-3.21 Forms of discipline

(a) The Commissioner or a designated representative may dispense the following discipline after any informal or formal hearing:

1. Removal from office;
2. Suspension;
3. Fine;
4. Written reprimand; or
5. Verbal reprimand.

12:235-3.22 Confidentiality

All personnel proceedings concerning judges of compensation shall be conducted in a confidential manner. The Director shall, in his or her discretion, have the sole responsibility for releasing information concerning personnel matters.

12:235-3.23 Separability

If any provision of this subchapter, or its application to any person or circumstances, is held invalid, the remainder of this subchapter and its application to other persons or circumstances shall not be affected.]

12:235-3.11 Commission on Judicial Performance

(a) Pursuant to this subchapter, a Commission of Judicial Performance (Commission) is established.

1. The Commission shall consist of nine members. The Director shall designate one member to serve as Chairman and another member to serve as Vice Chairman. At least two members shall be retired Judges of Compensation, not less than three members shall be members of the Bar, and not more than four members shall be laymen who do not hold public office of any nature. The members shall be appointed by the Director, and shall serve at the pleasure of the Director. Membership on the Commission shall terminate if a member is appointed or elected to public office or to any position considered by the Director to be incompatible with such service.

2. A quorum shall consist of five members of the Commission. No action of the Commission shall be valid unless concurred in by a majority of its membership; provided, however, that if the Commission finds sufficient cause therefor, and recommends to the Director the institution of formal proceedings which may lead to censure, suspension, or removal of the Judge of Compensation, such recommendation shall be made only on the affirmative vote of five members of the Commission who have considered the record and at least two of whom were present at any hearing at which oral testimony was produced.

3. Whenever in the judgment of the Commission it shall appear necessary or expedient to do so, the Chairman of the Commission may establish and designate three-member panels to conduct any investigation or any hearing contemplated by this subchapter. At the conclusion thereof, the panel shall make a report or recommendation to the Commission, which shall review the report or recommendation in accordance with (a)2 above.

4. The function of the Commission shall be to give advisory opinions, recommendations and reports to the Director.

(b) The Commission shall make a preliminary investigation to determine what, if any, action should be taken, upon receiving a written statement or criticism or complaint, not obviously unfounded or frivolous, or relating to a matter solely subject to an appeal from the criticized conduct or action, alleging facts indicating that a Judge of Compensation is guilty of:

1. Misconduct in office;
2. Willful failure to perform judicial duties;
3. Incompetence;
4. Habitual intemperance;
5. Engagement in partisan politics;
6. Conduct prejudicial to the administration of justice that brings the judicial office into disrepute; or
7. May be suffering from a mental or physical disability which is disabling the Judge and may continue to disable the Judge indefinitely or permanently from the performance of judicial duties.

(c) The Commission may make a preliminary investigation of any Judge of Compensation on its own motion without receiving a statement, criticism or complaint as set forth in (b) above.

(d) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the person submitting the statement, criticism or complaint shall be so notified.

1. If the Judge of Compensation involved is aware of the statement, criticism or complaint, he or she should be notified of the Commission's findings and action;

2. If the Judge has not been made aware of the statement, criticism or complaint, the Commission, in the exercise of its discretion in the particular circumstances, may furnish information to the Judge or withhold information from the Judge as to the action taken.

(e) If the preliminary investigation indicates that further inquiry into the matter is necessary, the Commission shall:

1. Require the complainant to file a verified complaint against the Judge unless the circumstances render it unnecessary;

2. Notify the Judge of the nature of the charge, the name of the person making it, and that the Judge has the opportunity to present within such reasonable time as the Commission shall fix, such matters as he or she may choose with respect to it, including, on his or her request, the right to appear before the Commission, on notice to the complaining party, and to make such statement under oath as he or she deems appropriate. If the Judge does make a statement before the

Commission, on request, the complainant shall be permitted to make further statement as he or she deems material. Such statements may be taken stenographically or by a sound recording device.

(1) The notice to the Judge referred to in (e)2 above shall specify in ordinary and concise language the charges against the Judge and the alleged facts upon which they are based.

(f) All Department personnel shall cooperate fully with the investigation and shall provide all such information to the Commission as may be deemed necessary by the Director.

(g) Upon completion of the preliminary investigation, the Commission may:

1. Dismiss the charges and notify the parties of the action taken if it finds that the charges are without merit. If the matter has been made public, the Commission may, at the request of the Judge involved, issue a short statement of clarification and correction;

2. Issue a short explanatory statement, if a Judge is publicly charged with having engaged in grievous reprehensible conduct or having committed a serious offense, and if after the preliminary investigation it is decided that there is no basis for further proceedings or recommendation respecting the issuance of a formal complaint;

3. Request a Judge to appear at a time and place designated for an informal discussion of the matter if the investigation reveals some departures by the Judge from common standards of judicial propriety, such as discourtesy, rudeness, disparagement of witnesses or attorneys and the like, or other conduct or demeanor which would reflect unfavorably upon the functions of the Division and administration of justice if persisted in or were to become habitual or more substantial in character. After making the Judge aware of the objectionable conduct, and becoming satisfied that it was temporary in nature and not likely to become habitual, the Commission may dismiss the complaint, and advise the parties of the action taken, and the reasons for the dismissal of the complaint.

i. Conferences shall be recorded by a qualified reporter or by a sound recording device and a transcribed record and all papers in the proceeding shall be filed with the Commission.

(h) Whenever the Commission concludes from the preliminary investigation that the circumstances may call for censure, suspension or removal of the Judge, and that formal proceedings to that end should be instituted, the Commission shall promptly file a copy of the recommendation and the record of the Commission with the Director. The Commission shall issue also without delay and serve upon the Judge a notice advising him or her that it has filed such a recommendation with the Director.

i. After the Director has received reports and recommendations from the Commission, the Director shall take such action as is deemed appropriate.

12:235-3.12 Removal from office

(a) Judges of Compensation may be removed from office if it is found by clear and convincing proof that:

1. They have violated any provision of this subchapter;
2. They have been convicted of an indictable offense;
3. They have been found to be incompetent or incapable of executing the duties of their office; or
4. They have committed an enumerated offense pursuant to N.J.S.A. 2C:51-2, which details the circumstances for forfeiture of public office.

12:235-3.13 Institution of removal proceedings

A proceeding for removal for cause may be instituted by the filing of a misconduct complaint with the Commissioner by the Director.

12:235-3.14 Prosecution of removal proceeding

The Attorney General or a designated representative shall prosecute the removal proceedings unless the Commissioner, with the express consent of the Attorney General, designates an attorney for that purpose.

12:235-3.15 Suspension pending resolution of the proceeding

The Commissioner may suspend Judges of Compensation from office or from performing their regular duties, with pay, prior to the resolution of the proceeding.

12:235-3.16 Right to counsel

The accused in a hearing for removal shall be given a reasonable time to prepare a defense and shall be entitled to counsel retained and paid for by the accused.

12:235-3.17 Formal hearing for suspension or removal

(a) A formal hearing shall be conducted at the request of the Director before the Commissioner or a representative designated by the Commissioner.

(b) The hearing shall commence within 30 days of the filing of such a complaint and shall be tried on a continuous basis to conclusion.

12:235-3.18 Minor discipline

(a) Any action other than an action for removal in which the penalty sought will result in suspension of a Judge will be processed in the same fashion as a cause for removal.

(b) Any action in which the penalty sought will not result in a suspension of a Judge shall be heard by the Commissioner or a designated representative who may be the Director, Chief Judge or an individual designated by the Commissioner and shall be conducted in a summary manner after the accused has been given formal notification of the charges, and afforded an opportunity to be heard. The decision of the Commissioner or his or her designated representative shall be final.

12:235-3.19 Forms of discipline

(a) The Commissioner or a designated representative may dispense the following discipline after any informal or formal hearing:

1. Removal from office;
2. Suspension;
3. Fine;
4. Written reprimand; or
5. Verbal reprimand.

12:235-3.20 Confidentiality

All disciplinary proceedings concerning Judges of Compensation shall be conducted in a confidential manner. The Director shall have the sole responsibility for releasing information concerning disciplinary matters.

12:235-4.1 Assignment to supervisory positions

(a) It shall be within the power of the [director] Director to ascertain the need to assign [judges] Judges to supervisory positions and exercise the administrative duties as set forth in this chapter for the districts [he] the Director may designate.

(b) [The director in his discretion may] In the discretion of the Director, the Director may:

1. Determine the number of [judges] Judges needed to provide the necessary supervision; and
2. Appoint [judges] Judges of [compensation] Compensation to supervisory positions in which the [judge] Judges shall serve at the pleasure of the [director] Director.

12:235-4.2 Personnel functions

(a) The [supervising judge] Supervising Judge of a particular district shall be directly responsible for the general conduct and performance of each [judge] Judge of [compensation] Compensation in [his] that district. The [supervising judge] Supervising Judge shall be prepared to give a periodic performance evaluation of each [judge] Judge at the request of the [director] Director.

(b) The [supervising judge] Supervising Judge of a particular district shall be responsible for the orderly and prompt flow of work in [his] that district.

(c) Subject to the approval of the [director] Director, the [supervising judge] Supervising Judge shall determine the composition of the daily calendar and shall designate the [judge] Judge of [compensation] Compensation to be responsible for each calendar list. The [supervising judge] Supervising Judge shall be responsible for all daily changes of scheduling for all hearing personnel within [his] each district and be available to discuss particular scheduling problems with attorneys.

(d) Each [supervising judge] Supervising Judge shall furnish statistical reports as required by the [director] Director.

12:235-5.1 Initial pleadings

(a) Claim petitions shall be subject to the following:

1. The formal hearing process shall be initiated by the filing of a **verified** claim petition in duplicate with the central office of the [division] **Division** within the time frame prescribed by law on a form prescribed by the [division] **Division**.

2. If an attorney for the petitioner knowingly files an incomplete or inaccurate petition, [there shall be a reduction of 15 percent of] any fee that may be awarded[, except as provided in N.J.A.C. 12:235-5.2(c)] **may be reduced by 15 percent or \$200.00, whichever is greater.**

3. If the petition is returned to the attorney more than once for additional information, there shall be a reduction of 25 percent of any fee that may be awarded.]

(b) Answers to a claim petition shall be subject to the following:

1. The answer of the respondent to a claim petition shall be on a form prescribed by the [division] **Division**. It shall be filed with the assignment clerk at the office to which the claim is assigned within 30 days of the date of service of the petition. A copy of the answer shall be served on the petitioner's attorney simultaneously. The filing and service of the answer may be made by first-class mail or its equivalent. The answer may be prepared by the attorney for the respondent based upon knowledge, information or belief and shall be regarded as his **or her** certification of its contents without the necessity of an affidavit.

2. If the answer is not filed as specified in (b)1 above, the [judge] **Judge** of [compensation] **Compensation** to whom the case is assigned may, on motion, either suppress the defenses and permit the petitioner to prove his **or her** case, or permit the filing of the answer on such terms as may be fixed in the discretion of the [judge] **Judge** of [compensation] **Compensation**.

3. (No change.)

12:235-5.2 Motions for temporary disability **and/or** medical benefits

(a) (No change.)

(b) The notice of motion for temporary disability or medical benefits shall be on a form prescribed by the [division] **Division** and shall contain:

1. (No change.)

2. Affidavits or certifications [as] made in personal knowledge by the petitioner, [his] **petitioner's** attorney or the treating physicians describing the medical diagnosis and the specific type of treatment for which payment is sought, and if available an itemized bill and report of the treating physicians, or institutions or both for which services past, present and future, petitioner is seeking payment and such other evidence as shall relate to the petitioner's claim for temporary disability **and/or** medical treatment.

(c) If an attorney for the petitioner knowingly files an incomplete, inaccurate or misleading notice of motion for temporary disability **and/or** medical benefits, [he shall] **the attorney may** be assessed a penalty [of \$50.00] **not to exceed \$200.00** which shall be deducted from any fee [he] **which** may be awarded for [his] services.

(d) When the [division] **Division** has received a notice of motion for temporary disability **and/or** medical benefits filed in accordance with (a), (b) and (c) above, it shall list the motion for a hearing before a [judge] **Judge** of [compensation] **Compensation** peremptorily within 30 days.

(e) Affidavits, certifications and medical reports in support of the motion shall constitute a prima facie case, and unless rebutted by reports or testimony or affidavits or certifications by the respondent or [his] **respondent's** attorney setting forth the factual or legal basis of the denial, shall be sufficient basis for the issuance of an order compelling the respondent to provide the relief sought.

(f) (No change.)

(g) On conclusion of the hearing on the motion for temporary **and/or** medical benefits, the [judge] **Judge** of [compensation] **Compensation** shall, within 15 days, render [his] **a** final decision on the motion and notify the respective counsel of [this] **the** decision via first-class mail. In computing the 15 days' time, the 15 days shall be from the last day of hearing or from the date of filing of briefs as ordered

by the [judge] **Judge**, whichever is later. Under no circumstances shall briefs be filed later than 15 days after the hearing.

12:235-5.3 Other motions

(a) (No change.)

[(b)](b) The form of order shall be appended to the foot of the order, a check list, to be completed by the judge of compensation, indicating whether, and by what party, answering or reply papers have been filed.]

[(c)](b) If the notice of motion or [response] **responsive pleading** relies on facts not of record, it shall be supported by affidavit made on personal knowledge setting forth facts which are admissible in evidence to which the affiant is competent to testify. The notice of motion shall be considered uncontested unless responsive papers are filed and served within 14 days of the service of the notice of motion.

[(d)](c) Motions to dismiss for lack of prosecution pursuant to N.J.S.A. 34:15-54 shall be listed for hearing. All other motions shall be disposed of on the papers, unless a [judge] **Judge** of [compensation] **Compensation** directs oral argument or further proceedings, in which event a hearing shall be scheduled within 30 days from the filing of the last papers contemplated by this section. At the conclusion of any such hearing the [judge] **Judge** of [compensation] **Compensation** shall render [his] **a** decision and enter an appropriate order **within 30 days**.

12:235-5.4 Third party joinder by respondent

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

(c) Such motion shall be granted only where the moving party has satisfied the [judge] **Judge** of [compensation] **Compensation** that there exists a substantial likelihood that the party to be joined may be liable for compensation benefits.

(d) (No change.)

(e) In cases where it appears that the only issue involved is which carrier or employer is liable to the petitioner for the benefits sought, the [judge] **Judge** of [compensation] **Compensation** may order the moving party to pay the benefits in whole or in part as a condition of joinder subject to an order for reimbursement, if another party is held to be liable for such benefits.

(f) If a respondent knowingly files an incomplete, inaccurate or frivolous motion for third party joinder, such circumstances shall be considered in the apportionment of any counsel fee awarded, in addition to a counsel fee not to exceed [\$100.00] **\$500.00** to opposing counsel.

12:235-5.6 [Interrogatories] **Discovery**

(a) (No change.)

(b) Interrogatories shall be allowed without motion where the injured worker is treated by the employer's physician and where medical information is not available to the worker. The employer shall be required to furnish or make available for inspection and copying of all records of medical treatment, examinations and diagnostic studies [in its possession] **authorized by the respondent**. The respondent shall have the same right when the worker is treated by his or her own physician.

(c) Interrogatories shall be allowed without motion in cases of review or modification of a prior award on the grounds of increase or decrease of disability. The party seeking such review or modification shall furnish [his] **the** adversary **party** with a chronology of the pertinent events from the date of the last award or judgment to the filing of the petition for the increase or decrease of disability indicating the essential facts upon which the petition is grounded.

(d) (No change.)

(e) Interrogatories in those cases allowed without motion shall be served by the petitioner not later than 30 days after service of the answer to the petition and by the respondent not later than 15 days after the service of its answer. Answers to the interrogatories shall be served within 45 days after service of the interrogatories. A [judge] **Judge** of [compensation] **Compensation** upon motion for good cause may enlarge the time provided for service of answers. Supplemental interrogatories may be allowed on motion for good cause shown.

(f) Interrogatories may be allowed in other cases, upon motion, [in extraordinary circumstances] **for good cause shown**.

(g) **Depositions of witnesses may be allowed, upon motion, for good cause shown.**

12:235-5.7 Testimony of injured or ill [employee] **petitioner** by depositions

(a) (No change.)

(b) The deposition may be ordered by a [judge] **Judge** of [compensation] **Compensation** upon notice to the adverse party and taken before a certified shorthand reporter.

(c) The appearance by an attorney for the respondent shall not constitute a waiver of any of the rights of the respondent or its insurance carrier. [A deposition for this purpose may also be taken by consent of all parties.]

(d) (No change.)

12:235-5.8 Certification of pre-existing conditions

(a) In all cases in which the petitioner claims total and permanent disability, the petitioner or [his] **petitioner's** attorney shall, prior to the first hearing date, furnish to all other parties a written certification as to the existence [or nonexistence] of any condition pre-existing the last claimed compensable episode.

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

(d) Copies of all records and reports so obtained by the respondent shall be furnished to the petitioner or [his] **petitioner's** attorney within 10 days of receipt.

12:235-5.9 Pre-trial conference

(a) In any formal proceeding[s], the [division] **Division** shall [where practicable, direct the parties or their attorneys to appear at a specific time and place for] **schedule** a pre-trial conference where the following [must] **shall** be accomplished:

1. Disposition by judgment, order approving settlement or discontinuance; dismissal, order approving settlement and dismissal under N.J.S.A. 34:15-20.]

2. The Judge and the attorneys shall agree upon the type of examination(s) required by each party;

3. The Judge and the attorneys shall make a sincere effort to limit issues; and

4. [a] A pre-trial memorandum on a form prescribed by the Division shall be executed[.]; or

[3.]5. [Adjournment] There shall be an adjournment upon [a] good cause shown.

(b) **Incomplete medical examinations by either party shall be considered good cause for the adjournment of a pre-trial conference; provided, however, that no such adjournment shall be granted unless each party requesting the adjournment shall supply to the Judge the name(s) of the examining physician(s) and the date(s) of the examination(s).**

[(b)](c) (No change in text.)

[(c)](d) Any case listed pre-emptorily, in which no appearance is made on behalf of the petitioner and which is not adjourned for good cause, shall be marked "not moved" and administratively discontinued. The case shall not be restored to the calendar except on notice of motion, provided however, the [judge] **Judge** of [compensation] **Compensation** may for good cause and on [his] **the Judge's** own motion restore a case marked "not moved" to the trial or pre-trial calendar. The counsel fee normally allowed shall be reduced within the discretion of the official presiding for each time a case has been marked "not moved" when the attorney for the petitioner is responsible for such marking. When a case has been marked "not moved" because of the petitioner's failure without good cause to submit [himself for] **to** a physical examination at the request of the respondent, the petitioner may be penalized in the apportionment of fees at the discretion of the official presiding.

12:235-5.10 Conduct of formal hearings

(a) (No change.)

(b) Only an attorney at law licensed to practice in the State of New Jersey shall act as attorney of record, or appear and prosecute or defend any action in any formal hearing. [No person convicted of

a crime involving moral turpitude shall be permitted to appear in a representative capacity.]

(c) Hearings shall be scheduled by the [director] **Director** or [his] **a designated representative of the Director.**

(d) The [judge] **Judge** of [compensation] **Compensation** shall, at the commencement of the day, call the list of cases in open court. No adjournment shall be granted unless there is found to be good cause. No adjournment shall be granted for medical examination unless the name of the examining physician and date of examination are supplied.

(e) [Trials shall continue, without interruption or adjournment, except where the judge of compensation, upon his own motion, or upon application or either party, shall for good cause continue the hearing to an adjourned date.] **Trials shall commence and continue in a timely manner subject to scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director.**

(f) All formal hearings or applications shall be conducted in open court, except when the [supervising judge] **Supervising Judge** of the district deems the matter to be so delicate that the hearing of a party or witness in camera is warranted. When this occurs, a [full] stenographic record shall be made.

[1. Bifurcation of any trial may be permitted by the judge of compensation. The order of proof shall be determined by the judge of compensation to whom the case is assigned.]

[(f)](g) All formal hearings, including motions where a record is required, shall be recorded stenographically by a certified shorthand reporter subject to such limitation as may be provided by statute.

1. Upon a determination reached at the conclusion of all hearings, including motions, the cost for the attendance of the certified shorthand reporter [may] **shall** be assessed [at the discretion of] **by** the [judge] **Judge** of [compensation] **Compensation**. Transcripts of the testimony may be obtained from the certified shorthand reporter at the official scheduled rates.

[(g)](h) When **there are pending in the Division** two or more formal proceedings[.], involving a common question of law or fact arising out of employment by the same employer or different employers, or out of the same accident or series of accidents, or out of the same exposure or series of exposures, to causes of occupational disease, [are pending in the Division,] the [judge] **Judge** of [compensation] **Compensation** or the [director] **Director** may, on motion, or on [his] **the Judge's** own initiative, order a joint hearing of any or all matters in issue [in the proceedings]. [He] **The Director** may order all such proceedings consolidated, and [he may] have such orders concerning proceedings [as may tend] **designed** to avoid unnecessary costs or delay. The order shall state the county in which the consolidated proceedings are to be heard.

[(h)](i) Upon the commencement of a formal hearing, counsel [for the parties] may make opening statements on behalf of their respective clients. All matters agreed upon shall be stipulated upon the record. However, this shall not bar the parties from making further stipulations as the trial proceeds, until the close of the formal hearing[s].

[(i)](j) Counsel may make [both] closing statements or file **post-trial** briefs. [Trial] **Post-trial** briefs, if [required] **ordered** or volunteered, shall be submitted within 15 days after the conclusion of the hearing. Each party thereafter may have seven days to file a reply brief, if so desired or [directed] **ordered**.

[(j)](k) Prior to the testimony of an expert witness, the producing party shall provide the [judge] **Judge** of [compensation] **Compensation** [with] and opposing counsel **with** a written curriculum vitae[.], of the witness.

[(k)](l) Questions calling for the opinion of an expert witness need not be hypothetical in form, unless the [judge] **Judge** of [compensation] **Compensation** in [his] **the Judge's** discretion so requires. If the hypothetical question is submitted in written form, counsel shall provide sufficient copies for the [judge] **Judge** of [compensation] **Compensation**, opposing counsel, the witness and the stenographer, and the **hypothetical question** may be marked as an exhibit in the proceedings in lieu of reading it to the witness.

[(l)](m) [When a medical expert is on vacation or extended absence for more than 30 days during a period other than when the Division

is closed for the trial or former cases, it shall be the duty of the party for which such medical expert witness is to appear to arrange for the examination of the petitioner by another medical expert and the appearance of such medical expert at the trial of the case.] **All medical experts for both parties who regularly examine petitioners to determine the nature and extent of their disability shall adhere to the vacation schedules established annually by the Director. If such medical expert is not available to testify because of an unexcused absence at any other time, the Judge of Compensation may require the party for whom such medical witness is to appear, to arrange for an examination and appearance at trial by another medical expert.**

1.[The absence of the original examining physician shall not constitute a good and valid reason for adjournment.] **A medical expert who regularly examines petitioners means a medical expert who performs a minimum of twenty-five workers' compensation examinations per year.**

(m)(n) All exhibits shall be marked with an identifying number, the date of submission and initials of the [stenographer] court reporter. [Exhibits other than medical reports may be returned to the respective counsel at the close of the hearing for retention during passage of time for appeal.

1. All medical reports submitted into evidence are to be forwarded to the Division for microfilming and storage. All other exhibits not claimed by the respective counsel within thirty days following the expiration of the appeal period shall be destroyed.]

1. An exhibit list shall be prepared by the Judge to be retained in the file and forwarded to the Division for microfilming and storage.

2. At the conclusion of the hearing, the Judge shall determine which exhibits are to be retained in the file and forwarded to the Division for microfilming and storage.

3. All other exhibits shall be returned to respective counsel for retention until the expiration of time for appeal or 20 years as determined by the Judge.

(n)(o) (No change in text.)

(o)(p) Judges of [compensation] **Compensation** may refer the petitioner to the Division of Vocational Rehabilitation when warranted.

(p)(q) Prior to testifying, a witness[es] shall be administered an oath by the [judge] **Judge** of [compensation] **Compensation** or by a certified shorthand reporter qualified to administer oaths. Because of religious beliefs, a witness may affirm in place of an oath.

(q)(r) Forms of subpoena, bearing the seal of the Department, shall be made available at all district offices. An attorney-at-law of New Jersey may prepare a subpoena and authorize its service, in accordance with the Rules of Civil Practice of New Jersey, in the name of the [judge] **Judge** of [compensation] **Compensation** assigned to the case, to compel the attendance of witnesses and the production of books and papers and such other items as shall be subject to production.

(r)(s) All reserved decisions shall be rendered by the [judge] **Judge** of [compensation] **Compensation** within [15] **30** days from completion of the last day of hearing, or within [15] **30** days from the date of filing of briefs. Additional time to render reserved decision may be allowed only on approval of a written application to the [director] **Director**.

(s)(t) The [judge] **Judge** of [compensation] **Compensation** shall notify all parties by letter of [his] **the** decision, detailing its terms and the name of the reporter and the certified shorthand reporting firm to which it has been dictated.

(u) A final judgment shall be deemed entered as of the date the judgment is signed by the Judge.

12:235-6.1 Purpose of informal hearings

(a) The informal hearing process is a service provided by the [division] **Division** to effectuate the amicable adjustment of controversies between injured [or disabled] workers and their employers involving their respective rights under the Act.

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

12:235-6.2 Filing of an application for an informal hearing

(a) The informal process is initiated by the filing of an application in duplicate with the [division] **Division**.

(b) The filing for informal hearing may be made by any party of interest including the injured [or disabled] worker, [his] **petitioner's** attorney, the employer, the employer's representative or insurance carrier, or the [division] **Division**.

(c) (No change.)

12:235-6.4 Scheduling of informal hearings

(a) Upon receipt of the completed application, the [division] **Division** shall schedule the matter as soon as practicable.

(b) The [division] **Division** shall give written notice of the time, place and name of the assigned [judge] **Judge** of [compensation] **Compensation** to all parties involved in the controversy.

12:235-6.6 Representative of employer or carrier

An employer or carrier shall be represented by an individual expressly empowered with authority to act on its behalf to agree or disagree with the recommendations made by the [judge] **Judge** of [compensation] **Compensation** at the time of the hearing.

12:235-6.7 Registration of representatives for employers or carriers

(a) Each employer, carrier, or self-insured shall submit to the [director] **Director** for distribution to all [judges] **Judges** of [compensation] **Compensation** a list of each individual who will represent them at informal hearings.

(b) (No change.)

12:235-6.8 Representation of claimant

(a) (No change.)

(b) Deviation from (a) above shall only be permitted by consent of the [director] **Director**.

12:235-6.9 Solicitation of compensation claims

No attorney nor any other person at the instance of an attorney shall solicit or cause to be solicited any compensation claim, nor shall [he pay] any referral fee **be paid** to anyone not an attorney.

[12:235-6.10 Appearance by persons convicted of crime

No person convicted of a crime involving moral turpitude shall be permitted to appear in a representative capacity at any informal hearing.]

12:235-[6.11]6.10 Procedure where employer has no insurance

Where it is brought to the attention of the [judge] **Judge** of [compensation] **Compensation** that the employer has failed to comply with N.J.S.A. 34:15-71, written notice of such violation shall be given to the [director] **Director** for appropriate action.

12:235-[6.12]6.11 Allowance of attorney fees

(a) A [judge] **Judge** of [compensation] **Compensation** conducting informal hearings may allow counsel fee, where warranted, for services rendered on behalf of the worker, in an amount not to exceed 10 percent of the worker's award.

(b) (No change.)

12:235-[6.13]6.12 Commencement of informal hearings

(a) Hearings shall be conducted by a [judge] **Judge** of [compensation] **Compensation** designated by the [director] **Director**.

(b) (No change.)

(c) Upon completion of the daily call, the [judge] **Judge** of [compensation] **Compensation** shall inform all parties present of the order for hearing the ready cases and commence hearings, excusing those persons whose presence will not be required and granting those adjournments [he] **the Judge** feels are warranted.

12:235-[6.14]6.13 Determination of issues

(a) Upon a review of the application for the informal hearing and any supporting documents, the [judge] **Judge** of [compensation] **Compensation** shall ascertain the areas of dispute and make recommendations to the parties to resolve any controversy as to unpaid temporary disability benefits and/or medical expenses.

(b) After a review of medical records or evaluation reports or both submitted by the parties and having personally inquired of the worker as to [his] **all** present complaints, the [judge] **Judge** of [compensation] **Compensation** shall make recommendations regarding permanent disability.

(c) In cases where there is insufficient factual or medical information upon which a recommendation can be made, the [judge] **Judge of [compensation] Compensation** shall require either to provide such information and shall adjourn the hearing until such time as the information is available.

12:235-[6.15]6.14 Acceptance of settlement recommendations and entry of informal award

(a) When agreement has been reached by all parties and approved by the [judge] **Judge of [compensation] Compensation**, the terms of such settlement shall be entered in the "Statement of Award," on a form prescribed by the [division] **Division**.

(b) The claimant shall be fully advised of [his] all rights under the Act.

(c) The "Statement of Award" shall be signed by the claimant, the employer or [his] the employer's representative, and by the [judge] **Judge of [compensation] Compensation**.

12:235-[6.16]6.15 Fee for service of physician

A [judge] **Judge of [compensation] Compensation** conducting an informal hearing may allow a fee to a physician for medical services rendered to a claimant for the term of a compensable injury, unless such treatment was not ordered or authorized by the employer or carrier.

12:235-[6.17]6.16 Denial of compensability or refusal to accept findings of informal hearings

In cases where the employer or the representative denies compensability under the Act or where either party refuses to accept the recommendations made by the [judge] **Judge of [compensation] Compensation**, the claimant shall be made aware of [his] all statutory rights, including [his] the right to obtain counsel, to file a formal claim petition, and the applicable time period within which [he must file] a claim petition must be filed.

12:235-[6.18]6.17 Failure of employer or carrier to appear

(a) If a worker is present and the employer or its carrier fails to appear, the [judge] **Judge of [compensation] Compensation** shall inform the worker of:

1.-2. (No change.)

(3) The worker's statutory rights as stated [above] at N.J.A.C. 12:235-6.16.

12:235-[6.19]6.18 Adjournment

When it appears that certain cases cannot be resolved at the first hearing, due to lack of notice or knowledge of any injury, incomplete reports, or for any good cause, the [judge] **Judge of [compensation] Compensation** shall be promptly informed so that [he] the **Judge** may have an opportunity to notify the parties and arrange for rescheduling.

12:235-7.1 General procedure

[(a) No hearing upon an application for benefits payable from the Second Injury Fund pursuant to N.J.S.A. 34:15-95 shall be conducted until the claim petitions for benefits under this chapter from the previous employers have been adjudicated and the petitioner is determined to be totally disabled and the judge of compensation making such determination shall be satisfied that there is a reasonable basis to believe that the disabled worker is a person who has suffered from a prior existing disability permanent in quality and partial in character and is now totally disabled as a result of experiencing a subsequent permanent injury under conditions entitling such person to compensation therefor each of which, severally, causes permanent partial disability, but which in conjunction result in permanent total disability.]

[(b)](a) [Where] Upon the filing of a verified petition for [fund] **Second Injury Fund (Fund)** benefits [has been filed prior to the commencement of the hearing for workers' compensation benefits there shall be one] a settlement conference shall be scheduled before a [judge] **Judge of [compensation] Compensation** where representatives of the employee, employer(s) and the [fund] **Fund** are noticed to attend.

1. The settlement conference may be adjourned by a **Judge of Compensation for good cause**.

(b) If a settlement cannot be effectuated at the settlement conference, the matter shall be listed for trial on a day when the probable responsible respondent is regularly scheduled to appear.

1. The **Judge of Compensation**, when determining the probable responsible respondent, shall be guided by the principles stated in *Bond v. Rose Ribbon and Carbon Mfg. Co.* 78 N.J. Super. 505 (App. Div. 1963), aff'd, 42 N.J. 308 (1964).

2. If the **Judge of Compensation** deems it appropriate, the trial may start on a day when the case has been listed for a settlement conference so that the Deputy Attorney General representing the Fund can observe and cross-examine the petitioner.

3. The case shall then be listed on the probable responsible respondent's regular list for completion.

(c) If the **Judge of Compensation** finds that the petitioner is not totally and permanently disabled, the Fund petition shall be dismissed.

(d) If the **Judge of Compensation** finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the last compensable accident, the Fund application shall be dismissed.

(e) If the **Judge of Compensation** finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the effects of the last compensable accident and subsequent conditions, the Fund application shall be dismissed.

(f) If the **Judge of Compensation** finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the last compensable accident together with pre-existing conditions, the **Judge of Compensation** shall schedule a hearing upon the application for Fund benefits on a day when the Deputy Attorney General representing the Fund regularly appears.

12:235-7.2 Hearing

(a) The hearing [upon the application for second injury fund] to determine whether the petitioner is entitled to Fund benefits shall be upon the transcript of the hearing for benefits [from the previous employers] previously heard, supplemented by oral and documentary evidence [and by such cross-examination] as may be required in the discretion of the [judge] **Judge of [compensation] Compensation** for a full and true disclosure of the facts as to [second injury fund] **Fund** responsibility and, where applicable, as to an apportionment of the responsibility [between employers and the second injury fund] of the **Fund**.

12:235-7.3 Payment of benefits

(a) Pending determination of the application for [second injury fund] **Fund** benefits, the [previous] employer previously found liable shall [continue to make] commence payments at the applicable rate for permanent total disability [for such period as set forth in an interim order which shall be entered at the time the claim petition against the previous employers are adjudicated].

(b) Upon approval of an application for benefits from the **Fund**, the [judge] **Judge of [compensation] Compensation** shall enter an order [compelling] requiring payment from the [fund] **Fund** from the date when the final payment of compensation by the employer is or was payable for the last compensable injury [or injuries sustained in the employment wherein] following which the employee became totally and permanently disabled. No payment from [such fund] the **Fund** shall be made for any period prior to the date of filing [of application for benefits] the verified petition for Fund benefits.

1. If the employer has paid in excess of the amount for which it is responsible, the employer shall be reimbursed by the Fund.

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

(e) When the application for benefits from the fund is denied by a judge of compensation, the employer shall continue to make payments as provided in N.J.S.A. 34:15-12.]

12:235-7.4 Filing

(a) The verified petition for benefits shall be filed in accordance with N.J.S.A. 34:15-95.1 and shall include a succinct and accurate description of all medical, legal and factual basis upon which the petitioner alleges [his] eligibility for [second injury fund] **Fund** benefits pursuant to N.J.S.A. 34:15-95. The verified petition shall be under oath or affirmation and be accompanied by all physician's reports in possession of the applicant or [his] the applicant's attorney.

(b) (No change.)

12:235-8.1 Application for commutation
 (a) All applications for commutation of compensation payments pursuant to N.J.S.A. 34:15-25 shall be filed with the [director] **Director**.
 (b) (No change.)

12:235-8.2 Application form for commutation
 (a) The application for commutation shall be made on a form prescribed by the [division] **Division** which shall include:
 1.-4. (No change.)
 5. The [judge] **Judge** of [compensation] **Compensation** and the place wherein the award was rendered;
 6.-8. (No change.)
 9. Such other information as prescribed by the [director] **Director**.
 (b) (No change.)
 (c) The application for commutation shall include, or have attached thereto, all documents upon which the applicant is relying in [his] the application.

12:235-8.3 Approval or disapproval of application for commutation
 (a) Upon receipt of the application for commutation, the [division] shall conduct an investigation and, if it is determined by the director that commutation is advisable and for the best interest of the petitioner, the director shall enter an order approving the commutation] **the matter shall be forwarded for hearing to the Judge of Compensation who entered the award which is sought to be commuted.**
1. If that Judge is not available, then any Judge in the vicinage may hear the application.
 (b) **After hearing the application, the Judge of Compensation shall enter an order either granting or denying the application and shall state the reasons therefor, pursuant to N.J.S.A. 34:15-25.**
 [(b)](c) The disbursement of all funds commuted shall be under the supervision of the [director] **Director**.

12:235-9.1 Filing discrimination complaints
 All complaints alleging discrimination pursuant to N.J.S.A. 34:15-39.1 shall be filed with the [director] **Director**.

12:235-9.2 Contents of discrimination complaints
 (a) The complaint alleging discrimination shall be under the oath or affirmation of the [complainant] **complainant**, and shall be on a form prescribed by the [division] **Division**.
 (b) The complaint alleging discrimination shall include the following:
 1. Complainant's name, address, [social security] **Social Security** number, and claim petition number, if [he has filed] a claim for formal hearing **has been filed**;
 2.-8. (No change.)
 9. Such other information as requested by the [director] **Director**.

12:235-9.3 Attachments to discrimination complaints
 The complaint for discrimination shall include, or have attached thereto, all documents upon which the complainant is relying on in [his] the application.

12:235-9.4 Investigation of discrimination complaints
 Upon receipt of a complaint for discrimination, the [division] **Division** shall conduct an investigation and forward the complaint and results of investigation to the [commissioner] **Director** within [30] **90** days.

12:235-9.5 Action by the [commissioner] **Commissioner**
 Upon receipt of the complaint and results of investigation from the [division]**Division**, and [commissioner]**Commissioner** may take such action pursuant to N.J.S.A. 34:15-39.1 as [he] **the Commissioner** deems appropriate.

12:235-10.1 Employer's first report of accidental injury or occupational disease
 (a)-(b) (No change.)
 (c) The first report of accident or occupational disease shall be filed with the [division] **Division** [of Workers' Compensation of the

Department of Labor], with the first copy being forwarded to the insurance carrier and the second copy being retained by the employer.
 (d) (No change.)

12:235-10.2 Employer's first report of accidental injury or occupational disease
 (a) The employer shall report to the [division] **Division** all accidental injuries causing disability beyond seven days or permanent injury or occupational disease. The form for this report shall be [contained in the Form WC-1, Employer's First Report of Accidental Injury or Occupational Disease] **as prescribed by the Division.**
 (b) The employer's report to the [division] **Division** of an accidental injury or occupational disease shall be filed with the [division] **Division**, with a copy being forwarded to the insurance carrier and a copy retained by the employer, as soon as it is reasonably known or expected that such disability, permanent injury, or occupational disease has occurred.

12:235-10.3 Insurer's initial notice of accident
 (a) (No change.)
 (b) The notice shall be as [contained in Form WC-2, Insurer's Initial Report of Accident and Insurer's and Self-Insurer's Statement of Wages and Agreement to Care for Case] **as prescribed by the Division.** The original of the insurer's initial notice of accident shall be filed via first-class mail with the [division] **Division**, with a copy retained by the carrier.

12:235-10.4 Insurer's final report of accident
 (a) (No change.)
 [(b) The final report of accident shall be as in:
 (1) Form WC-3, Final Report of Accident;
 (2) Form WC-4, Final Report of Accident;
 (3) Form WC-5, Final Report of Accident;
 (4) Form WC-6, Final Report of Accident.]
 [(c)](b) The final report of accident shall be filed with the [division] **Division**, with a copy to be sent to the employer, employee, and a copy retained by the insurance carrier or self-insured.

12:235-10.5 Report of death
 In the event that death results due to an accidental injury subsequent to the filing of a final report of accident, a report of death [as contained in the Form WC-3A, Report of Death,] shall be filed with the [division] **Division** and a copy sent to those recipients as named in N.J.A.C. 12:235-10.4.

12:235-13.2 Definitions
 The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:
 ...
 "Director" means the Director of the Division of Workers' Compensation[, for the Department of Labor].

12:235-14.1 Purpose; scope
 (a) The uninsured employer's fund ("Fund") has been established pursuant to N.J.S.A. 34:15-120.1 to provide for the payment of certain awards **of medical and temporary benefits entered** against uninsured defaulting employers. This subchapter sets forth the procedures by which the Fund will be operated.
 (b) [The fund shall be authorized to pay benefits] **Benefits** for temporary disability and medical costs **shall be provided** in accordance with N.J.S.A. 34:15-120.1 **et seq.** [The Judge of Compensation shall also enter an award for the payment of permanent benefits at the end of the hearing, if appropriate; however, this shall not be payable out of the Fund.]
(c) No judgment or order for the payment of benefits shall be entered against the Fund.

12:235-14.2 Filing notice of an uninsured claim; personal service; subpoena duces tecum; third-party joinder
 (a) The petitioner's attorney shall notify the Fund [by the filing of a claim against it] **that benefits will be sought from the Fund** within 45 days of the date petitioner or his or her attorney is aware that the employer is uninsured.

1. Petitioner's attorney shall notify the Fund by the filing of a motion [with the Division] to join the Fund.

2. **The motion to join the Fund shall be filed in the vicinage in which the case is assigned.**

3. **A copy of the motion to join the Fund shall be served upon the Fund in the Office of Special Compensation Funds, CN-399, Trenton, New Jersey 08625-0399.**

(b) Petitioner's attorney shall contact[, in writing,] the Compensation Rating and Inspection Bureau **in writing** to receive confirmation that the employer is uninsured. A copy of the Rating Bureau's response shall be included in the motion **to join the Fund**.

(c) Petitioner's attorney may make personal service of the claim petition and the motion to join the Fund on respondent.

1. Proof of service [is to] **shall be** filed with the Division and with the attorney representing the Fund.

2. If respondent is unable to be served, petitioner's attorney shall make a motion with the Director for substituted service pursuant to Civil Practice Rule 4:4(e). The motion shall be supported by convincing evidence that the petitioner has made all reasonable attempts to serve respondent.

(d) Petitioner's attorney shall also serve the respondent with a subpoena duces tecum requiring the respondent to appear and to produce all records pertaining to petitioner, on a date determined by the Court.]

(e)(d) **The Fund shall have the authority to join a third-party and the third party's insurance carrier when it appears that such party is or may be [involved in the cause of the action] liable for the benefits sought.**

12:235-14.3 Certification

(a) Petitioner's attorney shall submit a certification when filing a motion for an uninsured claim. The certification shall be specific, and shall contain the following information:

1.-7. (No change in text.)

8. [Complete and detailed] **A statement of facts which establish the employer-employee relationship;**

9.-15. (No change in text.)

16. Medical insurance coverage for employee and/or spouse, and, if available, the name and address of the company and the policy number; [and]

17. [How] **If medical expenses have been paid[.];**

18. **Who paid the medical expenses; and**

19. **Whether the petitioner is receiving Social Security benefits.**

(b) Any other information that the Director may deem necessary to assess the factual situation surrounding the accident may be requested at any time prior to the entering of a judgment.

(c) Failure to disclose pertinent information will result in the certification being returned to the petitioner's attorney for resubmission and the case will not be listed for hearing until the certification is returned.]

12:235-14.4 Medical bills; physician's examination

(a) **The [fund] Fund shall have the opportunity to review all medical bills and charges to determine if the costs incurred were reasonable and necessary.**

[1. The Fund shall consider a medical fee schedule employed by the New Jersey Department of the Treasury, Bureau of Risk Management when making a determination on the reasonableness of the medical costs.

2. Any medical bills that are found to be in excess of the charges prescribed in the medical fee schedule shall be presumed to be unreasonable.]

(b) The Fund may order an independent medical examination of a petitioner by [an authorized] a physician at any time when the Fund is involved or when it appears the Fund may become involved in a case. The authorized examining physician will be asked to offer an opinion on:

1. The appropriateness of petitioner's current medical treatment;

2. The prognosis for the petitioner[.];

3. **Whether petitioner is able to return to work; and**

4. **Whether petitioner requires further treatment.**

(c) Fees for the independent medical evaluation shall be paid by the Fund.

(d) If it [is determined] **appears** that the petitioner [is] **may be** entitled to benefits from the Fund, then the Fund may direct the petitioner to the appropriate authorized treating physician for treatment.

1. Treatment obtained by petitioner from any physician other than the one authorized by the Fund shall be deemed to be unauthorized treatment, and costs for such treatment shall not be chargeable to the Fund.

(e) When necessary, the evaluating physician shall be required to appear in court to testify concerning his or her evaluation.]

12:235-14.5 Assignment of cases; schedules

(a) The Director shall assign the Fund cases [to specific judges who shall handle all cases] **for hearing.**

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

12:235-14.6 [Attorney fees] Payments from the fund

[All fee requests shall be supported by an affidavit from petitioner's attorney justifying the amount of the fee.] **Payments from the Fund shall be made only in accordance with N.J.S.A. 34:15-120.4.**

12:235-14.7 Attorney fees

(a) **An attorney fee may be payable from the Fund to the petitioner's attorney when the petitioner is found eligible for Fund benefits by the Commissioner.**

(b) **An attorney shall make an application to the Commissioner for payment of the attorney fee awarded by the Judge of Compensation for obtaining the medical and/or temporary benefits assessed against the respondent.**

1. **The application shall be supported by an affidavit of services in a form and manner as prescribed by the Director.**

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Administrative Correction

Uniform Administrative Procedure Rules

Evidence Rules

Privileges

N.J.A.C. 1:1-15.4

Take notice that the Office of Administrative Law must change a statutory cross-reference at N.J.A.C. 1:1-15.4, due to the enactment of P.L. 1987, c. 169. That act repealed N.J.S.A. 2A:84A-22.11 and 22.12, and replaced them with N.J.S.A. 2A:84A-22.13 through 22.16. The term "Victim Counselor Privilege" replaces "Rape Counselor Privilege" to correspond to current statutory terminology. Because the rule applies rules of privilege recognized by law or contained in the New Jersey Rules of Evidence, the rule can be corrected administratively to reflect statutory changes. 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]):

1:1-15.4 Privileges

The rules of privilege recognized by law or contained in the following New Jersey Rules of Evidence shall apply in contested cases to the extent permitted by the context and similarity of circumstances: Rule 23 (Privilege of Accused); Rule 24 (Definition of Incrimination); Rule 25 (Self-incrimination); Rule 26 (Lawyer-Client Privilege); N.J.S.A. 45:14B-28 (Psychologist's Privilege); N.J.S.A. 24:84-22.1 et seq. (Patient and Physician Privilege); N.J.S.A. 2A:84A-22.8 and N.J.S.A. 2A:84A-22.9 (Information and Data of Utilization Review Committees of Hospitals and Extended Care Facilities); N.J.S.A. 2A:84A-[22.11]22.13 et seq. ([Rape] Victim Counselor Privilege); Rule 27 (Newsperson's Privilege); Rule 28 (Marital Privilege-Confidential Communications); N.J.S.A. 45:8B-29 (Marriage Counselor Privilege); Rule 29 (Priest-Penitent Privilege); Rule 30 (Religious Belief); Rule 31 (Political Vote); Rule 32 (Trade Secret); Rule 34 (Official Information); Rule 36 (Identity of Informer); Rule 37 (Waiver of Privilege by Contract or Previous Disclosure; Limitations); Rule 38 (Admissibility of Disclosure Wrongfully Compelled); Rule 39 (Reference to Exercise of Privileges); and Rule 40 (Effect of Error in Overruling Claim of Privilege).

(b)

OFFICE OF ADMINISTRATIVE LAW

Notice of Administrative Correction

Public Hearings

N.J.A.C. 1:30-3.3A

Take notice that the Office of Administrative Law has discovered an error in the adopted text of N.J.A.C. 1:30-3.3A, Public hearings, as published in the February 19, 1991 New Jersey Register at 23 N.J.R. 399(a). The reference in N.J.A.C. 1:30-3.3A(d) to "(e)1 through 4 below" should be to "(d)1 through 4 below". Subsection (e) contains no inferior paragraphs. 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]):

1:30-3.3A Public hearings

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

(d) In addition to any other publication of results, the recommendations of the hearing officer, and the agency's response either accepting or rejecting the recommendations, shall be summarized and pub-

lished in the New Jersey Register as set out in [(e)] (d)1 through 4 below. The notice shall also state where a copy of the public hearing record may be reviewed or obtained.

1.-4. (No change.)

(e) (No change.)

COMMUNITY AFFAIRS

(c)

DIVISION OF HOUSING AND DEVELOPMENT

New Home Warranties and Builders' Registration

Readoption with Amendments: N.J.A.C. 5:25

Proposed: June 4, 1990 at 22 N.J.R. 1701(a).

Adopted: February 13, 1991, by Melvin R. Primas, Jr.,

Commissioner, Department of Community Affairs.

Filed: February 19, 1991, as R.1991 d.140, **without change**.

Authority: N.J.S.A. 46:3B-10.

Effective Date: February 19, 1991, Readoption; March 18, 1991, Amendments.

Expiration Date: February 19, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:25.

Full text of the adopted amendment follows.

5:25-1.3 Definitions

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

...

"Director" means the Director of the Division of Housing and Development.

"Division" means the Division of Housing and Development in the Department of Community Affairs.

...

5:25-1.4 Administration and enforcement

(a) The Division of Housing and Development in the Department of Community Affairs shall administer and enforce this chapter. All the powers, duties, and responsibilities vested in the Commissioner by the New Home Warranty and Builders' Registration Act are hereby delegated to and vested in the Director of the Division of Housing and Development except the power to adopt, amend, or repeal regulations and the power to make final determinations resulting from any of the hearings required or permitted to be held pursuant to the Act, this chapter or the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) Within the Division of Housing and Development, responsibility for the administration and enforcement of these regulations shall be vested in the Bureau of Homeowner Protection. All powers and responsibilities delegated by the Director, Division of Housing and Development by this chapter shall be executed, subject to supervision by the Director and by the Assistant Director for Construction Code Enforcement, by the Chief, Bureau of Homeowner Protection.

5:25-2.5 Denial, suspension or revocation of registration

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

(c) Any new home purchaser under contract with a builder whose registration has been suspended or revoked may, at the purchaser's option, and under the supervision of the Bureau of Homeowner Protection, require the builder to complete the work. The warranty plan under which the home is covered or required to be covered at the time of closing shall cover said home for the length of the warranty.

5:25-5.1 Fund administrator

Responsibility for administering the State Plan is hereby delegated to the Director, Division of Housing and Development. The Director shall establish such procedures and controls as may be necessary to account for the fund and shall approve all payments from the fund.

5:25-5.5 Claims procedure

(a)-(b) (No change.)
(c) Rules concerning Departmental responsibilities and formal claims resolution process are:

1.-2. (No change.)
3. If all or any part of the dispute remains unresolved after conciliation, the Department shall provide one of the following options:
i. (No change.)

ii. Administrative hearing:
(1) Where both parties do not agree to arbitration, the Bureau of Homeowner Protection shall thoroughly review the matter and shall make a decision on the merits of the claim. This decision shall be binding on both parties; provided, however, that if either party files a notice of appeal of the decision with the Division within 15 days of service of notice of such decision, the Division shall then provide an administrative hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(2) (No change.)
(d)-(g) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Landlord-Tenant Relations

Readoption with Amendments: N.J.A.C. 5:29

Proposed: July 16, 1990 at 22 N.J.R. 2070(b).
Adopted: February 13, 1991, by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: February 19, 1991, as R.1991 d.141, **without change**.
Authority: N.J.S.A. 46:8-28, 46:8-9.2 and 52:27D-3(e).

Effective Date: February 19, 1991, Readoption; March 18, 1991, Amendments.
Expiration Date: February 19, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

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

Full text of the adopted amendment follows.

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
(b)

DIVISION OF FISH, GAME AND WILDLIFE
FISH AND GAME COUNCIL

Division of Fish, Game and Wildlife Rules
Readoption with Amendments: N.J.A.C. 7:25

Proposed: January 7, 1991 at 23 N.J.R. 37(a).
Adopted: February 14, 1991 by Judith A. Yaskin, Commissioner, Department of Environmental Protection, and February 13, 1991, by the Fish and Game Council, Cole Gibbs, Chairman.
Filed: February 15, 1991 as R.1991 d.132, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-29 et seq., 13:1D-9, 23:1-1 et seq. and 50:1-1 et seq.

DEP Docket Number: 047-90-12.
Effective Date: February 15, 1991, Readoption; March 18, 1991, Amendments.
Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:
Secondary notice was achieved by mailing news releases to, and publishing legal notices in, the Newark Star-Ledger, the Atlantic City Press, the Camden Courier-Post, the North Jersey Herald-News, the Trenton Times, the Asbury Park Press and the Bergen County Record and mailing news releases to approximately 200 outdoor writers. One written comment was received by the Department during the public comment period which closed February 6, 1991.

N.J.A.C. 7:25-10.8 and 7:25-10.13

COMMENT: The radical animalists will seek to restrict this area seriously. The criteria must permit the harvesting of game, trapping and raising such animals for personal consumption.

RESPONSE: The Department acknowledges the support of this commenter.

N.J.A.C. 7:25-23.6

COMMENT: Allowing the permittee pursuant to a Permit to Kill Wild Deer to keep one deer per parcel of land for personal consumption is far too restrictive. This will cause waste of a valuable resource. If the permit is warranted, why allow further waste? The permittee should be allowed to use the carcasses as he sees fit, as long as he does not attempt to sell uninspected meat.

RESPONSE: Pursuant to N.J.A.C. 7:25-23.6(a)8, deer killed pursuant to a Permit to Kill Wild Deer may be donated at the direction of the Division of Fish, Game and Wildlife, so that the meat will not go to waste. Limiting the permittee to consumption of one deer per parcel will remove any temptation to kill deer beyond that of depredation of his crops.

COMMENT: There is a movement to have deer meat inspected prior to donating it to the poor and homeless. Restricting deer carcass use in this manner would not be beneficial to society as a whole.

RESPONSE: Health inspections are beyond the scope of this chapter.

Summary of Agency-Initiated Changes:
Proposed N.J.A.C. 7:25-18.1 (o) is recodified as (n), and the reference in subsection (l) to former subsection (f) is amended to refer to subsection (k).
N.J.A.C. 7:25-18.2(d)9ii is amended to clarify the meaning of visibility and to conform with subsection (c)9.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:25.

Full text of the amendments follow (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

SUBCHAPTER 1. GENERAL PROVISIONS

7:25-1.1 to 1.4 (No change.)

7:25-1.5 (Reserved)

ADOPTIONS

7:25-1.6 (Reserved)

7:25-1.7 Penalties

(a) (No change.)

(b) Pursuant to N.J.S.A. 50:2-2, no person shall take or catch more than 150 clams a day with only a recreational license or no license. Any person violating this provision shall be liable to a penalty of \$100.00 for the first offense and \$200.00 for each subsequent offense.

(c) (No change.)

SUBCHAPTER 3. USE OF MECHANICAL NOISEMAKING DEVICES

7:25-3.1 Procedure for securing a permit

(a) A formal application form as prepared by the Division of Fish, Game and Wildlife will be completed by the landowner, who will then arrange an on-site inspection with the Division to determine the facts and approve or disapprove a permit. Upon approval by the conservation officer or a wildlife control representative, the application shall be forwarded to the Trenton office of the Division of Fish, Game and Wildlife. If disapproved, the property owner may apply to the Director of the Division of Fish, Game and Wildlife for timely review of the application.

(b) In case of emergency, the conservation officer or wildlife control representative may give verbal approval for use of the device for a period of five days pending processing of the application.

(c) (No change.)

(d) (No change in text.)

7:25-3.2 to 3.5 (No change.)

SUBCHAPTER 4. ENDANGERED, NONGAME AND EXOTIC WILDLIFE

7:25-4.1 (No change.)

7:25-4.2 Permit required

(a) (No change.)

(b) No person shall liberate within this State any nongame species or exotic mammal, bird, reptile or amphibian unless such person has first received a permit from the Department which explicitly allows the release of nongame species or exotic mammals, birds, reptiles or amphibians.

(c) (No change.)

7:25-4.3 Exotic species and nongame species requiring a permit for possession

(a) (No change.)

(b) The Department may issue a permit for the possession of the above exotic mammals, birds, reptiles or amphibians or nongame species provided the applicant has satisfactorily met the criteria contained within N.J.A.C. 7:25-4.7.

7:25-4.4 (No change.)

7:25-4.5 Additional species

A permit shall be required for any other exotic mammals, birds, reptiles or amphibians or nongame species not specifically exempted by N.J.A.C. 7:25-4.4.

7:25-4.6 Categories of permits, expiration, fees, sales receipt required, records and reports required

(a) The Division may issue, but shall not be limited to, the following categories of permits:

1. Individual hobby—issued to persons holding exotic mammals, birds, reptiles or amphibians or nongame species for hobby purposes or as pets.

2. Scientific holding—issued to qualified persons holding exotic mammals, birds, reptiles or amphibians or nongame species for scientific observation, captive breeding attempts and other scientific or educational study.

3. Zoological holding—issued to private and public institutions which exhibit exotic mammals, birds, reptiles or amphibians or nongame species, including possession, importation, exportation and sale of species listed in the permit.

ENVIRONMENTAL PROTECTION

4. Pet shop—issued to individuals and establishments engaged in the retail sale of exotic mammals, birds, reptiles or amphibians or nongame species, including importation, exportation and sale of species listed in the permit.

5. Animal Dealer—issued to individuals and establishments engaged in the wholesale of exotic mammals, birds, reptiles or amphibians or nongame species, including importation, exportation and sale of species listed in the permit.

6. Animal Exhibitor—issued to exhibitors of exotic mammals, birds, reptiles or amphibians or nongame species other than zoos. Traveling exhibits, small exhibitions not qualifying as zoos, and circuses are included, including importation, exportation, and sale of species listed in the permit.

7. Animal Theatrical Agencies—issued to persons owning exotic mammals, birds, reptiles or amphibians or nongame species to be hired for advertising, acting or theatrical appearances, including importation, exportation and sale of species listed in the permit.

8. Scientific Collecting—issued to persons to collect nongame species or escaped exotic mammals, birds, reptiles or amphibians for scientific studies or other approved purposes, when such activity is shown to have a beneficial effect on the conservation of the species, the public welfare or the environment.

9. Special Purpose Salvage—issued to persons or institutions to salvage dead migratory birds or parts thereof for scientific or educational purposes.

10. Special Wildlife Salvage—issued to persons or institutions to salvage dead nongame species or parts thereof, other than migratory birds, for scientific or educational purposes.

11. Endangered Species—issued to persons or institutions for the possession of endangered species for conservation or research purposes.

12. Depredation Control—issued to persons or establishments to control nongame species which are creating a hazard to public safety, crops, livestock or similar concerns.

13. Rehabilitation—issued to persons to rescue, rehabilitate and release nongame and endangered birds.

(b) All possession permits shall expire on December 31 of the year of issue, unless otherwise indicated.

(c) The possession permits shall require an annual issuance fee and inspection fee as listed:

Categories of Permits	Annual Inspection Fee	Annual Fee
Individual Hobby	None	\$10.00
Scientific Holding	\$ 25.00	\$10.00
Zoological Holding		\$10.00
less than 10 animals	\$ 50.00	\$10.00
more than 10 animals	\$100.00	\$10.00
Pet Shop	\$ 90.00	\$10.00
Animal Dealer	\$ 90.00	\$10.00
Animal Exhibitor		
Single Exhibit	\$ 25.00	\$10.00
Annual	\$100.00	\$10.00
Animal Theatrical Agency	\$100.00	\$10.00
Scientific Collecting	None	\$22.00
Special Purpose Salvage	None	\$ 7.00
Special Wildlife Salvage	None	\$ 7.00
Endangered Species	None	\$ 7.00
Depredation Control	None	\$22.00
Rehabilitation	None	\$ 7.00

(d) Pet shop, animal dealer, zoo, nature center and animal theatrical agency possession permits must be displayed in a prominent place. The sale of exotic mammals, birds, reptiles or amphibians or nongame species to any individual must be accompanied by an "Exotic or Nongame Sales Receipt," the form of which shall be prescribed by the Department. This "Exotic or Nongame Sales Receipt" will be a temporary possession permit valid for a period of 20 days after the date of sale.

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

(g) Periodic inspections shall be made by Division designated personnel and shall consist of examination of exotic mammals, birds, reptiles or amphibians or nongame species, their food, facilities,

ENVIRONMENTAL PROTECTION

holding pen and exhibit area, and a review of relevant records pertaining to these species.

(h) Animal exhibitors and animal theatrical agencies shall notify the Division no less than two weeks prior to any scheduled activity in New Jersey covered by permit in order to permit inspection of the activity by Division personnel.

(i) Persons holding permits listed above at (a)8 to 12 shall submit reports to the Division of permit activities no more than one month after the expiration of their permits.

7:25-4.7 (No change.)

7:25-4.8 Potentially dangerous species

(a) "Potentially dangerous species" is defined as any exotic mammals, birds, reptiles or amphibians or nongame species which, in the opinion of the Division, is capable of inflicting serious or fatal injuries or which has the potential to become an agricultural pest or a menace to the public health or indigenous wildlife populations, including, but not limited to the following:

Class/Order	Family/Genus
Primates	Cebidae—New World Monkeys Cercopithecidae—Old World Monkeys and Baboons Pongidae—Apes
Carnivora	Canidae—Nondomestic dogs Ursidae—Bears Felidae—Nondomestic cats
Saura (Venomous) Serpentes (Venomous)	Helodermatidae—Gila Monsters Elapidae—Coral snakes and cobras Viperidae—Vipers Crotalidae—Pit Vipers
Crocodylia	Alligatoridae—Alligators and caiman Crocodylidae—crocodiles Gavialidae—gavials
Psittaciformes	Psittaculis spp.—Ring-necked parakeets Myiopsitta spp.—Monk parakeets Cyanoliseus patagonus—Patagonian Conures
Rodentia	Cynomys spp.—Prairie dogs Spermophilus spp.—Ground Squirrels

(b) The Department, in its discretion, may issue a permit for possession of a potentially dangerous species only after a clear showing that the criteria for the possession of such potentially dangerous species contained in N.J.A.C. 7:25-4.9 have been met.

7:25-4.9 (No change.)

7:25-4.10 Endangered species prohibited

(a) (No change.)

(b) The Department, in its discretion, may issue a permit for the possession of any designated endangered species only after a clear showing by the applicant that all the requirements for the possession of endangered species (N.J.A.C. 7:25-4.14) are met. If the designated endangered species is also designated as an exotic mammal, bird, reptile or amphibian or nongame species or potentially dangerous species, the criteria established by 7:25-4.7 and 7:25-4.9 must also be met.

7:25-4.11 Miscellaneous provisions

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

(c) Exotic mammals, birds, reptiles or amphibians, or nongame species possessed under these permits may be dispatched in a manner as directed by the Commissioner and consistent with the provisions of the permit for legitimate purposes, including, but not limited to, the following:

1. Euthanasia of sick, injured or surplus animals, to cull individuals to prevent overcrowding or spread of disease; such euthanasia can also be ordered by the Commissioner when necessary to prevent spread of disease;

2. To use as food, or to utilize the hide, skin, or other body parts;

3. Euthanasia by an agent of the Division or as ordered by the Commissioner;

(CITE 23 N.J.R. 850)

ADOPTIONS

4. When an animal creates a danger or serious threat to persons or other animals as determined by the Commissioner; or

5. Euthanasia of research animals held under the scientific holding permits or scientific collecting permit.

7:25-4.12 to 4.18 (No change.)

SUBCHAPTER 10. POSSESSION, PROPAGATION, LIBERATION, SALE AND IMPORTATION OF GAME ANIMALS AND GAME BIRDS

7:25-10.1 to 10.7 (No change.)

7:25-10.8 General possession criteria

(a) Prior to the issuance of any permit under this subchapter the applicant shall, on forms provided by the Division, demonstrate the following:

1. The origin of the animal is not from the wild stock of this State or any other state except where authorized by the Division for rehabilitative, scientific or other purposes consistent with the purposes of this subchapter as determined by the Division.

2.-6. (No change.)

7:25-10.9 to 10.12 (No change.)

7:25-10.13 Miscellaneous provisions

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

(g) Game animals and birds possessed under these permits may be dispatched in a manner as directed by N.J.S.A. 23:3-31 for legitimate purpose, including, but not limited to, the following:

1. Euthanasia of sick, injured or surplus animals, in order to cull individuals to prevent overcrowding or spread of disease; such euthanasia can also be ordered by the Commissioner when necessary to prevent spread of disease;

2. To utilize as food, or to utilize the hide, skin, or other body parts; record-keeping and tagging requirements must comply with those described in N.J.S.A. 23:3-28 to 39;

3. Euthanasia by an agent of the Division or as ordered by the Commissioner;

4. When an animal creates a danger or serious threat to persons or other animals as determined by the Commissioner; or

5. Euthanasia of research animals held under the scientific holding permit.

SUBCHAPTER 12. SURF CLAMS

7:25-12.1 to 12.9 (No change.)

7:25-12.10 Harvest limitations; surf clam harvest quota and weekly vessel quota

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

(e) Based on harvest reporting, the Commissioner, with the advice of the Council, may adjust the season length and weekly vessel quota for surf clams as follows:

1.-2. (No change.)

3. If at any time during the season the Commissioner projects that the season quota will have been harvested from State waters, the Commissioner may by public notice take either of the following actions:

i.-ii. (No change.)

(f) (No change.)

7:25-12.11 to 12.21 (No change.)

SUBCHAPTER 18. MARINE FISHERIES

7:25-18.1 Size Limits

(a) No persons shall purchase, sell, offer for sale, or expose for sale any sea sturgeon measuring less than 42 inches in length, codfish measuring less than 12 inches in length, bluefish or weakfish measuring less than nine inches in length, sea bass or kingfish measuring less than eight inches in length, blackfish, mackerel or porgy measuring less than seven inches in length or winter flounder measuring less than six inches in length.

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

ADOPTIONS

(f) Except for products of commercial aquaculture, no person shall take from the marine waters in this State or have in his or her possession any striped bass hybrids, being hybrids of the Morone genus, under 16 inches in length.

1. For purposes of this section, commercial aquaculture shall mean the culture or husbandry of striped bass hybrids in non-wild systems for the purpose of egg and larval production and/or of increasing size.

2. For purposes of this section, parents of striped bass hybrids shall include Morone saxatilis (striped bass), M. chrysops (white bass), M. americana (white perch), and M. mississippiensis (Yellow bass).

(g) Except for the products of commercial aquaculture, a person shall not have more than two striped bass hybrids in his or her possession at one time.

(h) A person shall not remove the head, tail or skin from any striped bass hybrid except immediately prior to preparation or serving as food.

(i) All hybrid striped bass which are the products of commercial aquaculture shall be accompanied by accurate and dated documentation of quantity, original description and destination.

(j) Any person violating the provisions of (f) through (i) above shall be liable to a penalty of \$100.00 for each fish taken or possessed. Each fish shall constitute a separate and distinct offense.

(k) (No change from proposal.)

(l) Any person violating the striped bass size or possession limits as provided for in N.J.S.A. 23:5-45.1, or (e) and *(f)* *(k)* above shall be liable to a penalty of \$100.00 per fish for the first offense and a penalty of \$200.00 per fish for each subsequent offense.

(m) (No change from proposal.)

Recodify (o) as *(n)* (No change in text from proposal).

7:25-18.2 Pound nets

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

(c) Specific requirements for pound net users in Raritan and Sandy Hook Bays are as follows:

1.-8. (No change.)

9. A flashing, amber light must be displayed between sunset and sunrise on each of the two end poles of a pound net or a continuous row of pound nets. These lights must be placed at least 10 feet above the mean high water level and must be of sufficient brightness to be visible for at least three miles in all directions (360 degrees) at such times and under such weather conditions as would allow visibility of 10 miles.

10.-11. (No change.)

(d) Specific requirements for pound net users in the Atlantic Ocean are as follows:

1.-8. (No change.)

9. Ocean pound nets shall be maintained in compliance with the following additional requirements:

i. (No change.)

ii. Flashing amber lights must be displayed on the inshore and offshore poles of nets or rows of nets, between sunset and sunrise; these lights must be placed at least 10 feet above the mean high water level and must be ***of sufficient brightness to be*** visible for at least three miles in all directions ***(360 degrees)*** at such times and under such weather conditions as would allow visibility of 10 miles.

10.-12. (No change.)

7:25-18.3 to 18.5 (No change.)

SUBCHAPTER 23. PERMIT TO KILL WILD DEER

7:25-23.1 to 23.3 (No change.)

7:25-23.4 Definitions

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

“Permittee” means the owner or lessee or any member of the immediate family thereof of lands under cultivation to whom a permit is issued by the Division.

ENVIRONMENTAL PROTECTION

“State Game Code” means the regulations providing for the management of game birds, game animals and fur-bearing animals promulgated by the Fish and Game Council pursuant to N.J.S.A. 13:1B-30 and appearing at N.J.A.C. 7:25-5.

7:25-23.5 Permit required; authorized permittee; agents

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

(c) A permit for anticipated damage may be issued upon demonstration to the satisfaction of the Division of documented history of damage.

(d) Except as provided at (c) above, a person shall not be issued the permit unless and until he makes a reasonable showing to the Division, confirmed by a field investigation performed by Division personnel, of substantial deer-caused damage to seeded, cultivated grasses or planted crops. Under exigent circumstances, the permit may be issued for one day only without prior confirmation of necessity by field investigation; provided that within seven days thereafter a field investigation shall be performed by Division personnel. Should the Division then determine that conditions failed to warrant the issuance of the permit, no permit shall subsequently be issued to the same person without a prior field investigation confirming the necessity therefor.

(e) Any permittee or agent shall be in possession of the permit or a copy of the permit at all times when attempting to shoot deer.

(f) A permittee convicted of any two violations of any laws or regulations pertaining to hunting of this or any other state during a five-year period shall not be allowed to shoot deer pursuant to a permit for a period of two years from the date of such second conviction or of three years from the date of the latter of a third or subsequent conviction. A person convicted of any two violations of any law or regulation pertaining to fish, game and wildlife of this State or any other state during a five-year period shall not be allowed to be an agent for a period of two years from the date of such second conviction or three years from the date of the latter of a third or subsequent conviction.

1. A permittee killing deer under the permit on lands on which he does not reside must possess a New Jersey firearm purchaser identification card.

2. An agent killing deer on any land under the permit must possess a valid and proper New Jersey firearm hunting license and New Jersey firearm purchaser identification card.

7:25-23.6 Permit conditions

(a) The permittee and the agent shall adhere to the following conditions:

1.-4. (No change.)

5. Display the permit to any person requesting visual inspection thereof and provide any Division representative access to the land under permit at any reasonable time;

6. Keep a daily record of hunting activity and deer mortality during the permit period and submit it to the Division upon request; failure to comply may be cause for revocation of the permit;

7. Deer killed pursuant to the permit shall not be sold or bartered by the permittee or the agent; however the Division may authorize the permittee to keep for consumption one deer shot under permit annually for each separate, non-contiguous parcel of land under permit;

8.-10. (No change.)

11. The permit shall expire as specified on the permit;

12. Within two weeks of the expiration of the permit, the permittee shall file with the division a written report giving the date and sex of every deer killed under the permit;

13. Failure to comply with any of the provisions of this subchapter or requirements of a permit may be cause for denial of subsequent permits; and

14. Persons other than the permittee or agent are prohibited from assisting in any way in the shooting activities including, but not limited to, the driving of deer or the driving of a vehicle.

SUBCHAPTER 24. LEASING OF ATLANTIC COAST BOTTOM FOR AQUACULTURE

7:25-24.1 to 24.4 (No change.)

7:25-24.5 Lease Applications for new ground

(a) (No change.)

(b) An application for a shellfish lease for new ground may be submitted by any person who must meet the statutory requirements for leasing specified at N.J.S.A. 50:1-23 through 50:1-31, who, in the five years prior to making application, has not been convicted of violation of N.J.S.A. 50:4-3 or N.J.S.A. 58:24-3 or of any administrative rule promulgated pursuant to those statutory provisions, and who also satisfies the following requirements:

1. Holds a valid New Jersey Commercial Shellfish License; or
2. Holds a valid New Jersey Shellfish Certificate.

(c)-(h) (No change.)

7:25-24.6 to 7:25-24.7 (No change.)

7:25-24.8 Lease renewal

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

(d) Renewal of the lease is subject to the lessee's not having been convicted in the year prior to renewal of any violation of N.J.S.A. 50:4-3 or N.J.S.A. 58:24-3 or of any administrative rule promulgated pursuant to those statutory provisions.

(e) (No change in text.)

7:25-24.9 Lease transfers

(a) Leases may be transferred only with the approval of both the Council and the Commissioner and only under the following circumstances.

1. The new lessee shall meet all statutory criteria for leasing specified at N.J.S.A. 50:1-23 through 50:1-31, shall be the holder of a valid Commercial Shellfish License or a Shellfish Certificate and shall not have been convicted in the five years prior to the transfer of violation of N.J.S.A. 50:4-3 or N.J.S.A. 58:24-3 or any administrative rule promulgated pursuant to those statutory provisions;

2.-5. (No change.)

7:25-24.10 to 7:25-24.17 (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT Incorporation by Reference

Adopted Amendment: N.J.A.C. 7:26-8.19

Proposed: November 5, 1990 at 22 N.J.R. 3299(a).

Adopted: February 21, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.

Filed: February 25, 1991 as R.1991 d.156, **without change**.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 036-90-10.

Effective Date: March 18, 1991.

Expiration Date: October 25, 1995.

Summary of Public Comments and Agency Responses:

The amendment was proposed November 5, 1990. The public comment period closed February 6, 1991. **No comments were received.** The amendment is being adopted without change.

Full text of the adoption follows:

7:26-8.19 Incorporation by reference

(a) (No change.)

(b) The most current versions of the following publications are incorporated by reference into this chapter whenever or wherever mentioned herein:

1.-3. (No change.)

4. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846. The latest edition and updates of SW-846 are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487-4600, as document number PB 87-120-291.

(c) (No change.)

(d) For hazardous wastes listed at N.J.A.C. 7:26-8.13 and 8.14, the Department incorporates by reference the basis for those listings at 40 C.F.R. Part 261, Appendix VII.

(b)

Green Acres Grant Program

Adopted New Rules: N.J.A.C. 7:36-8

Proposed: February 20, 1990 at 22 N.J.R. 593(b).

Adopted: February 20, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.

Filed: February 20, 1991 as R.1991, d.151, **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 13:8A-7, 25 and 41.

DEP Docket Number: 003-90-01.

Effective Date: March 18, 1991.

Expiration Date: November 21, 1993.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection ("Department") is adopting N.J.A.C. 7:36-8, that was proposed on February 20, 1990 at 22 N.J.R. 593(b). A public hearing was held on June 13, 1990 to provide interested persons the opportunity to present testimony on the proposed rules, an exchange of land at Allamuchy State Park and the operations of the State House Commission. The Department received written comments on the proposed rules from 11 persons or organizations, and 10 persons made comments regarding the rules at the public hearing.

The following is a list of those persons or organizations that made either written or oral comments directly related to the proposed rule:

Upper Raritan Watershed Association
New Jersey Conservation Foundation
The Association of Northwest Jersey Conservators
Helen E. Welsh
New Jersey Environmental Lobby
The League of Women Voters of New Jersey
Maureen Ogden
New Jersey Audubon Society
Association of New Jersey Environmental Commissions
Upper Rockaway River Watershed Association
Barbara H. Trought
Willy Alexander
Suzanne MacDonnell
Dr. Emile Devito
Evon Berube-Reierson
Assemblyman Kamin
David Peifer
Marie Curtis
Candace Ashmun
Judy Keenan

The following is a summary of the comments received on the Department's proposed rules and the Department's responses to comments. This document does not include comments made in regard to either the operations of the State House Commission or the Allamuchy State Park land exchange, which were beyond the specific scope of the proposed new rules.

In this summary, the first section presents a summation of general comments that were most frequently expressed by commenters and the Department's responses to those comments. This section is followed by a listing of other comments and responses that, for the reader's convenience, are grouped under specific topics of concern. In only one case did a commenter specifically reference the section of the rules that they were addressing. Many of the comments received concerned issues which are not specifically covered by the public hearing rules and were comments on issues that go beyond the public hearing process for alienation of Department-held lands. The Department has made responses to those comments that are related to Department policies and are related to, but not specifically addressed by, the subject rules.

ALLOWABLE TRANSACTIONS

COMMENT: Many commenters expressed that the Department should not allow the sale, lease or exchange of any State lands acquired

ADOPTIONS

with Green Acres assistance. These lands should remain parkland because that was the intention when these lands were acquired and the State should not dispose of these lands because it would be a betrayal of the public trust. If these transactions must be considered, they should only be permitted if there is a clear public benefit.

RESPONSE: It is in the public interest to maintain the ability to allow for sale, granting of easements, leasing or exchanges of State lands acquired with Green Acres assistance or otherwise acquired and held by the Department for open space purposes. If there is a clear public need for the alienation of a property and no comparable and practicable alternative is available, then the Department's policy is to review such transactions for the environmental or recreational impacts. Transactions for sale, easements, leasing or exchanges that are not for recreational use of the Green Acres assisted property must go to the State House Commission for review. The Department may make recommendations to the Commission, but final approval or denial authority rests with the State House Commission.

The Department does not recommend a transaction to the State House Commission unless the compensation of land and monies would improve the Department's ability to protect the State's natural resources, manage public lands, or provide additional recreation opportunities and that there was no practicable alternative that would meet the same objective. However, the Department recognizes the need to improve the public participation in these decisions and that is why the subject rules have been proposed.

PUBLIC PARTICIPATION

COMMENT: The public participation and notification requirements in N.J.A.C. 7:36-8.4 should be expanded beyond that which was proposed. In particular, the notice should be published in the Department's monthly bulletin and on several consecutive days in regional newspapers and notices should be mailed to the appropriate local planning board, environmental commissions, neighboring property owners and any other interested parties that request notification of such transactions.

RESPONSE: The Department agrees with the comment and has added N.J.A.C. 7:36-8.4(b)4 to provide that the Department shall publish the notice of public hearing in the Department of Environmental Protection Monthly Bulletin. With this modification the notification procedures will access each of the Department's standard public information media and will allow adequate opportunity for interested parties to be made aware of the public comment and hearing procedures.

TERM OF LEASES

COMMENT: All Department leases of properties should be subject to the public comment procedures. If the threshold is set at 25 years as provided in N.J.A.C. 7:36-8.1 and 8.2 then the Department will be asked to enter into many 24 year leases to avoid public participation.

RESPONSE: The Department does not agree that all Department leases should be subject to the public participation requirements as many leases are for the concession operations, short-term rental of existing park buildings for recreational, employee residential or office use, agricultural cultivation, or not-for-profit sponsored renovation or educational activities. These leases do not represent a diversionary use of State lands or facilities and are therefore consistent with the purposes for which the property was acquired. In these cases the Department is not required to present the leases for State House Commission approval. All leases which represent a non-recreational use of Green Acres assisted properties currently must be approved by the State House Commission.

The Department believes that the public should participate in those leases, whether recreational in nature or not, that present a quasi-permanent use of State lands or facilities and that is why N.J.A.C. 7:36-8.1 and 8.2 provide that all leases over 25 years in term will be subject to public hearing requirements.

In addition, the rules as adopted do require that all easements be subject to public hearing requirements regardless of the nature or term of the easement. The Department recognizes that this may pose a difficulty to other public entities such as the Department of Transportation and local and county public works offices. The Department is occasionally asked to grant easements for utility rights-of-way. In some cases it may not be appropriate to hold public hearings for an easement request because on an individual and collective basis some easements do not represent a permanent alienation of State lands or facilities. In other cases the easement may represent a significant alienation. Within the next six

ENVIRONMENTAL PROTECTION

months the Department will establish in a new rule proposal specific criteria for determining which easements should be subject to public hearing requirements.

COMPENSATION FOR ALIENATED LANDS

COMMENT: All parcels of land to be conveyed or traded should be appraised at market value for their future intended use.

RESPONSE: The comment concerns subject matter that is not directly covered by the subject rules. Compensation policies for the sale of properties are established by the relevant statutes under which the properties were originally acquired. Properties acquired with Green Acres funds are subject to the requirements established in the Green Acres Bond Act which requires that compensation for sales be current fair market value.

ENVIRONMENTAL IMPACT

COMMENT: Complete environmental analysis should be required for all lands to be conveyed or traded. This analysis should be required for both the lands leaving State ownership and lands coming into State ownership. The inventory and analysis should include maps and narrative and contain information on soils, topography, hydrology, vegetation, wildlife, cultural and historic resources. Additionally, a finding by the Department that the incoming land meets an identified State need and that the outgoing land no longer should also be necessary.

RESPONSE: The Department agrees with the comment and intends to conduct or require an applicant to provide environmental analysis for all land sales or exchanges. This requirement is not specified in the proposed rules for public hearings but will be addressed within the next six months as a requirement in a new rule proposal.

APPLICATIONS FOR DIVERSIONS

COMMENT: One commenter said it is good to see attention finally being focused on the practice of selling, exchanging, granting easements on, and leasing property acquired with Green Acres assistance.

RESPONSE: The Department appreciates the comment and recognizes that public participation is desired and should be accommodated in these transactions.

COMMENT: One commenter suggests that the Green Acres Program should establish an application fee for all submissions of land diversions, State or local. This fee should cover the cost of administration, public notice, public hearing, etc., to insure that the applicant seeking diversion of parkland pays the full costs of review.

RESPONSE: The various statutes governing the Green Acres Program do not explicitly allow the Department to request fees to cover costs related to application processing.

ALLOWABLE TRANSACTIONS

COMMENT: Three commenters stated that there should be assurances that there is no foreseeable public use for the site before exchange, sale or easement. Other State agencies should be offered the site before it is redirected into private hands. Additionally, four commenters stated that there should be a direct public benefit from the transaction. Another commenter said that exchanges should be consistent with the Department's mission and goals.

RESPONSE: The comment concerns subject matter that is not directly covered by the subject rules. Pursuant to the various Green Acres Acts and other statutes authorizing the acquisition of land for open space purposes, the Department must hold said lands in perpetuity unless there is a compelling public need for alienation of a property. The Department must provide opportunity to the public to review transactions for sale, exchange, grant of easement, or lease of Department-held lands.

It is the Department's practice not to recommend a transaction to the State House Commission unless the compensation of land and monies would improve the Department's ability to protect the State's natural resources, manage public lands, or provide additional recreation opportunities and that there was no practicable alternative that would meet the same objective. However, the Department recognizes the need to improve the public participation in these decisions and that is why the subject rules have been proposed.

COMMENT: One commenter recommended that property should be declared surplus prior to permitting a sale or trade of any substantial property interest. This commenter further stated that: The process of surplus declaration should be independent of and prior to any application for alienation. The process should be initiated only by the Department as part of the State Comprehensive Outdoor Recreation Planning process. Not on an ad-hoc basis or in response to a request by the private sector.

Governing rules should be established for this process. These rules should require specific findings of fact. Identify responsible decision makers and provide for a public hearing to allow comment and input. Criteria to be evaluated in making a surplus determination should include a finding that the purposes for which the land was acquired are no longer valid or are no longer a State objective and that there is no feasible State recreational or conservation use for the tract.

Any final decision by the Department declaring land surplus should be made public and a complete record of the proceedings provided to the State House Commission. The State House Commission then should approve or deny the declaration of surplus, subject to public comment. Upon approval by the Commission the surplus land should be listed as such in the State Comprehensive Outdoor Recreation plan (SCORP). It is anticipated that this will be a periodic process, perhaps every six years.

There should be these same requirements for converting all State-owned land, whether obtained with or without Green Acres assistance. There is precedent for this in the Green Acres rules on municipal conversions. These rules require any municipality that has accepted Green Acres funds to meet the same requirements for any and all municipally owned open space whether acquired with Green Acres funds, through private donation, or some other source.

RESPONSE: It is the Department's intent to maintain ownership of all its properties acquired with Green Acres assistance or now held for public open space purposes. Therefore, the Department does not need a program to periodically review potential alienation of the properties acquired for open space or recreational use through a declaration of surplus. The Department may hold properties that were not acquired for open space purposes such as those lands purchased for potential water supply uses. With the adoption of these rules, these properties may not be alienated without conducting a public hearing to set forth the details of the proposed alienation and the consideration therefor.

The Department does not have the authority to adopt rules that constrain the use or disposition of properties held by other State agencies.

COMMENT: One commenter stated that more Green Acres lands should be left in a natural state and not developed for recreational or other purposes.

RESPONSE: The Department tries to balance the use of Green Acres assisted and other public open space properties. There is a significant public demand for recreational facilities and it is the Department's responsibility to offer recreational opportunities. The Department also is responsible for protecting environmentally sensitive lands and other natural resource values of public open spaces and the vast majority of the State's parks and wildlife management areas are left as undeveloped open space.

PUBLIC PARTICIPATION

COMMENT: One commenter said that public hearings required under N.J.A.C. 7:36-8.1 and 8.2 will not solve the problem because few people attend and public opinion is sometimes ignored once developers and/or public officials decide on a course of action.

RESPONSE: The Department believes that the public notification and participation requirements established by N.J.A.C. 7:36-8 will allow all interested parties to comment on property alienation transactions. Similar public hearing and comment procedures have worked well in other programs administered by the Department. The Department carefully considers all public comment received and weighs such comment in its administrative decisions.

COMMENT: One commenter stated that in addition to the information required in N.J.A.C. 7:36-8.4, the public notice should include an identification of the property proposed for sale, grant, easement or exchange by street address, if any, and by reference to lot and block numbers as shown on the current tax duplicate in the municipal assessor's office. In the case of an exchange, the notice should include a street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the municipal assessor's office of the land proposed to be conveyed to the State.

RESPONSE: The Department agrees and has modified N.J.A.C. 7:36-8.4(c)1 to require that all property proposed for sale, grant of easement, or exchange be identified by lot and block number or street address, if any, in the public notice.

COMMENT: There should be more public participation in the process of State acquisition and use of lands purchased with Green Acres funds.

RESPONSE: The comment concerns subject matter that is not directly covered by the subject rule. The Department welcomes public comment concerning any properties that an individual feels should be considered

for State acquisition. Comments concerning specific management issues for particular properties are also welcome.

COMMENT: Two commenters said that maps, surveys, descriptions and appraisals should be made available to the public prior to meetings, and that the files regarding the transactions also be made publicly available. Two commenters stated that transfer applications, correspondence and environmental inventories should be available for public inspection during normal business hours at the Green Acres office, the municipal clerk's office and county library in all municipalities and counties where the properties are located at least 30 days prior to the public hearing. One other commenter said appraisals and environmental inventory information should be available to the public at the public hearing.

RESPONSE: The Department agrees and has modified N.J.A.C. 7:36-8.4(c)7 to include the requirement for information on the location and availability of environmental assessments, appraisals and other related information to be made known in the public notice.

COMMENT: One commenter stated that testimony taken and a decision either recommending or denying the request and a complete record should be submitted to the State House Commission for approval or denial.

RESPONSE: N.J.A.C. 7:36-8.5 requires that a summary of written comments received and the testimony heard at the public hearing be transmitted to the Commissioner of the Department. This material will also be available to the State House Commission. Additionally, the complete administrative record is always available for public inspection.

COMMENT: One commenter suggests that the initial 30 day public comment period under N.J.A.C. 7:36-8.4(a) should be 60 days long.

RESPONSE: The public will have a minimum of 30 days from the date of notice to submit written comments to the Department before the public hearing is held. This public comment period is considered to be an adequate time period to receive comment.

COMMENT: Four commenters requested that hearings about transfer of lands be held in the municipality or county where the transfer will occur.

RESPONSE: Under N.J.A.C. 7:36-8.3 the hearing shall be conducted in the municipality in which the Department-held land proposed to be sold, exchanged, encumbered with an easement or leased is located or in a municipality as close thereto as can reasonable be arranged.

COMMENT: Three commenters stated that the rules should contain an appeals process for the public to appeal a recommendation of the Department or decision of the State House Commission.

RESPONSE: For sales, easements and exchanges of properties the Department may make recommendations to the State House Commission. These recommendations are not binding and the final right of approval rests with the State House Commission. The Department has no statutory authority to establish an appeals process for the decisions of the State House Commission. N.J.A.C. 52:20-18.4 requires the State House Commission to formulate and adopt rules of procedure for its Subcommittee on Green Acres Properties.

COMPENSATION FOR ALIENATED LANDS

COMMENT: One commenter stated that lands received in exchange are often further away from developed areas, defeating the original intent—to preserve open space in a developing area, while there was still opportunity to do so. Another commenter said that money paid to the DEP in lieu of lands to be exchanged should be used to acquire additional lands as close as possible to the municipality or municipalities affected by the exchange and/or sale of lands. Another commenter added that if cash is to be accepted as part of the incoming trade, that cash must be specifically earmarked for a need in the State Comprehensive Outdoor Recreation Plan (SCORP). Another commenter stated that funds generated from the sale of surplus lands purchased with Green Acres funds or owned by the DEP should accrue to the Green Acres program, not the general treasury.

RESPONSE: The comment concerns subject matter that is not directly covered by the subject rule. Whether through trade or expenditure of compensatory funds, it is the Department's practice to replace alienated lands as close as possible to the site of the alienated property as practicable. It is also the Department's practice to obtain properties that are equivalent or superior in value in terms of environmental, recreational or cultural attributes.

COMMENT: One commenter stated that leases should be minimally 25 years and include a termination clause which can be acted upon by the lessor for environmental or conservation reasons. The value of the lease rights at termination shall be determined by appraisal factoring in, among other things, rents, taxes, and insurance paid.

ADOPTIONS

RESPONSE: The comment concerns subject matter that is not directly covered by the subject rules. When appropriate, the Department has required similar clauses in lease or sale agreements.

COMMENT: Two commenters stated that all State owned lands exceeding 20 acres or those recognized as environmentally significant, being sold or traded, should be appraised at their highest potential. Two commenters stated that all appraisals should be based upon future intended use. Two other commenters added that if any consideration is to be given for "preliminary site plan approval" it should be firmly established and a matter of public record granted and effectuated before "value" is assigned to lands by appraisal. One other commenter added that values of the properties must be equal, or equalization must be achieved by cash transfer.

RESPONSE: The comment concerns subject matter that is not directly covered by the subject rule. Compensation policies for the sale of properties are established by the relevant statutes under which the properties were originally acquired. Properties acquired with Green Acres funds are subject to the requirements established in the Green Acres Bond Act which requires that compensation for sales be current fair market value.

COMMENT: Two commenters stated that appraisal firms should be screened in order to determine any past dealings with any of the parties involved in any given transaction.

RESPONSE: The comment concerns subject matter that is not directly covered by the subject rule. The Department requires notification by appraisal firms of any conflict of interest.

COMMENT: If the purchaser is from the private sector, the cost to the purchaser of surplus property shall have a value equal to the market value determined by competitive bidding. In the event that the Department determines that a competitive bidding situation does not exist the land shall not be conveyed until such time as the condition is deemed to exist.

RESPONSE: The comment concerns subject matter that is not directly covered by the subject rule. The Department bases its recommendations for alienation of properties on demonstration of public need for an alternate use of the property not upon what bidder would pay the highest price in a competitive bidding process.

COMMENT: Lands declared surplus should be offered by the Department to the public sector for conservation purposes first. To nonprofit conservation organizations second and to the public sector for non-conservation purposes third and to the open market last. Upon completion of a contract of sale the completed contract and the record of the transaction should be presented to the State House Commission for ratification or rejection subject to public hearing.

When surplus lands is to be acquired by government or non-profits for recreational or conservation purposes the price should be fixed at cost plus expenses incurred since the initial purchase was made.

When surplus land is acquired for purposes other than conservation and recreation then the price shall be the fair market value and proposed use must also be in compliance with all appropriate planning documents.

RESPONSE: The comment concerns subject matter that is not directly covered by the subject rule.

ENVIRONMENTAL IMPACT

COMMENT: Two commenters stated that an environmental impact statement should be compiled on all properties involved and any environmentally sensitive lands and/or bird wildlife habitat areas on or adjacent to said properties should be protected in perpetuity.

Another commenter added that recreational and conservation values of the lands to be traded or conveyed should be assessed thoroughly and a simple inventory of site conditions is not sufficient. A specified set of criteria for values assessment should be drawn up and the burden of proof should remain with the applicant. A values assessment of incoming lands should be prepared by the applicant and a values assessment of the outgoing lands should be prepared by the Department at the expense of the applicant.

Another commenter added that the rule proposal is silent on how the Department will assess the natural values of the land being converted. Since Green Acres lands are acquired for conservation and recreation purposes, it is important for the Department to have a clear analysis of those values when it is proposing to allow land to leave State ownership. The following suggestions were also made by this commenter.

(a) All environmental analysis should be completed at least 45 days prior to the public hearing.

ENVIRONMENTAL PROTECTION

(b) The environmental inventory should include maps and narrative and contain information on soils, topography, hydrology, vegetation, wildlife, cultural and historic resources.

RESPONSE: The Department agrees that an environmental analysis addressing the concerns raised in this comment should be required. Accordingly, within the next six months the Department will set forth requirements for an environmental analysis for all land sales or exchanges in a new rule proposal.

Summary of Hearing Officer Recommendations and Agency Response:

James F. Hall, the Department's Acting Assistant Commissioner for Natural and Historic Resources, served as hearing officer at the June 13, 1990 public hearing. After reviewing the testimony presented at the public hearing, Assistant Commissioner Hall recommended that the Department adopt N.J.A.C. 7:36-8, with the following changes:

1. N.J.A.C. 7:36-8.4(b) should provide that the Department will publish in its Monthly Bulletin a notice of the public hearing required under N.J.A.C. 7:36-8.4(a).

2. The notice of the public hearing should include information concerning the availability of environmental analyses of the property which is the subject of the public hearing, and appraisals of the fair market value of the property.

The Department accepts these recommendations, and has modified the rule accordingly upon adoption.

Assistant Commissioner Hall also recommended that it would be desirable for the rules to require an applicant to provide an environmental analysis in connection with all subject land sales and exchanges. However, in consultation with attorneys in the Department of Law and Public Safety, he concluded that the Department could not make the change upon adoption of the rules without providing notice of the change and additional opportunity for the public to comment.

The Department accepts this recommendation, and expects to propose an amendment incorporating the recommended change within the next six months.

Assistant Commissioner Hall also recommended that the Department should establish specific criteria for determining when easements should be subject to the public hearing requirement. Again, in consultation with attorneys in the Department of Law and Public Safety, he concluded that the Department could not make the change upon adoption of the rules without providing notice of the change and additional opportunity for the public to comment.

The Department accepts this recommendation, and expects to propose an amendment incorporating the recommended change within the next six months.

Assistant Commissioner Hall's recommendations are set forth in more detail in the hearing officer's report. A copy of the record of the public hearing, which includes the hearing officer's report, is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Samuel A. Wolfe, Esq.
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks***thus***; deletions from proposal indicated in brackets with asterisks *[**thus**]*).

SUBCHAPTER 8. PUBLIC HEARING FOR THE SALE, EXCHANGE OF, EASEMENT ON OR LEASE OF DEPARTMENT-HELD LAND

7:36-8.1 Public hearing for the sale, exchange of, easement on or lease of Department-held land acquired with Green Acres assistance

For any sale of, exchange for other lands or property, grant of an easement on, or any lease for a term of 25 years or more of any areas of land (including improvements thereon), water or land and water, acquired by the State with Green Acres assistance, the Green Acres Program shall, in addition to the requirement of all other pertinent statutes, rules and procedures now or hereafter in effect, conduct a public hearing to set forth the details of the proposed sale, exchange, easement, or lease to be granted and the consideration

therefor. The Green Acres Program shall conduct the public hearing at least 60 days in advance of the date on which the proposed sale, exchange, easement, or lease is scheduled to be considered by the State House Commission.

7:36-8.2 Public hearing for the sale, exchange of, easement on or lease of Department-held land not acquired with Green Acres assistance

For any sale of, exchange for other lands or property, grant of an easement on, or any lease for a term of 25 years or more of any areas of land (including improvements thereon), water or land and water that was not acquired by the State with Green Acres assistance but is held by the Department, the division or office within the Department administering said land shall, in addition to the requirements of all other pertinent statutes, rules and procedures now or hereafter in effect, conduct a public hearing to set forth the details of the proposed sale, exchange, easement or lease to be granted and the consideration therefor. The administering division or office shall conduct the public hearing at least 60 days in advance of the date on which the proposed sale, exchange easement, or lease is scheduled to be considered by the State House Commission, or if review by the State House Commission is not required under the pertinent statutes, rules and procedures now or hereafter in effect, at least 60 days in advance of the sale, exchange, grant of an easement or lease.

7:36-8.3 Location of public hearing

The public hearing required under N.J.A.C. 7:36-8.1 and 8.2 shall be conducted in the municipality in which the Department-held land proposed to be sold, exchanged, encumbered with an easement or leased is located or in a municipality as close thereto as can reasonably be arranged.

7:36-8.4 Public notice procedures

(a) The Department shall provide notice of a public hearing under N.J.A.C. 7:36-8.1 and 8.2 at least 30 days prior to the date of the public hearing.

(b) To provide notice as set forth in (a) above, the Department shall:

1. Mail a copy of the notice to the following:
 - i. All parties to the proposed sale, exchange or easement; and
 - ii. The county clerk, mayor and municipal clerk of the county(ies) and municipality(ies) in which the Department-held land proposed to be sold, exchanged, encumbered with an easement or leased is located;
2. Publish the notice in a daily or weekly newspaper of general circulation within the county(ies) or municipality(ies) in which the Department-held land proposed to be sold, exchanged, encumbered with an easement or leased is located; *and]*
3. Publish a notice in the New Jersey Register*[* *; and*
- *4. Publish a notice in the Department of Environmental Protection Monthly Bulletin.***

(c) The Department shall include the following information in all public notices in (a) above:

1. General description ***(including street address, if any, and the lot and block numbers from the current municipal tax map)*** of the Department-held land proposed to be sold, exchanged, encumbered with an easement or leased. In the case of an exchange, the notice shall also include a general description ***(including street address, if any, and the lot and block numbers from the current municipal tax map)*** of the land proposed to be conveyed to the State;
2. The name of the parties to the proposed sale, exchange, easement or lease;
3. A description of the current and proposed use of the Department-held land proposed to be sold, exchanged, encumbered with an easement or leased;
4. The date, time and place of the public hearing;
5. A statement that the public may submit written comments to the Department on or before the date of the public hearing;
6. A brief description of the comment procedures;
7. Name and address of the person in the administering division or office designated to receive written comments and to contact for additional information ***including applicable environmental analyses, if any, and applicable appraisals of fair market value***; and

8. Any additional information considered by the Department to be necessary or proper.

7:36-8.5 Submission of summary of comments and testimony

The appropriate division or office within the Department conducting the public hearing required under N.J.A.C. 7:36-8.1 or 8.2 shall submit to the Commissioner a summary of the written comments received and the testimony heard at the public hearing pertaining to the proposed sale, exchange, easement or lease within 30 days after the date on which the public hearing was held.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual

Recoveries Involving County Welfare Agencies/ Boards of Social Services

Adopted New Rule: N.J.A.C. 10:49-6.6

Proposed: September 4, 1990 at 22 N.J.R. 2672(a).

Adopted: February 14, 1991, by Alan J. Gibbs, Commissioner,
Department of Human Services.

Filed: February 15, 1991, as R.1991 d.135, **without change**.

Authority: N.J.S.A. 30:4D-7, 7a, b, c, and i; 30:4D-12.

Effective Date: March 18, 1991.

Expiration Date: July 13, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

10:49-6.6 Recoveries involving county welfare agencies/boards of social services

(a) The purpose of this section is to define areas of responsibility and establish basic principles and procedures in those collection activities in which the Division of Medical Assistance and Health Services (DMAHS), the Division of Economic Assistance (DEA) and/or a county welfare agency/board of social services (CWA/BSS) may be involved. It is intended that maximum conservation of public funds be effected without duplication of effort. It is recognized that certain situations may fall into more than one of the following categories. Any such matter will be processed in accordance with the provisions of the first occurring applicable category.

(b) The following requirements pertain to incorrectly granted assistance (cash and/or medical assistance):

1. In instances involving incorrect eligibility for medical assistance, whether or not in combination with cash assistance, the CWA/BSS shall determine the period(s) of ineligibility and ascertain from DMAHS the amount of medical assistance incorrectly granted. The CWA/BSS shall then attempt recovery of medical assistance incorrectly granted either by administrative collection, or by way of restitution in a criminal or disorderly persons proceeding.

- i. Recoveries or attempts at recoveries can be made from those persons specified in N.J.S.A. 30:4D-7i.

2. When recovery cannot be obtained by these methods in a case generated by the Internal Revenue Service (IRS) unearned income component of the Income and Eligibility Verification System (IEVS), the case shall be referred by the CWA/BSS to DMAHS for possible initiation of recovery proceedings.

3. When in any other case not generated by IEVS, recovery cannot be obtained by these methods, the CWA/BSS is authorized after securing DMAHS approval to initiate recovery proceedings as DMAHS' agent. If the CWA/BSS does not initiate such recovery proceedings, it shall refer the case to DMAHS for possible initiation of recovery proceedings.

4. When collection occurs in a case involving both cash assistance and medical assistance, the CWA/BSS shall, in the absence of court

ADOPTIONS

instruction to the contrary, apply the net proceeds, after deducting identifiable costs of collection, such as filing fees and advertising costs but not including such costs as CWA/BSS staff time, supplies, counsel fees or overhead, to the repayment of cash assistance and the reimbursement of DMAHS.

5. When in any other case a CWA/BSS recovers only medical assistance improperly granted, the CWA/BSS shall reimburse itself for those cash expenses directly related to the recovery such as filing fees and advertising costs but not including costs such as CWA/BSS staff time, supplies, counsel fees or overhead. In addition, the CWA/BSS shall retain 10 percent of the gross amount of the recovery up to \$250.00. The CWA/BSS shall remit the remaining proceeds to DMAHS. The reimbursement shall be payable to the Treasurer, State of New Jersey.

6. When any CWA/BSS action, whether alone or in combination with DMAHS, results in a recovery of improperly granted medical assistance from a case generated by the IRS unearned income component of the IEVS match, all funds recovered shall be remitted to DMAHS, payable to the Treasurer, State of New Jersey, which shall then reimburse the CWA/BSS in the amount of 25 percent of the gross recovery on a periodic basis to be determined by DMAHS.

(c) The following requirements pertain to third party liability claims in tort actions:

1. Whenever either a CWA/BSS or DMAHS learns of a situation in any case in which the other may have a claim it will notify the other.

2. Unless the individual case circumstances intervene, the first claim after settlement or judgment is for any payments by DMAHS arising from the occurrence notwithstanding any CWA/BSS claim for recovery of cash assistance. The next claim is that which the CWA/BSS may assert in accordance with an agreement to repay or similar document. The DMAHS and the CWA/BSS will, insofar as their controls allow, maintain priority of payment in the above order.

(d) The following requirements pertain to liquidation of potential resources:

1. The CWA/BSS will participate in the liquidation of potential resources according to the program requirements under which eligibility has been established, regardless of whether cash assistance is being granted. Notification of the potential resource to be liquidated shall be forwarded to DMAHS, enabling it to seek a voluntary contribution. Sale of real property to which title is held by a CWA/BSS is subject to DEA approval in all instances regardless of the proposed distribution of the proceeds.

2. All funds arising from the liquidation of resources and which, by action of law, regulation, or agreement with the owner, fall under the jurisdiction of either a CWA/BSS or DMAHS for distribution will, insofar as possible, be allocated as follows:

i. Proceeds will be first applied to the cash costs of liquidation, such as advertising costs and filing fees but not including costs such as CWA/BSS staff time, supplies, counsel fees or overhead.

ii. Proceeds will be next applied to any claims superior to that of the CWA/BSS (for example, taxes).

iii. Proceeds will be next applied to any funds owing to and collectible by the CWA/BSS.

iv. Any residue remaining after the above payments are allocated would, in the absence of circumstances to the contrary, be the property of the client and thereby subject to (d)3 below.

3. All funds properly belonging to a client free of any agency claim are to be remitted to the client as promptly as possible or otherwise disbursed at the client's instruction. The CWA/BSS will promptly reevaluate eligibility following such distribution, taking into consideration any voluntary repayment to DMAHS.

(e) The following requirements pertain to recovery from estates of deceased clients:

1. The CWA/BSS shall normally undertake recovery activity as agent for DMAHS in any case in which the CWA is or will be undertaking activities on its own account. However, in those cases where the recovery of medical assistance is possible and where the entire CWA/BSS claim is for burial expenses only, DMAHS shall initiate recovery activity inclusive of CWA/BSS burial costs. DMAHS may, in certain cases, assume direct jurisdiction in recovery

HUMAN SERVICES

of its claim concurrent with CWA/BSS activity. DMAHS shall make the CWA/BSS aware of its activity in such cases.

2. CWA/BSS recoveries and distribution shall be in accordance with the following procedures:

i. From the proceeds of liquidation, the CWA/BSS shall first recover the amount necessary to satisfy its own claim, including costs of liquidation and the claims of other New Jersey CWA's/BSS's. The CWA/BSS shall recover funds from the clearing account in the order in which the funds were received in the clearing account. If any part of any remaining surplus has been received from the proceeds of assigned life insurance for which there was a named beneficiary other than the client's estate, that surplus or the policy benefit, whichever is less, is the property of the beneficiary and should be so directed.

ii. All other surplus funds are a part of (or the entire) client's estate and are payable to the legally designated representative of the estate. If the representative of the estate is unknown or if no representative has been appointed and there are no known next of kin, the CWA/BSS shall forward to the DMAHS an amount not to exceed the amount of the proper medical assistance claim as determined by communication with the Chief, Bureau of Administrative Control, DMAHS. Any remaining funds will escheat to the State of New Jersey.

iii. When there are known next of kin, the CWA/BSS shall request the next of kin to file to be the appointed administrator if the amount to be disbursed is greater than the claim of DMAHS. If the claim of DMAHS will equal or exceed the estate, the CWA/BSS shall request the next of kin to sign a consent to transfer his or her rights to DMAHS and, upon receipt of such signed consent, the CWA/BSS shall forward the funds to DMAHS.

iv. When the next of kin will not sign a consent to transfer his or her right to DMAHS and will not file to become the administrator, the CWA/BSS may, at its option, arrange for someone to file to become administrator or the CWA/BSS may refer the information to DMAHS for action.

v. In any question or dispute among two or more claimants on surplus funds, the CWA/BSS shall withhold payment pending resolution by mutual consent of all claimants or by court order.

3. DMAHS recoveries and distribution shall be in accordance with the following procedures:

i. DMAHS shall undertake recovery activity in medical assistance payment cases in which no CWA/BSS shall be submitting a claim. However, should information from the CWA/BSS be necessary to such DMAHS activity, the CWA/BSS shall communicate with DMAHS, supplying such material as may be required.

ii. In cases in which DMAHS is acting for a CWA/BSS in collection of burial expenses, DMAHS shall accord payment of the burial claim priority over its own recovery.

(f) The CWA/BSS may at any time accept an offer of voluntary repayment, either on its own behalf or on behalf of DMAHS, up to but not in excess of the amount of assistance granted. To any inquiry as to amount granted, the CWA/BSS shall supply the appropriate information, identifying the respective amounts granted by the CWA/BSS and DMAHS. In the absence of instruction from the payer, the CWA/BSS will reimburse cash assistance first and then remit any balance to DMAHS.

(g) Compromise settlements of cash assistance are subject to DEA approval. Compromise settlements of medical assistance are subject to DMAHS approval.

(h) This section shall apply to all pending and future recovery cases, except that (b)6 above shall apply to all IEVS-related recoveries received on or after July 1, 1989 by either DMAHS or the CWA/BSS, whichever agency is handling the recovery.

(a)**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Manual for Physician's Services****Readoption: N.J.A.C. 10:54**

Proposed: December 17, 1990 at 22 N.J.R. 3711(b).

Adopted: February 14, 1991, by Alan J. Gibbs, Commissioner,
Department of Human Services.

Filed: February 15, 1991, as R.1991 d.136, **without change**.

Authority: N.J.S.A. 30:4D-6a(5); 30:4D-7, 7a, b and c; 30:4D-12.

Effective Date: February 15, 1991.

Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:54.

(b)**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Podiatry Services Manual****Readoption: N.J.A.C. 10:57**

Proposed: November 19, 1990 at 22 N.J.R. 3439(b).

Adopted: February 11, 1991, by Alan J. Gibbs, Commissioner,
Department of Human Services.

Filed: February 13, 1991, as R.1991 d.129, **without change**.

Authority: N.J.S.A. 30:4D-6b(8), 7, 7a, b and c; 30:4D-12.

Effective Date: February 13, 1991.

Expiration Date: February 13, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:57.

(c)**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Nurse-Midwifery Services Manual****General Provisions, Billing Procedures****Readoption with Amendments: N.J.A.C. 10:58**

Proposed: December 3, 1990 at 22 N.J.R. 3613(a).

Adopted: February 22, 1991, by Alan J. Gibbs, Commissioner,
Department of Human Services.

Filed: February 22, 1991, as R. 1991 d.153, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-6a(5)(b)(3)(17), 7, 7a, b and c; 30:4D-12; 1905(a)(17) of the Social Security Act; 42 CFR 440.165.

Effective Date: February 22, 1991, Readoption;
March 18, 1991, Amendments.

Expiration Date: February 22, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Agency-Initiated Changes:

The Division, on its own initiative, is making the following technical changes upon adoption:

At N.J.A.C. 10:58-1.1, the reference to the Board of Medical Examiners regulations for certified nurse-midwives has been changed to conform with current Office of Administrative Law codification.

At N.J.A.C. 10:58-1.6, the reference to the Division's Procedure Code Manual containing H.C.P.C.S. is connected to N.J.A.C. 10:54-4.

At N.J.A.C. 10:58-2.1, the N.J. 1500 claim form reference is deleted, since the form is not printed in the Code.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:58.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

10:58-1.1 Nurse-midwifery

This chapter is concerned with the provisions of health care services by certified nurse-midwives, in accordance with the New Jersey Medicaid Program Provider agreement and the minimal standards as set forth by the New Jersey Board of Medical Examiners, N.J.A.C. ***[13:35-9.1 through 9.6]* *13:35-2.6 through 2.14***.

10:58-1.6 Supplies and equipment

When the certified nurse-midwife performs a home delivery, the C.N.M. may be reimbursed for a "home delivery pack" (see N.J.A.C. ***[10:54-3]* *10:54-4***, Procedure Code Manual).

10:58-2.1 General billing procedures

(a) (No change.)

(b) This subchapter contains basic information necessary for the proper completion and submission of a claim. ***[A sample of the "Health Insurance Claim Form". (1500-N.J.), is included in this subchapter.]***

(d)**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Medical Supplier Manual****Readoption: N.J.A.C. 10:59**

Proposed: December 17, 1990 at 22 N.J.R. 3712(a).

Adopted: February 14, 1991, by Alan J. Gibbs, Commissioner,
Department of Human Services.

Filed: February 15, 1991, as R.1991 d.137, **without change**.

Authority: N.J.S.A. 30:4D-6b(2)(6); 30:4D-7, 7a, b and c; 30:4D-12; 42 CFR 440.70, 120.

Effective Date: February 15, 1991.

Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:59.

(e)**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Independent Laboratory Services Manual****Readoption: N.J.A.C. 10:61**

Proposed: December 17, 1990 at 22 N.J.R. 3713(a).

Adopted: February 14, 1991, by Alan J. Gibbs, Commissioner,
Department of Human Services.

Filed: February 15, 1991, as R.1991 d.138, **without change**.

Authority: N.J.S.A. 30:4D-6a(3), 7, 7a, b and c, 12; 42 CFR 440.30.

Effective Date: February 15, 1991.

Expiration Date: February 15, 1996.

ADOPTIONS

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:61.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Hearing Aid Services Manual

Readoption: N.J.A.C. 10:64

Proposed: December 3, 1990 at 22 N.J.R. 3614(a).

Adopted: February 22, 1991, by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: February 22, 1991, as R.1991 d.154, **without change**.

Authority: N.J.S.A. 30:4D-6b(12)(17), 30:4D-7, 7a, b and c, 30:4D-12; 42 CFR 440.70, 440.120.

Effective Date: February 22, 1991.

Expiration Date: February 22, 1996.

Summary of Public Comments and Agency Responses:

There were two comments submitted within the 30-day comment period which expired on January 2, 1991. The commenters were Patricia A. Royer, Director, Division of Consumer Affairs, Department of Law and Public Safety, and George T. Dougherty, Esq., of Katz, Bitterman and Dougherty, Attorneys at Law, representing the New Jersey Guild of Hearing Aid Dispensers.

Both commenters requested that hearing aid dispensers be allowed to perform hearing tests within the scope of their practice as defined in State law and regulation.

The agency's response is that the Hearing Aid Services Manual must be readopted in its present form in order to comply with Executive Order No. 66, commonly known as the Sunset Provision. By allowing the manual to be readopted, Medicaid recipients will continue to receive hearing aids (when medically necessary), and providers will be reimbursed for dispensing the hearing aids. The agency's policy of limiting testing by audiologists and otologists remain in effect.

However, the agency is responding to the commenters' concerns by reviewing the policy in conjunction with a new manual that is being developed. The agency intends to submit the new manual, when completed, as a proposal to the New Jersey Register as part of the normal rule-making process. There is a draft manual which has been shared with interested professional associations, and this is the document that may have precipitated the comments.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:64.

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Psychologist's Services Manual

Readoption with Amendment: N.J.A.C. 10:67

Proposed: December 3, 1990 at 22 N.J.R. 3615(a).

Adopted: February 19, 1991, by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: February 19, 1991, as R. 1991 d.142, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-6B(10), 30:4D-7, 7a, b and c.

Effective Date: February 19, 1991, Readoption;
March 18, 1991, Amendment.

Expiration Date: February 19, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

CORRECTIONS

Summary of Agency-Initiated Change:

The Division, on its own initiative, is making a technical change upon adoption.

N.J.A.C. 10:67-1.9, Basis of payment, is being amended to indicate that the correct citation for the Procedure Code Manual is N.J.A.C. 10:54-4. The Procedure Code Manual, which is referenced but not reproduced at N.J.A.C. 10:54-4, contains the HCFA Common Procedure Coding System (HCPCS), which is the basis of reimbursement for psychologists.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:67.

Full text of the adopted amendment follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

10:67-1.9 Basis of payment

(a) Psychological services are reimbursed on a fee-for-service basis in accordance with Procedure Code Manual, which is referenced at N.J.A.C. ***[10:54-3]* *10:54-4***. In no event shall the payment exceed the charge by the provider for identical services to other governmental agencies; or other groups or individuals in the community. If a patient receives care from more than one member of a partnership or corporation in the same discipline, the maximum payment allowance would be the same as that of a single attending physician.

(b) (No change.)

CORRECTIONS

(c)

THE COMMISSIONER

Mail, Visits and Telephones

Attorneys and Court Related Personal Visits

Adopted New Rule: N.J.A.C. 10A:18-1.4

Adopted Amendment: N.J.A.C. 10A:18-6.7

Proposed: January 7, 1991 at 23 N.J.R. 14(a).

Adopted: February 20, 1991 by William H. Fauver,

Commissioner, Department of Corrections.

Filed: February 25, 1991 as R.1991 d.155, **without change**.

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

Effective Date: March 18, 1991.

Expiration Date: July 6, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment, from Kenneth Pursell, Chairman of the Resident Committee at the Adult Diagnostic and Treatment Center, in response to the proposed amendment and new rule. A summary of the comment and the Department of Corrections response follows:

COMMENT: Commenter objects to the development of Form 292-I, REQUEST FOR ATTORNEYS-CLIENT CONTACT VISIT, because it is believed that the use of the form will result in a minimum delay of 24 hours and the expense of additional telephone calls when an attorney visit is to be arranged.

RESPONSE: The Department of Corrections believes that this criticism of the proposal lacks merit. Form 292-I, REQUEST FOR ATTORNEY-CLIENT CONTACT VISIT, is designed to insure that the identity of the attorney is clearly verified and that there is a formal review process for approval or disapproval of attorney visits. Use of the form further insures that a proper record is kept of attorney contact visits. A short delay in scheduling the visit, if indeed this occurs, is justified in order to meet these objectives.

Full text of the adoption follows.

10A:18-1.4 Forms

(a) The following form related to Mail, Visits and Telephone shall be reproduced by each correctional facility from the original that is available by contacting the Standards Development Unit:

1. 292-I REQUEST FOR ATTORNEY-CLIENT CONTACT VISIT.

CORRECTIONS

10A:18-6.7 Attorneys and court related personal visits

(a) Attorneys licensed in any jurisdiction and representatives of attorneys shall be permitted contact visits during regular business hours when sufficient space and staff are available.

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

(e) Form 292-I REQUEST FOR ATTORNEY-CLIENT CONTACT VISIT may be used to verify the inmate's desire to meet with the requesting attorney in the context of an attorney-client relationship.

Recodify existing (e), (f) and (g) as (f), (g) and (h). (No change in text.)

(a)

THE COMMISSIONER

Adult County Correctional Facilities General Conditions; Separation of Inmates

Adopted Amendments: N.J.A.C. 10A:31-3.5 and 22.2

Proposed: December 17, 1990 at 22 N.J.R. 3714(c).

Adopted: February 13, 1991 by William H. Fauver,

Commissioner, Department of Corrections.

Filed: February 20, 1991 as R.1991 d.143, **without change.**

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

Effective Date: March 18, 1991.

Expiration Date: March 5, 1995.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment, from Ms. Jean Paashaus, on the proposed amendments. A summary of the comment and the Department of Corrections' response follows:

COMMENT: Commenter believes that the proposed amendments to N.J.A.C. 10A:31-22.2 will permit first offenders to be housed in the same cell with "habitual criminals", and suggests that this section be amended to include a separation of "sentenced inmates from detainees."

RESPONSE: The Department agrees that first offenders and habitual criminals should not be housed in the same cell, and the proposed amendment to N.J.A.C. 10A:31-22.2(d) included a requirement for a separation between "sentenced inmates and detainees" at N.J.A.C. 10A:31-22.2(a)6.

Full text of the adoption follows.

10A:31-3.5 General conditions

(a)-(e) (No change.)

(f) The design of the correctional facility shall provide for the secure confinement of inmates and for adequate separation of inmates of one classification from inmates of another (see N.J.A.C. 10A:31-22.2).

(g)-(w) (No change.)

10A:31-22.2 Separation of inmates

(a) The following types of inmates shall be maintained separately insofar as space permits:

1.-4. (No change.)

5. Serious offenders and less serious offenders; and

6. Sentenced inmates and detainees.

(b) (No change.)

INSURANCE

(b)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Manner of Determining Premium for Perpetual Homeowners Insurance

Adopted New Rules: N.J.A.C. 11:2-31

Proposed: February 20, 1990 at 22 N.J.R. 601(a).

Adopted: February 15, 1991 by Samuel F. Fortunato,

Commissioner, Department of Insurance

(CITE 23 N.J.R. 860)

ADOPTIONS

Filed: February 15, 1991 as R.1991 d.139, **with substantive and technical** changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:23-1 et seq. and 54:18A-1 et seq.

Effective Date: March 18, 1991.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

The Department received comments from Elmer Matthews of Clapp and Eisenberg representing Mutual Assurance Company. These comments are as follows:

COMMENT: The commenter stated that the term "premium deposit" in N.J.A.C. 11:2-31.3 could lead to confusion because the words premium deposit are not being used as insurance terms of art. "Premium deposit" refers to a prepayment of an estimated premium when the actual amount is not known. The deposits for perpetual insurance are not "premium deposits," as was indicated in *Mutual Assurance Company v. Gluck*, 9 N.J. Tax 55 (1987). Since the amount returned to the policyholder is not contingent on annual loss experience, the commenter suggested that the term "premium deposit" be changed to "perpetual deposit" or "net perpetual deposit" in the proposed rules.

RESPONSE: The Department agrees. The rules have been changed upon adoption to reflect this clarification.

COMMENT: The commenter suggested that N.J.A.C. 11:2-31.4(c) be revised to conform to the language in N.J.S.A. 54:18A-4, since the amount to be computed under this subsection is taxable premium for the purposes of N.J.S.A. 54:18A-1 et seq. The commenter thus suggested that the word "premium" be changed to "taxable premium" in N.J.A.C. 11:2-31.4(a). Similarly, the commenter suggested that the title of these rules be changed to read "Determination of Taxable Premium."

RESPONSE: The Department disagrees. The use of term "taxable premium" is too narrow for the purpose of these rules. The rules set forth the manner of determining premium for perpetual homeowners insurance not only for taxes, but also for other applicable fees, surcharges or assessments. The premium tax imposed pursuant to N.J.S.A. 54:18A-1 et seq. is based on "taxable premium". Applicable assessments, surcharges, or fees however, may not necessarily be so based. The taxable premiums of an insurer are capped at 12.5 percent for the calculation of premium taxes pursuant to N.J.S.A. 54:18A-6. There are no similar limitations on the premiums for assessments or surcharges. The use of "premium" is also consistent with the court's opinion, which states: "... the cost of the use of the deposit money is the premium." *Mutual Assurance Company*, 9 N.J. Tax at 62.

Therefore the Department believes that the term "premium" as used in the proposed rules is appropriate and that no change is required.

COMMENT: The commenter suggested that the interest on one-year U.S. Treasury bills for determining the cost of the use of the deposit money is inappropriate. The Treasury bill rate reflects an average rate for a one year period. Perpetual homeowners policies, however, are maintained by policyholders for longer periods of time (averaging 15 years or longer.) Thus, the deposit money on these policies is held by perpetual homeowners insurance companies for a long period of time and invested at rates that may vary significantly over the period that the policies are in effect. The cumulative amount of the deposit money from those policies is included in the base for computing total premiums annually. The use of a one-year interest rate to calculate the cost of the cumulative amount of deposit money does not accurately reflect the actual return on the underlying investment of the cumulative amount of deposit money on policies during their entire term.

Additionally, the commenter stated that since the one year Treasury bill rate is subject to wide variation, utilizing a rate which is the average of one year may result in distortions in the amount of tax from year to year because the rate will be applied to cumulative deposit money for all years and not just one year's deposits.

The commenter suggested that the interest rate on 15 year Treasury bonds be used as a measure of the cost of the use of the deposit money. This interest rate is a more equitable measure of the rate of return on deposit money investments since the term of 15 year Treasury bonds better approximates the length of time that deposit money investments are held by a perpetual insurance company.

RESPONSE: The Department disagrees. The rules implement the decision of the Tax Court by placing perpetual homeowners insurers on an equal basis with other insurers that write homeowners insurance. The Tax Court stated that the portion of the premium deposit which rep-

resents the cost of the use of the deposit money is premium subject to taxation.

Since homeowners policies are generally written on an annual basis, and the premium tax is paid annually, the Department believes it appropriate and reasonable to utilize a one-year U.S. Treasury bill rate to determine the cost of the use of the deposit money.

Further, pursuant to the Tax Court opinion, the premium for perpetual homeowners insurance is the cost of the use of the deposit money to the policyholder. The rate of return on one-year U.S. Treasury bills reflects a rate of return that a policyholder would have received had he or she put the deposit money in a relatively risk free investment. Pursuant to the Tax Court opinion, the rate is not intended to reflect the rate of return the perpetual homeowners insurer actually received on its investment of the deposit money. The Department believes that the rate best approximates the cost of the use of the deposit money to the policyholder for each one year period and thus is consistent with the Tax Court opinion.

COMMENT: The commenter suggested that N.J.A.C. 11:2-31.4(b) be revised to confirm that the ultimate taxable premium is the premium as computed "less any so called dividends . . . returned or credited to policyholders during the year for which the tax is determined." The decision in *Mutual Assurance Company v. Gluck* recognized the deduction of dividends received by the policyholder. The commenter further stated that these rules agree with this since the definition of "annual adjustments" excludes the subtraction of dividends from the perpetual deposit. This language thus preserves the dividend deduction to be applied pursuant to N.J.S.A. 54:18A-4.

Accordingly, the commenter suggested that the rules specifically authorize a deduction for dividends returned or credited to policyholders during the year; and that N.J.A.C. 11:2-31.4(b) be revised as follows: The taxable premium for any applicable statutory fee, surcharge, tax or assessment shall be as calculated annually as set forth in (a) above less any so-called dividends returned or credited to policyholders during the year for which the tax is determined. This is consistent with the intent of these rules (to place perpetual homeowners insurance companies on an equal basis with other homeowner insurers), and recognizes N.J.S.A. 54:18A-4 (which allows insurers, other than life or marine insurers, to deduct from gross premiums dividends returned or credited to policyholders during the year).

RESPONSE: The Department agrees that the rules should specifically provide a deduction for dividends returned or credited to policyholders during the calendar year. The rules have been changed upon adoption to reflect this clarification.

COMMENT: The commenter suggested that the rules make clear that the effective date of the rules will include returns to be filed next March with the current tax year as the measuring base.

RESPONSE: Rules become effective upon publication of the Notice of Adoption in the New Jersey Register pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The rules merely provide the method of calculating tax liability. The determination that perpetual deposit account insurers are liable for taxes was decided by the Tax Court.

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 31. MANNER OF DETERMINING PREMIUM FOR PERPETUAL HOMEOWNERS INSURANCE

11:2-31.1 Purpose

This subchapter sets forth the manner of determining premium for perpetual homeowners insurance for any applicable statutory fee, surcharge, tax or assessment.

11:2-31.2 Scope

The provisions of this subchapter apply to all insurers transacting the business of perpetual homeowners insurance in this State, including all perils insured thereunder.

11:2-31.3 Definitions

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

"Annual adjustments" means any adjustments in the *[premium]* *perpetual* deposit account during the calendar year, exclusive of

dividends. Increases include any additions to the account, such as policy fees and premium assessments. Decreases include the return of *[premium]* *perpetual* deposits, in whole or in part, due to the termination of policies and any other decreases, exclusive of dividends.

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

"Insurer" means an insurance company licensed to transact the business of perpetual homeowners insurance in this State.

"Net *[premium]* *perpetual* deposits" means the total *[premium]* *perpetual* deposits received by an insurer for perpetual homeowners insurance increased or decreased by annual adjustments.

"*[Premium]* *Perpetual* deposit" means a payment by a policyholder for perpetual homeowners insurance.

"Perpetual homeowners insurance" means a homeowners policy and related endorsements, including all perils insured thereunder, which remains continuously in effect until cancelled, and is paid for with one lump sum deposit with no additional payment required, notwithstanding any subsequent fees or assessments.

11:2-31.4 Determination of premium

(a) For the purposes of any statutory fee, surcharge, tax or assessment based on premium and applicable to perpetual homeowners insurance, premium is:

1. The sum of the net *[premium]* *perpetual* deposits received for perpetual homeowners insurance from the inception of the policy through the calendar year immediately preceding the date that such applicable statutory fee, surcharge, tax or assessment is due, multiplied by:

2. The average annual interest rate on one-year U.S. Treasury bills for the calendar year in question.

(b) The premium base for any applicable statutory fee, surcharge, tax or assessment is calculated annually as set forth in (a) above ***less any so-called dividends returned or credited to policyholders during the calendar year in question***.

11:2-31.5 Data filed; examination

(a) Each insurer shall include with the annual statement filed with the Commissioner, a list of the lines of business under which perpetual homeowners insurance is written, on form(s) prescribed by the Commissioner.

(b) All data submitted is examined by the Commissioner and he or she may make any further audit or investigation or reaudit as necessary. An insurer shall pay the reasonable expenses of any examination, pursuant to N.J.S.A. 17:23-4.

11:2-31.6 Penalties

Failure to comply with these provisions may result in the imposition of sanctions by the Department including, but not limited to, sanctions pursuant to N.J.S.A. 17:33-2.

(a)

DIVISION OF ADMINISTRATION

Notice of Administrative Correction

Personal Auto Injury Fee Schedule—Dental Services

Publication of Personal Auto Injury Fee Schedule—Physicians' Services

N.J.A.C. 11:3-29.6

Take notice that the Department of Insurance has discovered an error in the adopted text of N.J.A.C. 11:3-29.6, Medical Fee Schedules, as published in the February 19, 1991 New Jersey Register at 23 N.J.R. 536(a). The concurrently proposed (see 22 N.J.R. 3809(a)) Personal Auto Injury Fee Schedule—Dental Services at N.J.A.C. 11:3-29.6(c) was adopted without textual change, recodified as subsection (b) (see R.1991 d.96), but was erroneously not reproduced in the published notice of adoption. This notice of administrative correction, published in accordance with N.J.A.C. 1:30-2.7, provides the full text of the Personal Auto Injury Fee Schedule—Dental Services.

INSURANCE

ADOPTIONS

In addition, as a public service, the Department is publishing the full adopted text of the Personal Auto Injury Fee Schedule—Physicians’ Services, at N.J.A.C. 11:3-29.6(a), as it will ultimately appear in the New

Jersey Administrative Code. The additions upon adoption are included as current text, and the text deleted upon adoption is removed.

Full text of the Personal Auto Injury Fee Schedules for Physicians’ Services and Dental Services follows:

11:3-29.6 Medical Fee Schedules

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

**STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE—PHYSICIANS’ SERVICES**

CPT-4 Code	Description of Services	Region 1	Region 2	Region 3
10003	I&D OF LESION WITH CAVITY TREATMENT	94	91	96
10060	I&D OF SKIN ABSCESS, SIMPLE	91	86	81
10061	I&D OF SKIN ABSCESS, COMPLICATED	275	269	269
10100	I&D OF ONYCHIA/PARONYCHIA, SIMPLE	48	43	43
10101	I&D OF ONYCHIA/PARONYCHIA, MULTIPLE	117	107	124
10120	REMOVAL OF FOREIGN BODY, SIMPLE	99	91	86
10121	REMOVAL OF FOREIGN BODY, COMPLICATED	301	301	301
10140	I&D OF HEMATOMA, SIMPLE	80	75	84
10141	I&D OF HEMATOMA, COMPLICATED	583	583	583
10160	PUNCTURE ASPIRATION OF ABSCESS	92	102	112
11000	DEBRIDEMENT OF SKIN; UP TO 10%	37	37	37
11040	DEBRIDEMENT; SKIN, PARTIAL THICKNESS	52	43	48
11041	DEBRIDEMENT; SKIN, FULL THICKNESS	93	107	113
11042	DEBRIDEMENT; SKIN, SUBCUTANEOUS TISS	168	162	140
11043	DEBRIDEMENT; SKIN, SUB-Q TISS, MUSCLE	454	454	486
11044	DEBRIDEMENT; SKIN, SUB-Q, MUSCLE, BONE	648	648	648
11730	NAIL AVULSION, SIMP, PARTIAL OR COM	61	61	50
11740	EVACUATION OF SUBUNGUAL HEMATOMA	48	48	48
11750	EX NAIL/MATRIX, PART/COMP, PERMANENT	346	372	377
11765	WEDGE EXC OF SKIN NAIL FOLD	146	146	146
11900	INJ INTRALESIONAL UP TO & INCLU 7	54	54	65
11901	INJ INTRALESIONAL MORE THAN 7	80	75	86
11950	SUB-Q INJ FILLER; 1 CC OR LESS	70	70	70
12001	SIMPLE REPAIR, SCALP ETC; TO 2.5 CM	107	124	120
12002	SIMPLE REPAIR, SCALP ETC; 2.6-7.5 C	162	162	162
12004	SIMPLE REPAIR, SCALP ETC; 7.6-12.5 C	233	233	233
12011	SIMP REPAIR, FACE ETC; TO 2.5 CM	131	152	147
12013	SIMP REPAIR, FACE ETC; 2.6-5.0 CM	190	190	189
12020	TX SUPRFICL WOUND DEHISCENLE; SIMPL	107	107	107
12031	INTER REPAIR, SCALP ETC; TO 2.5 CM	207	207	207
12032	INTER REPAIR, SCALP ETC; 2.6-7.5 C	277	277	277
12041	INTER REPAIR, NECK, ETC; TO 2.5 CM	218	218	218
12042	INTER REPAIR, NECK ETC; 2.6-7.5 CM	286	286	286
12051	INTER REPAIR, FACE ETC; TO 2.5 CM	438	394	482
12052	INTER REPAIR, FACE ETC; 2.6-5.0 CM	540	540	594
13101	COMPLEX REPAIR, TRUNK; 2.6-7.5 CM	491	491	491
13120	COMPX REPAIR, SCALP ETC; 1.1-2.5 CM	405	405	405
13121	COMPX REPAIR, SCALP ETC; 2.6-7.5 CM	637	637	637
13131	COMPX REPAIR, CHECKS ETC; 1.1-2.5 CM	547	547	567
13132	COMPX REPAIR, CHECKS ETC; 2.6-7.5 CM	846	846	809
13150	COMPX REPAIR, NOSE ETC; TO 1.0 CM	438	438	438
13151	COMPX REPAIR, NOSE ETC; 1.1-2.5 CM	639	639	648
13152	COMPX REPAIR, NOSE ETC; 2.6-7.5 CM	1040	1040	1040
13300	COMPLICATED REP; OVR 7.5 CM ANY AREA	1431	1431	1431
14000	ADJ TISS TRANSFER, TRUNK; TO 10 SQ CM	513	513	542
14001	ADJACENT TIS TRANS OR REARR, TRUNK; 10 TO 30 SQ CM	920	920	951
14020	ADJ TISS TRANS, SCALP ETC; TO 10 SQ CM	1096	1096	1096
14040	ADJ TISS TRANS, CHIN ETC; TO 10 SQ CM	1225	1225	1269
14060	ADJ TISS TRANS, NOSE ETC; TO 10 SQ CM	1589	1589	1589
14061	ADJ TIS TRANS, NOSE ETC, 10.1-30 SQ CM	1945	1945	1945
14300	ADJAC TIS TRANS/REARR, MORE THAN 30 SQ CM UNUSUAL/COMP ANY AR	1234	1234	1234
15100	SPLIT GRAFT, TRUNK ETC; TO 100 SQ CM	1261	1261	1261
16000	INITIAL TREATMENT, FIRST DEGREE BURN	75	75	75
16020	DRESS/DEBRIDE SM BURN; NO ANESTHESIA	87	87	93
16025	DRESS/DEBRIDE MED BURN; NO ANES	124	124	124
17000	DESTROY FACE LES, ANY METH; ONE	83	96	99
17001	DESTROY FACE LES, ANY METH; 2ND & 3RD	78	78	78
17002	DESTROY FACE LES, ANY METH; OVER 3, EA	122	122	122
17010	DESTROY FACE LES, ANY METH; COMPLICATED	205	205	205

ADOPTIONS

INSURANCE

17100	DESTROY SKIN LES, NOT FACE; ONE	70	81	81
17102	DESTROY SKIN LES, NOT FACE; 3-14, EACH	81	81	81
17105	DESTROY SKIN LES, NOT FACE; COMPLICATED	98	98	98
17250	CHEMICAL CAUTERIZATION OF WOUND	57	57	54
17304	CHEMOSURG, 1ST STG, FRESH TISSUE TECH	826	826	826
17340	CRYOTHERAPY (CO2 SLUSH, LIQUID N2)	67	70	81
19000	PUNCTURE ASPIRATION CYST	107	118	113
19100	BIOPSY OF BREAST; NEEDLE (SEP PROC	153	151	156
20220	BIOPSY, BONE, TROCAR OR NEEDLE; SUPER	317	317	313
20299	BONE MARROW ASPIRATION BIOPSY	313	313	313
20550	INJ, TEND SHEATH, LIGAMENT, TRIGGER P	96	96	91
20600	ARTHROCENTESIS, ASP &/OR INJ; SM JNT	81	86	86
20605	ARTHROCEN, ASP &/OR INJ; INTER JOINT	86	92	96
20610	ARTHROCEN, ASP &/OR INJ; MAJOR JOINT	102	113	113
20670	REMOVAL OF IMPLANT; SUPERFICIAL	187	187	187
20680	REMOVAL OF IMPLANT; DEEP	806	809	864
21315	MANIPULATIVE TREATMENT NASAL BONE FX; WITHOUT STABILIZATION	679	679	679
21320	MANIP TREATMNT, NOSE FX; STABILIZATION	719	719	719
21455	CLOSE MANIP TREAT, FIXATN, MANDIB FX	2398	2398	2398
21800	RIB, FRACTURE(S), CLOSED (SIMPLE), UNCOMPLICATED	86	86	86
22555	ARTHRODESIS W DISK, CERV ANT APPR W ILIAC OR AUTO GRAFT	5680	5680	5680
23350	INJECTION PROC, SHOULDER ARTHROGRAPH	133	133	133
23420	REPAIR SHOULDER CUFF AVULSION, CHRON	3294	3294	3294
23500	TREAT CLOSED CLAVICLE FX; NO MANIPUL	237	237	237
23505	TREAT CLOSED CLAVICLE FX; W/MANIPUL	468	468	468
23600	TREATMENT CLOSED HUMERAL FX; NO MANIP	430	430	430
23605	TREATMENT CLOSD HUMERAL FX; W/MANIP	617	617	617
23650	TREAT CLOSED SHOULDER DISLOC, W/MANIP	354	354	339
23655	TREATMENT OF CLOSED SHOULDER DISLOC, W MANIP W ANESTH	450	450	450
24577	TREATMENT OF CLOSED CONDYLAR FX MEDIAL OR LATERAL W MANIPULA	333	333	333
24640	RADIAL HEAD SUBLUXATION, CHILD, MANI	194	194	194
24650	CLOSED RADIAL HEAD/NECK FX; NO MANIP	505	505	505
25000	TEND SHEATH INCISION; RADIAL STYLOID	1022	1022	1022
25111	EXCISION GANGLION, WRIST; PRIMARY	1000	1000	1101
25500	CLOSED RADIAL SHAFT FX; NO MANIP	452	452	452
25505	CLOSED RADIAL SHAFT FX; W/ MANIP	559	559	559
25535	TX. OF CLOSED ULNAR SHAFT FRACTURE; WITH MANIPULATION	432	432	432
25560	CLSD RADIAL & ULNAR SHAFT FX; NO MANIP	728	728	728
25565	CLSD RADIAL & ULNAR SHAFT FX; W/ MANIP	843	843	843
25600	C/S DIS RAD FX/ EPIPHYS SEP; NO MANIP	498	486	513
25605	C/S DIS RAD FX/EPIPHYS SEP; W/ MANIP	657	594	702
25610	CLSD COMPLEX, DIST RAD FX/EPIPHY SEP	719	719	719
25611	CLS COMPLX, DIS RAD FX/EPIP SEP; FIXA	1433	1433	1433
25635	TREATMENT CLOSED CARPAL BONE FX W MANIPULATION	481	481	481
26055	TENDON SHEATH INCISION, TRIGGER FING	794	794	794
26160	EXCISION LESION TENDON SHTT OR CAPS	762	762	762
26600	TX CLOSED METACARP FX, SNG; W/O MANIP	323	323	346
26605	TX CLOSED METACARP FX, SNG; W/ MANIP	428	428	432
26720	TX CLOS PHALAN SHAFT FX; W/O MANIP	224	224	210
26725	TX CLOS PHALANG SHAFT FX, W/ MANIP	344	344	344
26750	TX CLOS DIST PHALANG FX; W/O MANIP	156	156	156
26755	TX CLOS DIST PHALANG FX; W/ MANIP	194	194	194
26760	OPEN DISTAL PHALANGEAL FX W SOFT TISSUE CLOSURE, EACH	369	369	369
26770	TX CLOS INTERPHAL JNT DIS; W/O ANESTH	154	154	154
27093	INJECT FOR HIP ARTHROGRAPHY WO ANES	75	75	75
27125	PARTIAL HIP REPLACEMENT, PROSTHESIS	4429	4429	4429
27130	ARTHROPLAS; TOT HIP REPLAC W/WO GRF	4932	4618	5185
27236	OPEN TX CLOSE/OPEN FEM FX, INT FIX	3422	3422	3422
27244	OPEN TX CHANTERIC FEM FX; W INT FIX	2971	2971	2971
27370	INJECT PROCEDURE KNEE ARTHROGRAPHY	139	139	165
27447	ARTHRO, KNEE, TOT, CNDYL&PLAT; MED & LAT	5022	5022	5402
27506	OPEN TX CLOS/OPEN FEM SHAFT FX	3955	3955	3955
27520	PATELLA, FRACTURE, CLOSED (SIMPLE), WITHOUT RED	444	444	444
27750	TX CLOSED TIBIAL SHAFT FX; W/O MAN	648	648	648
27752	TIBIA, SHAFT FRACTURE, CLOSED (SIMPLE), CLOSED	817	817	817

INSURANCE

ADOPTIONS

27760	TX CLOSED DISTAL TIBIAL FX; W/O MAN	451	451	451
27762	TX CLOS DIST TIBIAL FX; W/MANIP	544	544	544
27781	CLOSED PROX. FIBULA OR SHAFT FX; WITH MANIPULATION	402	402	402
27786	TX CLOSED DISTAL FIBULAR FX; W/O MAN	521	521	518
27788	TX CLOSED DISTAL FIBULAR FX; W/ MAN	602	602	602
27802	TX CLOS TIB & FIB FX, SHAFT; W/ MANIP	1046	1046	1046
27808	TX CLOS BIMALLEOLAR ANKLE FX, W/O MAN	648	648	648
27810	TX CLOS BIMALLEOLAR ANKLE FX, W/ MAN	803	803	803
27814	OPEN TX CLOS/OPEN BIMALL ANKLE FX	2522	2522	2522
27818	TX CLOS TRIMALL ANKLE FX; W/ MANIP	1107	1107	1107
27822	OPEN TX CL/OP TRIMALL ANKLE FX; ONLY	3155	3155	3155
28043	EXCIS, BENIGN TUM: SUBCUTANEOUS	444	444	444
28080	EXCISION MORTON NEUROMA, SNG, EA	967	967	967
28090	EXC LES TEN, SHEATH, CAP W/SYNOV; FOOT	844	844	844
28124	PART EX, PHALANX	687	687	687
28126	CONDYLECTOMY, PHALANX BASE SNG EA	648	648	648
28153	RESECTION, HEAD OF PHALANX	648	648	648
28160	HEMIPHALANGECTOMY/JOINT EX, SNG, EACH	917	917	917
28455	TRTM. OF CLOSED TARSAL BONE FRACTURE, W MANIPULATION, EACH	347	347	366
28470	METATARSAL FX CLSD; W/O MANIP, EA	384	384	384
28475	METATARSAL FX CLSD; W/ MANIP, EA	390	390	390
28490	PHALANGES FX, CLSD; W/O MANIPULATION	148	148	148
28510	PHAL NT GT TOE FX CLSD W/O MANIP, EA	132	132	132
28515	PHAL NT GT TOE FX CLSD W/ MANIP EA	219	219	219
29065	CAST SHOULDER TO HAND (LONG ARM)	216	226	216
29075	CAST ELBOW TO FINGER (SHORT ARM)	188	216	205
29085	CAST HAND & LOWER FOREARM- GAUNTLET	185	185	185
29105	SPLINT LONG ARM (SHOULDER TO HAND)	137	137	137
29125	SPLINT SHORT ARM (FOREARM-HAND(STAT))	114	135	135
29130	SPLINT FINGER; STATIC	91	91	91
29240	STRAPPING; SHOULDER	89	89	89
29260	STRAPPING; ELBOW OR WRIST	69	69	70
29280	STRAPPING; HAND OR FINGER	58	58	62
29345	CAST LONG LEG (THIGH TO TOES)	279	279	279
29365	CAST CYLINDER (THIGH TO ANKLE)	208	208	208
29405	CAST SHORT LEG (BELOW KNEE TO TOES)	243	269	243
29425	CAST SHORT LEG; WALKING/AMBULATORY	280	291	296
29505	SPLINT LONG LEG (THIGH-ANKLE/TOES)	67	67	67
29515	SPLINT SHORT LEG (CALF TO FOOT)	128	124	135
29530	STRAPPING; KNEE	93	93	91
29540	STRAPPING; ANKLE	75	75	75
29550	STRAPPING; TOES	59	59	65
29580	STRAPPING; UNNA BOOT	90	107	102
29700	CAST REM/BIV;GAUNTLET/BOOT/BODY	90	90	90
29705	CAST REM/BIV;FULL ARM/FULL LEG	83	83	86
29870	ARTHROSCPY, KNEE, DIAG, W/WO SYNOV BX	1785	1785	1785
29874	ARTHROSCPY, KNEE, SURG; REMOVE F-BODY	2452	2452	2452
29875	ARTHROSCPY, KNEE, SURG; SYNOVECTMY, LTD	2594	2594	2594
29876	ANTHROSCPY, KNEE, SURG; SYNOVECT, COMP	2798	2798	2798
29877	ARTHROSCPY, KNEE, SURG; CHONDROPLASTY	2640	2640	2640
29880	ARTHRO, KNEE SRG, W/MENISECTOMY	2998	2998	2998
29881	ARTHROSCOPY, W/MENISCTMY MED OR LAT	2627	2700	3106
29882	ARTHROSCOP, W/MENSCUS REP MED OR LAT	3189	3189	3189
29888	ARTHRO, AID ANT CRUC LGMNT, RP/AG/RC	4567	4567	4567
30200	INJECTION TURBINATE(S), THERAPEUTIC	76	76	75
30210	DISPLACEMENT THERAPY (PROETZ TYPE)	43	43	43
30300	REMOVAL FOR BODY, INTRANASAL; OFFICE	96	96	96
30420	RHINOPLASTY; INCL MAJOR SEPTAL REP	4041	4041	4213
30520	SEPTOPLASTY W/WO CARTILAGE IMPLANT	2479	2479	2700
30805	CAUTERIZATION TURBINATES, UN/BIL, INT	107	107	107
30901	CONTROL NASAL HEMORRHAGE, ANT SMP; U	104	107	102
30902	CONTROL NASAL HEMORRHAGE, ANT, SMP; B	148	148	148
30903	CNTROL NASAL HEMORRHAGE, ANT, COMP; U	159	143	162
30905	CONTROL NASAL HEMORRHAGE POST; INIT	405	405	405
31000	LAVAGE CANNULATION; MAXIL SINUS, UNI	113	113	124
31001	LAVAGE CANNULATION; MAXIL SINUS, BIL	150	150	150
31201	ETHMOIDECTOMY; INTRANASAL, TOTAL	2714	2714	2714
31250	NASAL ENDOSCOPY, DIAGNOSTIC	226	226	226
31252	NASAL ENDOSCOPY SRG W/NASAL POLYPEC	311	311	311

ADOPTIONS

INSURANCE

31500	INTUBATION, ENDOTRACHEAL EMERGENCY	275	275	269
31505	LARYNGOSCOPY INDIRECT; DIAGNOSTIC	121	121	129
31515	LARYNGOSCOPY, DIRECT; FOR ASPIRATION	346	346	346
31525	LARYNGOSCOPY, DIR; DIAG, EXCEPT NEWBORN	421	421	421
31540	LARYNGOSCOPY, DIR, W/EX TUM/STRIPPING	1415	1415	1415
31541	LARYNGOSCOPY, DIR, EX TUM/STRP; OP MIC	1319	1319	1431
31575	LARYNGOSCOPY, FLEX FIBERSCOPIC; DIAG	351	377	351
31600	TRACHEOSTOMY, PLANNED	1075	1075	1075
31622	BRONCHOSCOPY, DIAG; W W/O CELL WASHNG	737	702	778
31645	BRONCHOSCOPY; W/ASP TRACH TREE INIT	756	756	756
32000	THORACENTESIS, INITIAL/SUBSEQUENT	305	249	291
32020	TUBE THORACOSTOMY W/WO WATER SEAL	806	853	804
32405	BX LUNG/MEDASTINUM; PERCUTAN NDLE	408	408	408
32480	LOBECTOMY, TOTAL OR SEGMENTAL	5660	5660	5660
33207	INS PERM PACEMAKER/ELECT; VENTRICUL	2332	2332	2332
33208	INS PERM PACEMAKER/ELECT; AV SEQ	2760	2760	2760
33210	INS TEMP CARD ELECT/PACEMAKER CATH	831	831	831
33212	INSERT/REPLC PULSE GENERATOR/AICD	1262	1262	1262
33405	REPLACMNT AORT VALV W CARD BYPASS	7986	7986	7986
33511	CORONARY ARTERY BYPASS, AU GFT; TWO	6855	6855	6855
33512	CORONARY ARTERY BYPASS, AU GFT; THREE	8142	8142	8186
33513	CORONARY ARTERY BYPASS, AU GFT; FOUR	8520	8520	8373
33514	CORONARY ARTERY BYPASS, AU GFT; FIVE	9183	9183	9183
35081	REP ANEURYSM, GFT; OCCLUS, ABDOM AORTA	5277	5277	5277
35301	THROMBOENDARDECTOMY; CAROTID, ETC; NCK	4215	4215	4215
35656	BYPASS GFT; FEMORAL-POPLITEAL	3937	3937	3937
36000	INTRO NEEDLE/INTRACATHETER, VEIN; UN	118	103	124
36010	INTRO CATH; SUP/INF VENA CAVA, RT HRT	470	470	446
36200	CATHETER; AORTA	462	462	464
36400	VENIPUNCTURE, < 3 YR; FEM JUGULAR/SAGI	50	50	50
36410	VENIPUNCTURE, > 3 YR, DIAG/THER, COMPL	41	41	43
36415	ROUTINE VENIPUNCTURE 4 SPECMEN COLL	10	10	10
36425	VENIPUNCTURE, CUTDOWN; AGE 1 OR OVER	59	59	59
36430	TRANSFUSION, BLOOD/COMPONENTS; INDIR	153	153	162
36470	INJ SCLEROSING SOLUTION; SINGLE VEI	81	81	81
36471	INJ SCLEROS SOL; MULT VEINS, SAME LE	147	135	156
36488	PLACE CENT VEN CATH; PERCUT; AGE 2& <	156	156	156
36489	PLACE CENT VENOUS CAT; PERCUT, > 2	324	273	316
36491	PLCMT CENT VEN CATH HYPERAL, > 2YR	444	442	437
36495	INSERT OF IMPLANTABLE INFUSION PUMP	1104	1118	1118
36600	ART PUNCTURE, WITHDRAW BLD FOR DIAG	105	102	107
36620	ART CATH/CANNULAT FOR SAMP; PERCUTAN	216	216	216
36800	INS CANNULA HEMODIALYSIS; VEIN-VEIN	571	571	571
36830	ARTERIOVEN FIST, NONAUTOGENOUS GRAFT	2833	2833	2833
36860	CANNULA DECLOTTING; WO BALLOON CATH	73	73	73
37609	LIGATION/BIOPSY, TEMPORAL ARTERY	584	584	584
37620	INTERRUPT, INFERIOR VENA CAVA BY SUT	2539	2539	2539
41896	OSSEOUS SURGERY	630	630	637
41897	TOOTH REMOVAL IMPACTED PARTIAL BONY	240	240	243
41898	TOOTH REMOVAL IMPACTED COMPLETE BONY	332	324	351
43220	ESOPHAGOSC, RIG/FIBEROPT; W/DIR DILAT	918	918	918
43235	ESOPHAGOGASTRODUODENOSCOPY; DIAGNOST	594	541	648
43245	ESOPHAGOGASTRODUODENOSCOPY, DILATION	883	883	883
43246	ESOPHAGOGASTRODUODENOSCOPY, FOR TUBE	1093	1093	1093
43247	ESOPHAGOGASTRODUODENOSCOPY; W/REM FB	988	988	988
43255	ESOPHAGOGASTRODUOD; FOR HEMORRHAGE	1053	1053	1053
43260	ERCP W/WO BX +/SPEC COLLECTION	1000	939	1026
43450	ESOPHAG, INDIRECT DILATE SOUND, INIT	152	152	152
43451	ESOPHAG, INDIRECT DILATE SOUND, SUBS	162	162	162
43830	GASTROSTOMY, TEMPORARY (SEP. PROC.)	1594	1594	1594
44005	ENTEROLYSIS, ACUTE BOWEL OBSTRUCTION	2485	2485	2485
44120	ENTERECTOMY, RES SM INTES; W/ANASTOMO	2994	2994	2994
44140	COLECTOMY, PARTIAL; W/ANASTOMOSIS	3102	3102	3284
44143	COLECTOMY, PART; END COLOST/CLS DIST	3461	3461	3461
44145	COLECTOMY, PARTIAL; W/COLOPROCTOSTOMY	3501	3501	3501
44160	COLECTMY W/REM TERM ILEUM & ILEOCOL	3354	3354	3354
45300	PROCTOSIGMOIDOSCOPY; DIAGNOSTIC (SEP)	129	129	124
45330	SIGMOIDOSCOPY, FLEX FIBEROPTIC; DIAGN	269	254	259
45355	COLONOSCOPY W/SIGMOID, TRANSAB/COLOT	354	377	335
45378	COLONOSCOPY, FIBER BEYOND SPLEN FLEX	809	702	783
46040	I&D ISCHIORECTAL/PERIRECTAL ABSCESS	466	466	466

INSURANCE

ADOPTIONS

46050	SI&D PERIANAL ABSCESS, SUPERFICIAL	155	155	155
46320	ENUCLEATION/EXC EXT THROMB HEMORRH	199	199	188
46500	INJ SCLEROSING SOL, HEMORRH	102	102	102
46600	ANOSCOPY, DIAGNOSTIC (SEPARATE PROC)	93	114	93
46604	ANOSCOPY, DX W/DILATE, DIRECT, INSTRUM	124	124	124
46700	ANOPLASTY FOR STRICTURE, ADULT	1296	1296	1296
47000	BIOPSY LIVER, NEEDLE, PERCUTANEOUS	396	396	396
47600	CHOLECYSTECTOMY	1991	1991	2433
47605	CHOLECYSTECTOMY W/CHOLANGIOGRAPHY	2183	2106	2296
47610	CHOLECYSTECTOMY W/EXPL COMMON DUCT	2686	2686	2686
49000	EXPLOR LAPAR/CELIOTOMY W/VO BX(S)	2114	2114	2204
49080	PERITONEOCENTESIS, ABD PARACEN; INIT	202	216	247
49421	INS INTRAPERI CANN/CATH DRAIN, PERM	1012	1012	1012
50230	NEPHRECTOMY, RAD, W/RGNL LYMPHADEC	3916	3916	3916
50392	INTRO OF INTRACATHETER RENAL PELVIS DRAINAGE/ INJECT, PER CUT	666	666	666
50393	INTRO URETHRAL CATH/STENT THRU RENAL PELVIS/ DRAIN/INJ	493	493	493
50394	INJECT PROC FOR PYELOGRAPHY (SEPARATE PROCEDURE)	122	122	122
51600	INJ PROC CYSTOGRAPHY/VOID URCYSTOG	80	80	80
51700	BLAD IRRIG, SIMP, LAVAGE &/ INSTILLA	70	65	78
51720	BLAD INSTILL ANTICARCINOGENIC AGNT	139	114	135
51725	SIMPLE CYSTOMETROGRAM	166	166	166
51736	SIMPLE UROFLOWMETRY	86	86	86
51741	ELECTRONIC UROFLOWMETRY; INITIAL REC	178	178	178
52000	CYSTOURETHROSCOPY	249	249	304
52005	CYSTOURETHROSC, W/URETERAL CATH	543	489	594
52204	CYSTOURETHROSCOPY, W/ BIOPSY	512	512	512
52214	CYSTOURETHROSC, W/FULG OF TRIBONE	648	648	648
52224	CYSTOURETHROSC, W/FULG, < .5CM	686	686	686
52234	CYSTOURETHROSC, W/FULG, BLAD, .5-2C	1032	1032	1032
52235	CYSTOURETHROSC, W/FULG, BLAD TM, 2-5CM	1360	1360	1296
52240	CYSTOURETHROSC, W/FULG, BLAD TM, > 5CM	1848	1848	1848
52276	CYSTOURETHROSC; DIR VIS INT URTHROT	964	964	964
52281	CYSTOURETHROSC W/DILAT URETH STR	464	432	486
52285	CYSTOURETHROSC TX FEM URETHRAL SYND	605	605	605
52310	CYSTOURETHROSC; W/REM FB UR/BLAD, SIM	582	582	631
52332	CYSTOURETHROSC; W/INS INDWELL STENT	866	866	945
52335	CYSTOURETHROSC; W/URETEROSC & PYELOSC	934	934	934
52500	TRNSURETH RESECT OF BLADDER NECK	1620	1620	1620
53600	DILAT URET STRICT, W/ SOUND, MALE, IN	77	78	81
53601	DILAT URET STRICT, W/ SOUND, MALE SU	64	64	63
53620	DIL UR STRIC, FILLIFRM/FOLL, MALE, IN	132	132	132
53621	DIL UR STRIC, FILLIFRM/FOLL, MALE, SU	124	124	124
53660	DIL FEM UR W/ SUPPOS &/INSTILL, INIT	80	75	70
53661	DIL FEM UR W/ SUPPOS &/INSTILL, SU	69	65	59
53670	CATHETERIZATION; SIMPLE	81	81	91
53675	CATHETERIZATION; COMPLICATED	155	155	155
54235	INJ CORPORA CAVERNOSA W/PHARM AGNTS	105	105	104
58980	LAPAROSCOPY; SURGICAL	1747	1620	1922
59160	D & C FOR CURETTAGE, POSTPARTUM	848	848	848
59515	CESAREAN DELIV INC POSTPARTUM CARE	2968	2968	3187
59812	SPONT ABORT, TRIMEST, COMPLETE SURG	773	773	809
59820	TREAT MISS ABORT, COMP SURG, 1ST TRIM	756	809	809
62270	SPINAL PUNCTURE LUMBAR; DIAGNOSTIC	216	216	216
62278	INJ ANESTH SUB; EPIDURAL/CAUDAL, SIM	388	354	388
62279	INJ ANESTH SUB; EPIDURAL/CAUDAL, CON	378	378	378
62282	INJ NEUROLYTIC SUB; EPIDURAL/CAUDAL	486	486	486
62284	INJ PROC MYELOGRAPHY, SPINAL/POST	535	535	589
62289	INJ SUB OT THAN ANES/NEUROLYT; EP/C	420	420	432
63030	LAMINOTOMY; 1 INTRSP, LMBR, UNILAT	4650	4650	4861
64440	INJ, ANESTH AGNT; PARAVERTEBR, NRV, SN	92	92	83
64445	INJ, ANESTH AGNT; SCIATIC NERV	113	113	113
64450	INJ, ANESTH AGNT; OT PERIPH NRV/BRAN	84	84	86
64505	INJ, ANESTH AGNT; SPHENOPALATINE GAN	432	432	432
64640	DESTR BY NEUROLYTIC AGNT; OT PER NRV	118	118	118
64721	NEUR &/ TP; MEDIAN NRV @ CARPAL TUN	1380	1620	1620
64998	ACUPUNCTURE	51	48	54
65205	REM FB, EXTERN EYE; CONJUNC SUPERFI	53	53	53
65210	REM FB, EXTERN EYE; CONJUNC EMBEDDE	80	80	80
65220	REM FB, EXTERN EYE; CORN, W/O SLIT L	103	103	103

ADOPTIONS

INSURANCE

65222	REM FB, EXTERN EYE; CORN W/ SLIT LM	112	112	113
65420	EX OR TRANSPOS PIERYGIUM; W/O GRAFT	1296	1296	1296
65435	REM CORNEA EPITHELIUM WWO CHEMOCAU	156	156	156
65855	TRABECULOPLSTY BY LASER, 1/MORE SESS	1460	1344	1583
67101	REP RET DETACH, CRYOTHERAPY/DIATHERM	1646	1646	1646
67105	REP RET DETACH; PHOTCOAG, W/VO DRAIN	1635	1635	1635
67107	REP RETINAL DETACH; SCLERAL BUCKLIN	3714	3714	3714
67145	PROPHY RET DETACH; PHOTOCOAGULATION	1508	1508	1508
67500	RETROBULBAR INJECTION; MEDICATION	126	126	126
67700	BLEPHAROTOMY, DRAIN ABSCESS EYELID	86	86	86
69400	EUST TUBE INFLATE, TRANSNAS; W CATH	81	81	81
69420	MYRING W ASPIRE &/EUST TUBE INFLA	167	167	183
69433	MYRNG/TYMPNOSTMY, LOC/TOP ANES, TUBE	306	306	324
69434	MYRNG/TYMPNOST, L/T ANES; BOTH W TUB	475	475	475
69436	MYRING/TYMPANOSTMY, GEN ANES; W TUBE	704	704	704
69437	MYRING/TYMPNOST, GEN ANES; BOTH W TUB	657	648	686
70110	X-RAY MANDIBLE, COMP, MIN 4 VIEWS	65	65	65
70150	X-RAY FACIAL BONES, COMP, MIN 3 VIEWS	69	69	69
70160	X-RAY NASAL BONES, COMP, MIN 3 VIEWS	60	60	66
70200	X-RAY ORBITS, COMP, MIN 4 VIEWS	72	72	65
70210	X-RAY SINUSES, PARTIAL, > 3 VIEWS	82	82	86
70220	X-RAY SINUSES, COMP, MIN 3 VIEWS	95	89	102
70250	X-RAY SKULL, > 4 VIEWS, W/VO STEREO	67	67	67
70260	X-RAY SKULL, COMP, MIN 4 VIEWS, W/VO	81	74	70
70330	X-RAY TMJ, OPEN/CLOSED, BILATERAL	166	166	166
70336	MRI, TEMPOROMANDIBULAR JOINT	875	875	875
70355	ORTHOPANTOGRAM	70	70	70
70360	X-RAY NECK, SOFT TISSUE	45	45	43
70450	CAT SCAN, HEAD OR BRAIN, W/O CONTRAST	453	371	432
70460	CAT SCAN, HEAD OR BRAIN W/CONTRAST	517	428	458
70470	CAT SCAN, HEAD/BRN, WO CONT, FOL CONTR	612	535	535
70480	CAT SCAN, ORBIT/SELLA/FOSSA, WO CONTR	536	536	539
70481	CAT SCAN, ORBIT/SELLA/FOSSA, W/CONTR	505	505	505
70486	CAT SCAN, MAXILLOFACIAL, W/O CONTRAST	539	536	539
70487	CAT SCAN, MAXILLOFACILA, W/CONTRAST	357	357	357
70490	CAT SCAN, NECK, SOFT TISSUE, WO CONTR	539	539	539
70491	CAT SCAN, NECK, SOFT TISSUE, W CONTR	501	501	481
70540	MRI, ORBIT, FACE AND NECK	918	918	918
70551	MRI, BRAIN, W/O CONTRAST	891	891	918
70552	MRI, BRAIN, W/CONTRAST	1096	1096	1096
71010	X-RAY CHEST, SINGLE, FRONTAL	43	41	48
71020	X-RAY CHEST, 2 VIEWS, FRONTAL/LATERAL	66	57	65
71021	X-RAY CHEST, 2 VIEWS, APICAL LORDOTIC	70	70	70
71022	X-RAY CHEST, 2 VIEWS, OBLIQUE PROJECT	80	80	80
71030	X-RAY CHEST, COMPLETE, MIN 4 VIEWS	73	77	77
71035	X-RAY CHEST, SPECIAL VIEWS	15	15	15
71100	X-RAY RIBS, UNILAT, 2 VIEWS	80	68	75
71101	X-RAY RIBS, UNI, INCL CHEST, 3 VIEWS	81	89	91
71110	X-RAY RIBS, BILAT, 3 VIEWS	80	80	80
71111	X-RAY RIBS, BI, INCL CHEST, 3 VIEWS	96	96	96
71120	X-RAY STERNUM, MIN 2 VIEWS	70	70	70
71250	CAT SCAN, CHEST, W/O CONTRAST	513	467	475
71260	CAT SCAN, CHEST, W/CONTRAST	580	527	507
71270	CAT SCAN, CHEST, WO CONT, FOL BY CONTR	476	476	476
72010	X-RAY SPINE, ENTIRE, SURVEY, A/P & LAT	135	129	145
72020	X-RAY SPINE, SINGLE VIEW	53	53	43
72040	X-RAY CERVICAL SPINE, A/P & LATERAL	65	65	65
72050	X-RAY CERV SPINE, A/P LAT, MN 4 VIEWS	107	96	107
72052	X-RAY CERV SPINE, COMP, OBLIQ/FLEX/EX	117	105	113
72070	X-RAY THORACIC SPINE, A/P & LATERAL	73	71	75
72072	X-RAY THOR SPINE, AP LAT, CERVICOTHOR	61	61	61
72074	X-RAY THOR SPINE, COMP, INCL OBLIQUES	83	83	83
72080	X-RAY THORACOLUMBAR SPINE, A/P & LAT	75	72	70
72090	X-RAY SPINE, SCOLIOSIS STUDY	79	79	75
72100	X-RAY LUMBOSACRAL SPINE, A/P & LAT	75	75	75
72110	X-RAY LUMBOSACRAL SPINE, COMPLETE	129	108	118
72114	X-RAY LUMB/SAC SPINE, INCL BENDING	140	133	131
72120	X-RAY LUMB/SAC SPINE, BENDING ONLY	81	81	89
72125	CAT SCAN CERVICAL SPINE WO CONTRAST	453	453	498
72128	CAT SCAN THORACIC SPINE WO CONTRAST	572	572	572
72131	CAT SCAN LUMBOSACRAL SPINE WO CONTR	550	513	577

INSURANCE

ADOPTIONS

72141	MRI, CERVICAL SPINE, W/O CONTRAST	918	864	891
72148	MRI, LUMBOSACRAL SPINE, W/O CONTRAST	914	914	918
72170	X-RAY PELVIS, ANTEROPOSTERIOR ONLY	66	59	63
72190	X-RAY PELVIS, COMP, 3 OR MORE VIEWS	67	67	67
72192	CAT SCAN PELVIS, W/O CONTRAST	413	413	372
72193	CAT SCAN PELVIS, W/CONTRAST	432	392	353
72194	CAT SCAN PELVIS, WO CONT FOL BY CONT	550	550	550
72196	MRI, PELVIS	938	938	938
72200	X-RAY SACROILIAC JOINTS, < 3 VIEWS	77	77	77
72202	X-RAY SACROILIAC JOINTS, 3 OR MORE	93	93	93
72220	X-RAY SACRUM & COCCYX, MIN 2 VIEWS	73	73	75
72265	MYELOGRAM, THORACIC, R SPINE	320	320	320
73000	X-RAY CLAVICLE, COMPLETE	61	60	65
73010	X-RAY SCAPULA, COMPLETE	62	62	62
73020	X-RAY SHOULDER, 1 VIEW	62	62	65
73030	X-RAY SHOULDER, COMPLETE, MIN 2 VIEWS	70	70	70
73041	ARTHROGRAM SHOULDER, COMPLETE PROC	295	295	295
73050	ARTHROGRAM, ACROMIOCLAVICULAR, BILAT	81	81	81
73060	ARTHROGRAM, HUMERUS, MIN 2 VIEWS	73	66	66
73070	X-RAY ELBOW, A/P & LATERAL	65	59	65
73080	X-RAY ELBOW, COMPLETE, MIN 3 VIEWS	67	65	70
73090	X-RAY FOREARM, A/P & LATERAL VIEWS	63	59	59
73100	X-RAY WRIST, A/P & LATERAL VIEWS	62	62	59
73110	X-RAY WRIST, COMPLETE, MIN 3 VIEWS	70	65	70
73120	X-RAY HAND, 2 VIEWS	59	54	59
73130	X-RAY HAND, MINIMUM 3 VIEWS	65	65	65
73140	X-RAY FINGER(S), MINIMUM 2 VIEWS	56	51	59
73220	MRI UPPER EXTREMITY, NOT JOINT	929	929	929
73221	MRI UPPER EXTREMITY JOINT	902	902	902
73500	X-RAY HIP, UNIL, 1 VIEW	63	63	65
73510	X-RAY HIP, UNIL, COMP, MIN 2 VIEWS	81	70	75
73520	X-RAY HIPS, BIL, MIN 2 VIEWS EA SIDE	96	100	102
73540	X-RAY PELVIS & HIPS, INFNT/CHILD, MIN 2	73	73	73
73550	X-RAY FEMUR, A/P & LATERAL VIEWS	75	70	70
73560	X-RAY KNEE, A/P & LATERAL VIEWS	70	70	70
73562	X-RAY KNEE, AP & LAT, OBLIQ, MIN 3 VIEWS	75	80	80
73564	X-RAY KNEE, COMPLETE	91	91	91
73590	X-RAY TIBIA, & FIBULA, A/P & LATERAL	65	65	75
73600	X-RAY ANKLE, A/P & LATERAL	57	57	70
73610	X-RAY ANKLE, COMPLETE PROCEDURE	75	65	70
73620	X-RAY FOOT, A/P & LATERAL	54	57	55
73630	X-RAY FOOT, COMPLETE, MIN 3 VIEWS	70	70	70
73650	X-RAY CALCANEUS, MINIMUM 2 VIEWS	59	64	65
73660	X-RAY TOE(S), MINIMUM 2 VIEWS	59	56	57
73700	CAT SCAN LEG, W/O CONTRAST	486	486	486
73720	MRI LOWER EXTREMITY, NOT JOINT	891	908	918
73721	MRI LOWER EXTREMITY JOINT	907	896	891
74000	X-RAY ABDOMEN, SINGLE A/P VIEW	54	53	59
74010	X-RAY ABDOMEN, AP, OBLIQUE, CONE VIEWS	48	44	39
74020	X-RAY ABDOMEN, COMP, DECUB/ERECT	46	54	54
74022	X-RAY ABDOMEN, ACUTE SERIES	61	60	60
74150	CAT SCAN ABDOMEN, W/O CONTRAST	465	423	443
74160	CAT SCAN ABDOMEN, W/CONTRAST	575	471	513
74170	CAT SCAN ABD WO CONT FOLL BY CONT	624	578	583
74181	MRI, ABDOMEN	958	958	958
74210	X-RAY PHARYNX &/OR CERV ESOPHAGUS	108	108	108
74220	X-RAY ESOPHAGUS	114	112	113
74230	SWALLOW FUNCT, PHAR/ESOPH, CINE/VIDEO	140	140	140
74240	X-RAY UPPER GI, W/O KUB	159	173	178
74241	X-RAY UPPER GI, W/KUB	182	187	221
74245	X-RAY UPPER GI, W/SM BOWEL, MULT FILM	221	220	259
74246	UPPER GI SERIES/BARIUM, W/O KUB	174	190	209
74247	UPPER GI SERIES, BARIUM, W/KUB	216	223	226
74249	UPPER GI, BARIUM, W/SM BOWEL FOLLOW	284	284	300
74250	X-RAY SMALL BOWEL, INCL MULT FILMS	153	153	162
74270	CONTRAST X-RAY COLON, BARIUM ENEMA	167	166	199
74280	CONTRAST X-RAY COLON, BARIUM, AIR CONT	232	222	229
74290	CHOLECYSTOGRAPHY, ORAL CONTRAST	104	116	127
74300	CHOLANG/PANCREATOGRAPHY INTRAOP	52	52	52
74330	ENDOSC BILE/PANC DUCT, FLUOROSCOPIC	78	78	78
74400	UROGRAPHY/PYELOGRAPHY, IV, W WO KUB	168	168	173

ADOPTIONS

INSURANCE

74405	UROGRAPHY, IV, W/HYPERTENSIVE CONTR	210	210	210
74410	UROGRAPHY, INFUSION, DRIP/BOLUS TECH	188	188	188
74415	UROGRAPHY, INF, W/NEPHROMATOGRAPHY	198	216	226
74420	UROGRAPHY, RETROGRADE, W WO KUB	55	55	55
74431	CYSTOGRAPHY, MIN3 VIEWS, COMP PROC	151	151	151
74455	URETHROCYSTOGRAM, VOIDING, SUP/INTERP	137	137	137
74456	URETHROCYSTOGRAM, VOIDING, COMP PROC	235	235	235
74740	HYSTEROSALPINGOGRAPHY, SUPRV/INTERP	146	146	146
74741	HYSTEROSALPINGOGRPHY, COMPLETE PROC	253	253	269
75500	ANGIOGRAM/CINERADIOGRAPHY, SUP/INTRP	89	89	89
75754	COR ANGIO, BI, LFT VENT/SUPVALV, S/I	178	178	178
75821	VENOGRAPHY, EXTREMITY, UNI, COMP PROC	286	286	286
76000	FLUOROSCOPY, UP TO ONE HOUR	67	67	65
76140	CONSULT, XRAY MADE ELSEWHERE, WRITTEN	54	53	54
76150	XERORADIOGRAPHY	24	23	26
76370	CAT SCAN, GUIDE RADIOTHERAPY FIELDS	151	151	151
76375	CAT SCANS, OTHER PLANES	243	232	216
76499	DIAG RADIOLOGY, DEFAULT CODE	171	154	174
76506	ECHOENCEPHALOGRAPHY	101	101	101
76511	OPHTHALMIC ULTRASOUND, A-MODE	216	216	216
76512	OPHTHALMIC ULTRA, CONTACT B-SCAN	298	298	296
76516	OPHTHAL BIOMETRY, ULTRASOUND, A-MODE	188	196	216
76519	OPHTHAL BIOMETRY, W IOL POWER CALC	188	202	216
76536	ECHOGRAM, HEAD/NECK, B-SCAN/REAL TIME	182	182	191
76700	ECHOGRAM, ABDOMEN, W IMAGE DOCUMENT	226	213	221
76705	ECHOGRAM, ABDOMEN, LIMITED	203	168	173
76770	ECHOGRAM, RETROPERITONEAL, COMPLETE	232	221	226
76775	ECHOGRAM, RETROPERITONEAL, LIMITED	198	198	198
76805	ECHOGRAM, PREGNANT UTERUS, COMPLETE	243	216	216
76815	ECHOGRAM, PREGNANT UTERUS, LIMITED	177	146	162
76816	ECHOGRAM, PREG UTERUS, REPEAT/FOLOWUP	132	132	119
76818	FETAL BIOPHYSICAL PROFILE	223	223	216
76825	ECHOGRAM, FETAL HEART	243	243	243
76830	ECHOGRAM, TRANSVAGINAL	269	269	269
76855	ECHOGRAM, PELVIC AREA (DOPPLER)	246	246	246
76856	ECHOGRAM, PELVIC, NON-OB, COMPLETE	226	185	194
76857	ECHOGRAM, PELVIC, NON-OB, LTD/FOLLOW	147	164	180
76870	ECHOGRAM, SCROTUM AND CONTENTS	291	291	269
76872	ECHOGRAM, PROSTATE, TRANSRECTAL	311	311	311
76880	ECHOGRAM, EXTREMITY, NON-VASCULAR	246	246	246
76925	ECHO, PERIPH VASC (DOPPLER, BSCAN)	255	232	216
76926	ECHOGRAM, HEAD/TRUNK VASCULAR SYSTEM	269	269	269
76970	ULTRASOUND STUDY FOLLOW-UP	162	162	162
77261	RADIOTHERAPY PLANNING, SIMPLE	216	216	216
77280	SET RADIOTHERAPY FIELD, SIMPLE	135	135	135
77290	SET RADIOTHERAPY FIELD, COMPLEX	243	243	243
77300	BASIC RADIATION DOSIMETRY	107	107	107
77315	TELETHERAPY, ISODOSE, COMPLEX	287	287	287
77336	RADIATION PHYSICS CONSULT	140	140	140
77400	DAILY MEGAVOLT THERAPY, SIMPLE	54	54	54
77410	DAILY MEGAVOLT THERAPY, COMPLEX	175	175	175
77415	PORT VERIFICATION FILMS, PER COURSE	43	43	43
77420	WEEKLY RADIATION THERAPY, SIMPLE	735	735	735
77430	WEEKLY RADIATION THERAPY, COMPLEX	475	475	475
78000	THYROID UPTAKE, SINGLE DETERMINATION	86	86	86
78006	THYROID IMAGING W/UPTAKE, SINGLE	233	233	243
78007	THYROID IMAGING W/UPTAKE, MULTIPLE	171	171	171
78010	THYROID IMAGING, ONLY	107	107	107
78215	LIVER & SPLEEN IMAGING, STATIC ONLY	164	164	164
78220	LIVER FUNCTION STUDY	93	93	93
78223	HEPATOBIILIARY DUCT IMAGE, INCL GALL	145	145	145
78300	BONE IMAGING, LIMITED AREA	193	193	193
78305	BONE IMAGING, MULTIPLE AREAS	324	319	313
78306	BONE IMAGING, WHOLE SKELETON	296	269	269
78315	BONE SCAN, 3-PHASE TECHNIQUE	269	269	269
78351	BONE DENSITY, DUAL PHOTON ABSORPT	199	199	199
78415	CARDIAC BLOOD POOL, FUNCTIONAL IMAGE	188	188	188
78435	CARDIAC FLOW IMAGING	118	118	118
78460	MYOCARDIAL IMAGING, RESTING	258	258	254
78461	MYOCARDIAL IMAGING, EXERCISE	513	568	469
78464	MYOCARDIAL IMAGING, TOMOGRAM, REST	628	628	628

INSURANCE

ADOPTIONS

78465	MYOCARDIAL IMAGING, TOMOGR, EXERCISE	697	697	848
78470	CARDIAC OUTPUT	107	107	107
78471	CARDIAC BLOOD POOL, GATED EQ, EJ FRAC	246	246	265
78472	CARD BLD POOL, WALL MOTION, REG EJ FR	339	339	339
78481	CARD BLD POOL, 1ST PASS, EJ FRACTION	205	205	205
78484	CARD BLD, 1ST PASS, EJ FRAC, VENT VOL	269	269	269
78486	CARD BLD, 1ST PAS, EJ FRAC, EXER/PHARM	188	188	188
78487	CARD BLD, 1ST PAS, EJF, VENT VOL, EX/PH	702	702	702
78580	PULM PERFUSION IMAGING, PARTICULATE	115	115	113
78585	PULM PERF IMAGING, PARTIC, REBREATH	175	175	175
78587	PULM VENTILAT IMAGING, AEROSOL, MULT	113	113	113
78701	KIDNEY IMAGING W/VASCULAR FLOW	237	237	237
78707	KIDNEY IMAGING, VASC & FUNCT STUDIES	310	310	310
78802	RADIONUCLIDE LOCAL TUMOR, WHOLE BODY	178	178	178
78890	AUTOMATED DATA, NUCL MED, TO 30 MIN	115	115	115
78891	AUTOMATED DATA, NUCL MED, OVER 30 MIN	150	150	151
78990	PROVISION OF DIAG RADIONUCLIDES	89	89	107
80002	1-2 CLINICAL CHEM TESTS	35	35	35
80003	3 CLINICAL CHEMISTRY TESTS	25	25	25
80004	4 CLINICAL CHEMISTRY TESTS	24	24	24
80006	6 CLINICAL CHEMISTRY TESTS	51	51	51
80007	7 CLINICAL CHEMISTRY TESTS	26	26	26
80010	10 CLINICAL CHEMISTRY TESTS	29	29	29
80012	12 CLINICAL CHEMISTRY TESTS	37	37	37
80016	13-16 BLOOD/URINE TESTS	46	51	43
80018	17-18 BLOOD/URINE TESTS	41	37	43
80019	19 OR MORE BLOOD/URINE TESTS	37	42	37
80031	DRUG MONITORING, ONE DRUG	80	80	80
80050	GENERAL HEALTH SCREEN PANEL	53	54	54
80053	EXECUTIVE PROFILE	62	62	62
80055	OBSTETRIC PROFILE	82	82	82
80058	HEPATIC FUNCTION PANEL	45	45	45
80059	HEPATITIS PANEL	77	77	77
80061	LIPID PROFILE	48	51	54
80062	CARDIAC EVALUATION PANEL	51	51	51
80070	THYROID PANEL	51	47	48
80073	RENAL PANEL	43	43	43
80500	LAB PATHOLOGY CONSULTATION, LIMITED	39	39	39
81000	URINALYSIS WITH MICROSCOPY	12	12	13
81002	ROUTINE URINE ANALYSIS	12	12	10
81005	URINALYSIS, ANY #NO	11	11	11
81015	MICROSCOPIC EXAM OF URINE	8	8	8
82150	ASSAY OF SERUM AMYLASE	18	18	16
82172	APOLIPOPROTEIN IMMUNOASSAY	18	18	18
82250	ASSAY BLOOD BILIRUBIN	19	19	19
82270	TEST FECES FOR BLOOD	12	12	15
82310	ASSAY CALCIUM IN BLOOD, CHEMICAL	16	16	16
82372	ASSAY SERUM CARBAMAZEPINE	57	57	57
82374	ASSAY BLOOD CARBON DIOXIDE	11	11	11
82465	ASSAY SERUM CHOLESTEROL, TOTAL	16	15	15
82533	RIA ASSAY PLASMA CORTISOL	62	62	62
82550	ASSAY CPK IN BLOOD, T.K.U. METHOD	21	21	20
82565	ASSAY BLOOD CREATININE	15	15	15
82570	ASSAY URINE CREATININE	16	16	16
82607	RIA ASSAY FOR VITAMIN B-12	60	60	60
82643	RIA ASSAY FOR DIGOXIN	49	49	49
82660	TEST FOR DRUGS	67	67	67
82670	RIA ASSAY OF ESTRADIOL	71	71	71
82728	ASSAY FERRITIN	22	22	21
82746	BLOOD FOLIC ACID RIA	53	53	53
82756	FREE THYROXINE INDEX (T-7)	32	32	32
82784	ASSAY GAMMAGLOBULIN A/D/G/M	96	96	96
82785	ASSAY, GAMMAGLOBULIN E	69	69	69
82947	ASSAY BLOOD FLUID GLUCOSE	12	12	12
82948	STICK ASSAY OF BLOOD GLUCOSE	13	13	12
82950	GLUCOSE TEST	14	14	13
82951	GLUCOSE TOLERANCE TEST (GTT)	42	42	42
82952	GTT-ADDED SAMPLES	45	45	45
82977	ASSAY OF GGT ENZYME	15	15	15
83001	PITUITARY GONADOTROPIN RIA	66	66	66
83002	PITUITARY GONADOTROPINS RIA	59	59	59

ADOPTIONS

INSURANCE

83020	ASSAY HEMOGLOBIN	13	13	12
83036	GLYCOSYLATED HEMOGLOBIN TEST	38	38	39
83540	ASSAY SERUM IRON	15	15	15
83545	AUTO-ASSAY SERUM IRON	24	24	24
83550	SERUM IRON BONDING TEST	31	31	31
83555	SERUM IRON BINDING, AUTO-TEST	12	12	12
83705	ASSAY BLOOD LIPID GROUPS	29	29	29
83718	ASSAY BLOOD LIPOPROTEIN, PRECIP	17	18	15
83719	BLOOD LIPOPROTEIN ASSAY, ULTRACENT	33	33	33
83720	BLOOD LIPOPROTEIN ASSAY, FRACT CALC	16	16	16
83725	ASSAY BLOOD LITHIUM	27	27	26
83735	ASSAY BLOOD MAGNESIUM, CHEMICAL	25	25	25
84045	ASSAY PHENYTOIN	57	57	57
84065	ASSAY PROSTATE PHOSPHATASE, FRACTION	41	41	41
84075	ASSAY ALKALINE PHOSPHOTASE, BLOOD	15	15	15
84132	ASSAY BLOOD POTASSIUM	13	13	12
84144	ASSAY PROGESTERONE	62	62	68
84146	RIA ASSAY FOR PROLACTIN	79	79	80
84165	ASSAY SERUM PROTEINS, ELEC FRAC, QUAN	42	42	42
84180	ASSAY URINE PROTEIN	30	30	30
84231	RADIOIMMUNOASSAY	94	94	94
84233	ASSAY ESTROGEN	43	43	43
84295	ASSAY BLOOD SODIUM	19	19	19
84403	RIA ASSAY BLOOD TESTOSTERONE	95	95	95
84420	ASSAY THEOPHYLLINE	54	54	54
84435	ASSAY THYROXINE (T-4)	25	25	25
84436	RIA ASSAY, TRUE THYROXINE	22	24	21
84439	RIA ASSAY, FREE THYROXINE	53	53	50
84443	ASSAY THYROID STIM HORMONE	60	59	66
84450	UV-ASSAY TRANSDAMINASE (SGOT)	14	14	14
84460	UV-ASSAY TRANSAMINASE (SGPT)	14	14	14
84478	ASSAY BLOOD TRIGLYCERIDES	18	18	16
84479	ASSAY TRIIODOTHYTONINE (T-3)	16	16	15
84480	RIA ASSAY, TT-3	58	58	64
84520	ASSAY BUN	12	12	13
84550	ASSAY BLOOD URIC ACID	19	19	19
84702	CHORIONIC GONADOTROPIN TEST	58	58	60
84703	CHORIONIC GONADOTROPIN ASSAY	29	29	30
84999	CLINICAL CHEMISTRY TEST	90	90	90
85005	BASOPHIL BLOOD CELL COUNT	15	15	15
85007	DIFFERENTIAL WBC COUNT, W/MORPH+PLT	12	12	11
85009	DIFFERENTIAL WBC COUNT, BUFFY COAT	9	9	9
85014	HEMATOCRIT	12	10	12
85018	HEMOGLOBIN, COLORIMETRIC	12	10	10
85021	AUTOMATED HEMOGRAM, R/WBC, HGB, HCT, IN	17	15	16
85022	AUTOMATED HEMOGRAM, MAN DIFF, WBC	19	21	21
85023	AUTOMATED HEMOGRAM, PLAT, AUT+MAN, CBC	31	31	25
85024	AUTOMATED HEMOGRAM, PLT, AUT+AUT PART	27	30	26
85025	AUTO HEMOGRAM, PLATLETE, AUT+AUT COMP	18	18	18
85027	AUTOMATED HEMOGRAM, HEM+PLAT COUNT	23	22	23
85029	AUTOMATED HEMOGRAM, RDW+MPV 1-3 IND	4	4	4
85031	MANUAL HEMOGRAM, COMPLETE CBC	21	20	21
85044	RETICULOCYTE COUNT	15	15	15
85060	BLOOD SMEAR INTERPRETATION	37	37	37
85100	BONE MARROW EXAMINATION	269	269	269
85580	BLOOD PLATELET COUNT	15	15	15
85595	ELECTRONIC PLATELET COUNT	14	15	14
85610	PROTHROMBIN TIME	16	15	14
85650	RBC SEDIMENTATION RATE, WINTROBE	16	15	16
85651	RBC SEDIMENTATION RATE, WESTERGREN	15	15	14
85730	THROMBOPLASTIN TIME, PART, PLAS/WHOLE	23	23	22
86006	ANTIBODY, QUALITATIVE, FIRST	26	26	26
86008	ANTIBODY, QUANT., FIRST	54	54	54
86016	RBC SALINE ANTIBODIES, HP+ANTIHUMAN	18	18	18
86038	ANTINUCLEAR ANTIBODIES, RIA	42	42	42
86060	ANTISTREPTOLYSIN O TITER	32	32	32
86082	BLOOD TYPING, ABO & RHO(D)	23	23	20
86100	BLOOD TYPING, RHO(D) ONLY	6	6	6
86128	BLOOD AUTOTRANSFUSION	432	432	432
86140	C-REACTIVE PROTEIN	25	25	25
86149	CARCINOEMBRYONIC ANTIGEN, GEL	66	66	66

INSURANCE

ADOPTIONS

86151	CEA ASSAY, RIA OR EIA	74	74	77
86171	COMPLEMENT FIXATION, EACH	58	58	64
86225	DNA ANTIBODY	62	62	62
86244	ASSAY ALPHA-1 FETROPROTEIN	65	65	65
86255	FLUORESCENT ANTIBODY; SCREEN	78	78	83
86256	FLUORESCENT ANTIBODY; TITER	68	68	68
86280	HEMAGGLUTINATION INHIBITION	30	30	30
86287	HEPATITIS HAA, RIA, OR EIA	32	32	31
86289	HEPATITIS BC ANTIBODY TEST, HBCAB	49	49	49
86291	HEPATITIS BS ANTIBODY TEST, HBSAB	37	37	37
86296	HEPATITIS A ANTIBODY TEST, HAAB	51	51	51
86300	HETEROPHILE ANTIBODY SCREEN	20	20	20
86310	HETEROPHILE ANTIBODIES	35	35	35
86312	HIV ANTIBODY DETECTION	51	51	51
86316	IMMUNOASSAY, TUMOR ANTIGEN	61	61	63
86317	IMMUNOASSAY, INFECTIOUS AGENT	67	74	60
86319	IMMUNOASSAY TECHNIQUE FOR DRUGS	54	54	54
86329	IMMUNODIFFUSION, EACH	67	67	67
86357	LYMPHOCYTES, T&B DISTINCTION	179	179	179
86403	RAPID TEST, INFECTIOUS AGENT	20	20	19
86421	RADIOALLERGOSORBENT TESTS, 5/ <	34	34	34
86422	RADIOALLERGOSORBENT TESTS, 6/ >	346	346	346
86423	RADIOIMMUNOSORBENT TEST IGE, QUANT	58	58	58
86430	RHEUMATOID FACTOR TEST	18	18	16
86580	TB INTRADERMAL TEST	15	15	15
86585	TB TINE TEST	14	13	15
86592	BLOOD SEROLOGY, QUALITATIVE	15	15	14
86999	IMMUNOLOGY PROCEDURE	82	82	82
87015	SPECIMEN CONCENTRATION	32	32	32
87040	BLOOD CULTURE FOR BACTERIA	51	51	54
87045	STOOL CULTURE FOR BACTERIA	45	45	45
87060	NOSE/THROAT CULTURE, BACTERIA	15	15	16
87070	CULTURE SPECIMEN, BACTERIA	35	32	36
87072	CULTURE OF SPECIMEN BY KIT	20	18	21
87081	BACTERIA CULTURE SCREEN	18	16	19
87082	CULTURE OF SPECIMEN BY KIT, SINGLE	19	19	19
87084	CULTURE OF SPECIMEN BY KIT, COL EST	19	19	19
87085	CULTURE OF SPECIMEN BY KIT, COL CNT	15	15	15
87086	URINE CULTURE, COLONY COUNT	30	26	31
87087	URINE BACTERIA CULTURE, COMMERC KIT	22	22	24
87088	URINE BACTERIA CULTURE, ID+COM KIT	26	26	26
87101	SKIN FUNGUS CULTURE	25	25	25
87102	FUNGUS ISOLATION CULTURE	38	38	38
87106	FUNGUS IDENTIFICATION	26	26	26
87109	MYCOPLASMA CULTURE	74	74	74
87110	CULTURE, CHLAMYDIA	80	80	80
87177	OVA AND PARASITES SMEARS	63	63	63
87184	ANTIBIOTIC SENSITIVITY, EACH, DISC	25	25	22
87186	ANTIBIOTIC SENSITIVITY, MIC	16	16	16
87205	SMEAR, STAIN & INTERPRET, ROUTINE	17	17	17
87210	SMEAR, STAIN & INTERPRET, WET+SIMPLE	16	16	15
87253	VIRUS INOCULATION FOR TEST, ADDL STD	70	70	70
87999	MICROBIOLOGY PROCEDURE	26	26	26
88104	CYTOPATHOLOGY, W/CENTRIF, WO/CRV+VAG	73	73	71
88108	CYTOPATHOLOGY, CONCENTRATION	102	102	102
88150	CYTOPATHOLOGY, PAP SMEAR, TECH	19	21	21
88151	CYTOPATHOLOGY INTERPRETATION, PHYS	21	21	21
88155	CYTOPATHOLOGY, PAP SMEAR, W/HORMONAL	25	23	21
88160	CYTOPATHOLOGY, ANY OTHER SOURCE	46	46	46
88161	CYTOPATHOLOGY, PREP, SCRN+INTERPET	9	9	9
88170	FINE NEEDLE ASPIRATION, W/NO PREP	136	136	136
88173	INTERPRETATION OF SMEAR	118	118	118
88267	CHROMOSOME ANALYSIS:PLACENTA	626	626	626
88300	SURGICAL PATHOLOGY, GROSS	28	28	26
88302	SURGICAL PATHOLOGY, COMP, NORM TISS	48	50	48
88304	SURGICAL PATHOLOGY, COMP, ABNORM TSS	73	80	75
88305	SURGICAL PATHOLOGY, COMP, WO/COMPLEX	124	124	129
88307	SURGICAL PATHOLOGY, COMP, COMPLEX	192	192	194
88309	SURGICAL PATHOLOGY, COMP, COMPLEX, DIS	269	269	269
88311	DECALCIFY TISSUE	21	21	21
88312	SPECIAL STAINS, GROUP 1	65	65	65

ADOPTIONS

INSURANCE

88313	SPECIAL STAINS, GROUP2+OTHERS	21	21	21
88346	IMMUNOFLUORESCENT STUDY	42	42	42
88399	SURGICAL PATHOLOGY PROCEDURE	43	43	43
90000	OFFICE/OP VISIT, NEW, BRIEF	49	60	59
90010	OFFICE/OP VISIT, NEW, LTD	54	54	56
90015	OFFICE/OP VISIT, NEW, INTERM	66	66	81
90017	OFFICE/OP VISIT, NEW, EXTEND	91	87	107
90020	OFFICE/OP VISIT, NEW, COMPRH	129	107	118
90030	OFFICE/OP VISIT, EST, MINIM	32	32	32
90040	OFFICE/OP VISIT, EST, BRIEF	37	43	43
90050	OFFICE/OP VISIT, EST, LTD	44	44	53
90060	OFFICE/OP VISIT, EST, INTERM	48	48	54
90070	OFFICE/OP VISIT, EST, EXTEND	70	64	75
90080	OFFICE/OP VISIT, EST, COMPRH	86	81	91
90150	HOME VISIT, LIMITED	82	82	82
90200	HOSPITAL CARE, NEW, BRIEF	142	142	145
90215	HOSPITAL CARE, NEW, INTERMED.	148	139	162
90220	HOSPITAL CARE, NEW, COMPREH.	162	162	167
90225	HOSPITAL CARE, NEW, NEWBORN	152	138	135
90240	HOSPITAL VISIT, BRIEF	50	50	60
90250	HOSPITAL VISIT, LIMITED	55	55	61
90260	HOSPITAL VISIT, INTERMEDIATE	58	55	61
90270	HOSPITAL VISIT, EXTENDED	73	69	81
90280	HOSPITAL VISIT, COMPREHENSIVE	91	82	91
90282	NORMAL NEWBORN CARE, HOSPITAL	85	85	81
90292	HOSPITAL DISCHARGE DAY	81	81	91
90350	SKILLED NURSING FACILITY SUBSEQUENT CARE; LIMITED SERVICE	42	42	42
90360	SKILLED NURSING FACILITY SUBSEQ CARE INTERMED SERVICE	43	43	43
90450	NURSING HOME ESTABLISHED PATIENT LIMITED SERVICE	48	48	48
90460	NURSING HOME ESTABL PATIENT INTERMEDIATE SERVICE	57	57	57
90510	EMERGENCY CARE, NEW, LIMITED	72	72	72
90515	EMERGENCY CARE, NEW, INTERMED	100	100	101
90517	EMERGENCY CARE, NEW, EXTEND.	139	139	139
90600	LIMITED CONSULTATION	102	102	107
90605	INTERMEDIATE CONSULTATION	131	131	135
90610	EXTENDED CONSULTATION	140	162	162
90620	COMPREHENSIVE CONSULTATION	178	178	194
90630	COMPLEX CONSULTATION	216	189	216
90640	BRIEF FOLLOW-UP CONSULT	68	68	68
90641	LIMITED FOLLOW-UP CONSULT	76	76	81
90642	INTERMEDIATE FOLLOWUP CONSULT	86	86	105
90643	COMPLEX FOLLOW-UP CONSULT	124	124	135
90650	2ND OR 3RD OPINION, LIMITED	113	113	113
90652	2ND OR 3RD OPINION, EXTENDED	162	162	162
90653	2ND OR 3RD OPINION, COMPREHENSIVE	135	135	135
90701	DTP IMMUNIZATION	31	31	31
90707	MMR VIRUS IMMUNIZATION	51	51	51
90712	ORAL POLIOVIRUS IMMUNIZATION	28	28	28
90761	PREVENTIVE MEDICINE, 12-17	51	51	51
90762	PREVENTIVE MEDICINE, 5-11	46	46	46
90763	PREVENTIVE MEDICINE, 1-4	45	45	45
90764	PREVENTIVE MEDICINE, INFANT	44	44	48
90782	INJECTION SUBCU/(IM)	27	29	26
90801	DIAGNOSTIC INTERVIEW, PSYCH	197	197	237
90843	INDIVIDUAL PSYCHOTHERAPY, 20-30 MIN	78	78	78
90844	INDIVIDUAL PSYCHOTHERAPY, 45-50 MIN	128	129	129
90900	BIOFEEDBACK TRNG BY ELECTROMYOGRAM	108	110	110
90935	HEMODIALYSIS, SINGLE EVAL	1868	1868	1868
92004	EYE EXAM & TREATMENT, NEW PT, COMP	75	75	75
92012	EYE EXAM & TREATMENT	57	57	59
92014	EYE EXAM & TREATMENT	75	75	75
92020	GONIOSCOPY W/EVALUATION	59	59	59
92081	VISUAL FIELD EXAM, LIMITED	57	57	57
92082	VISUAL FIELD EXAM, INTERMEDIATE	65	65	65
92083	VISUAL FIELD EXAM, ENTENDED	89	89	89
92100	SERIAL TONOMETRY, 1 OR MORE SESSIONS	42	42	42
92225	OPHTHALMOSCOPY, EXTENDED, INITIAL	126	126	126
92226	OPHTHALMOSCOPY, EXTENDED, SUBSEQUENT	65	65	65
92235	OPHTHALMOSCOPY W/ANGIOGRAPHY	287	287	287

INSURANCE

ADOPTIONS

92250	OPHTHALMOSCOPY W/FUNDUS PHOTOGRAPHY	74	74	74
92551	PURE TONE AUDIOMETRY, AIR ONLY	24	24	24
92552	PURE TONE AUDIOMETRY, AIR & BONE	33	33	33
92553	AUDIOMETRY, AIR & BONE	47	47	47
92557	COMPREHENSIVE AUDIOMETRY	80	80	72
92566	IMPEDANCE HEARING TEST	30	30	32
92567	TYMPANOMETRY	24	22	26
92982	PERCUT TRNSLUMINL CORN ANGIO; 1 VESL	3207	3207	3241
93000	ELECTROCARDIOGRAM, COMPLETE	54	54	59
93010	ELECTROCARDIOGRAM REPORT	38	37	43
93014	REPORT ON TRANSMITTED ECG	40	40	40
93015	CARDIOVASC STRESS TEST, TRAC/INTERP	291	269	296
93018	CARDIOVASC STRESS TEST, INTERP ONLY	183	183	188
93040	RHYTHM ECG WITH REPORT	47	47	47
93042	RHYTHM ECG, REPORT	27	27	27
93224	24 HR ECG, SCANNER, RECORD/INTERP	322	322	322
93227	24 HR ECG, SCANNER, REV/INTERP ONLY	162	162	162
93307	ECHOCARDIOGRAPHY, REALTIME, COMPLETE	342	308	376
93320	DOPPLER ECHOCARDIOGRAPHY, COMPLETE	257	257	232
93325	DOPPLER COLOR FLOW VELOCITY MAPPING	162	162	162
93501	HEART CATHETERIZATION RIGHT, ONLY	1117	1117	1117
93503	HEART CATH RT; W/SWAN-GANZ CATH	774	756	809
93545	INJ FOR SELECT CORONARY ANGIOGRAPHY	1242	1242	1242
93547	HRT CATH LFT COR ANG & VENT ANG	1583	1620	1566
93548	HRT CAT LFT COR ANG VENT AORT RT AO	1539	1539	1539
93549	HRT CAT RT & LFT COR ANG VENT ANG	1674	1755	1993
93552	LT HRT CAT COR ANG VEN CIN; VIS BYPS	2183	2183	2183
93553	LT CT COR ANG/VEN CIN; VISL; AORTGPHY	2106	2106	2106
93762	PERIPHERAL THERMOGRAM	432	432	432
93870	CAROTID ARTERY IMAGING	397	397	432
93910	LOWER LIMB ARTERY STUDY	257	257	256
93950	NONINVASIVE EXTREMITY VEIN STUDIES	171	171	171
93960	QUANTITATIVE VENOUS FLOW STUDIES	269	269	269
94010	SPIROMETRY	64	57	65
94060	BRONCHOSPASM EVALUATION	127	127	135
94160	VITAL CAPACITY SCREENING	25	25	25
94240	RESIDUAL LUNG CAPACITY	81	81	81
94375	RESPIRATORY FLOW VOLUME LOOP	88	88	84
94700	BLOOD GAS ANALYSIS, REST ONLY	60	60	60
94720	CARBON MONOXIDE DIFFUSING CAPACITY	107	107	107
95000	PERCUTANEOUS ALLERGY TESTS: 1-30	79	79	79
95020	INTRCUT TSTS, EXTRACTS, 15-20 MIN: <11	76	76	76
95021	INTRCUT TSTS, EXTRCTS, 15-20 MN:11-20	107	107	107
95115	IMMUNOTHERAPY, 1 INJ, PROF SERV ONLY	26	26	26
95117	IMMUNOTHERAPY INJECTIONS, PROF SERV	23	23	26
95120	IMMUNOTHERAPY, 1 ANTIGEN, COMPLETE	27	27	27
95125	IMMUNOTHERAPY, MULTIPLE ANT, COMP	30	30	37
95155	SUPRV/PRV SNG/MLT ANTS, >1 MULT DOSE	133	133	133
95819	EEG, STANDARD/PORTABLE, SAME FACILITY	166	162	162
95860	ELECTROMYOGRAPHY, 1 LIMB	265	265	265
95861	ELECTROMYOGRAPHY, 2 LIMBS	314	314	314
95869	ELECTROMYOGRAPHY, SPECIFIC MUSCLES	179	179	179
95900	MOTOR NERVE CONDUCTION TESTING, EA	122	116	122
95904	SENSORY NERVE CONDUCTION TESTING, EA	116	110	122
96900	ACTINOTHERAPY (ULTRAVIOLET LIGHT)	21	21	21
96912	PHOTOCHEMOTHERAPY: PSORALENS & PUVA	32	32	32
97010	PHYS MED TRI 1 AREA HOT/COLD PACKS	31	38	34
97012	PHYS MED TRI 1 AREA, TRACTION MECH	35	35	35
97014	PHYSICAL MEDICINE TREATMENT TO ONE AREA; ELECTR STIMULATION	27	27	33
97018	PHYSICAL MEDICINE TREATMENT TO ONE AREA: PARAFFIN BATH	37	37	37
97022	PHYSICAL MEDICINE TREATMENT TO ONE AREA: WHIRLPOOL	30	30	30
97024	PHYSICAL MEDICINE TREATMENT TO ONE AREA: DIATHERMY	21	21	21
97110	PHYSIOTHERAPY: THERAPEUTIC EXERCISE	55	60	55
97118	PHYS MED TRT TO ONE AREA; INIT 30 MIN; ELECTRICAL STIMULAT	46	46	46
97124	PHYS MED TRT TO ONE AREA; INIT 30 MIN; MASSAGE	32	32	34
97128	PHYSIOTHERAPY: ULTRASOUND	33	37	37

ADOPTIONS

INSURANCE

97145	PHYS MED TRT TO ONE AREA EA ADD'L 15 MIN	17	17	17
97240	POOL THERAPY/HUBBARD TANK W THERAPEUTIC EXERCISES, INIT 30 MI	37	37	37
97260	MANIPULATION, PERFORMED BY PHYSICIAN; ONE AREA	45	45	45
97530	KINETIC ACTIV INCREASE COORD, STRENGTH, 1 AREA; INIT 30 MIN EA VI	65	65	72
97700	VISIT WITH ORTHOT/PROSTH/ADL CHECK, 30 MIN	60	60	56
97720	EXTREMITY TEST/STRENGTH, DEXTERITY, STAMINA; 30 MIN; EA VISIT	60	60	60
99000	SPECIMEN HANDLING, DOC TO LAB	11	10	12
99050	AFTER HOURS, ADD TO BASIC SERVICE	54	54	54
99058	OFFICE EMERGENCY CARE	52	52	52
99172	CRITICAL CARE, FOLLOW-UP, LIMITED	140	140	140
99173	CRITICAL CARE, FOLLOW-UP, INTERMED	220	220	220

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 dental services:

**STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE—DENTAL SERVICES**

ADA Code	Description of Services	Region 1	Region 2	Region 3
0110	INITIAL ORAL EXAM	24	26	28
0120	PERIODIC ORAL EXAM	18	21	21
0121	RECALL EXAM-ADULT (W/X RAYS & PROPHY)	68	70	79
0122	RECALL EXAM-CHILD (W/X RAYS, PROPHY, FLUOR)	68	65	72
0123	RECALL EXAM-CHILD W/X-RAYS, PROPHY, FLUO	54	61	62
0124	RECALL EXAM-ADULT, W/PROPHY	58	54	61
0130	EMERGENCY ORAL EXAM	27	27	30
0210	FULL MOUTH X-RAY SERIES	55	55	61
0220	X-RAY, PERIAPICAL, FIRST FILM	8	10	10
0222	X-RAY INTRA-ORAL TWO FILMS	15	15	16
0223	X-RAY INTRA-ORAL THREE FILMS	19	19	22
0224	X-RAY INTRA-ORAL FOUR FILMS	24	27	27
0225	X-RAY INTRA-ORAL FIVE FILMS	29	30	32
0226	X-RAY INTRA-ORAL SIX FILMS	33	32	37
0227	X-RAY INTRA-ORAL SEVEN FILMS	42	40	43
0228	X-RAY INTRA-ORAL EIGHT FILMS	41	43	48
0229	X-RAY INTRA-ORAL NINE FILMS	46	48	48
0230	X-RAY, PERIAPICAL, ADDITIONAL FILM	5	5	6
0240	X-RAY, INTRAORAL OCCLUSAL FILM	18	20	21
0270	X-RAY, BITEWING, SINGLE FILM	10	10	10
0272	BITEWING X-RAYS, TWO FILMS	16	16	17
0273	BITEWING X-RAYS, THREE FILMS	18	20	22
0274	BITEWING X-RAYS, FOUR FILMS	22	21	26
0280	BITEWING X-RAY, ADDITIONAL FILM	5	5	5
0290	X-RAY POST-ANT-LAT-SKLL FCL BN SURV	54	54	54
0321	X-RAY TMJ SINGLE FILM	36	36	36
0330	PANORAMIC X-RAY SERIES	48	51	55
0340	CEPHALOMETRIC FILM	50	53	55
0410	BACTERIOLOGIC CULTURE	22	24	21
0450	HISTOPATHOLOGIC EXAMINATION	63	63	64
0460	PULP VITALITY TESTS	20	21	24
0470	DIAGNOSTIC CASTS	43	46	45
0471	DIAGNOSTIC PHOTOGRAPHS	26	26	25
1110	PROPHYLAXIS, ADULT-INCL. SCALING	42	48	49
1120	PROPHYLAXIS, CHILD-INCL. SCALING	28	31	32
1201	TOPICAL APPL OF FLUORIDE W/PROPHYLAXIS	40	40	49
1203	TOPICAL APPL OF FLUORIDE	17	18	21
1210	FLUORIDE SOD TOP APPL 4 EXCL PROPH	16	16	19
1211	TOP APPL SOD FLUOR 4 INCL PROPHYL	47	53	53
1220	FLUORIDE STAN TOP APPL 1 EXCL PROPH	17	19	21
1221	TOP APPL STAN FLUOR 1 INCL PROPHYL	43	45	53
1230	TOPICAL APPL OF FLUORIDE	17	19	21
1231	APPLICATION OF FLUORIDE W/PROPHYLAXIS	43	44	51
1330	ORAL HYGIENE INSTRUCTION	23	28	25
1340	TRAINING IN PREVENTIVE DENTAL CARE	30	30	28
1350	TOPICAL APPL OF SEALANT, PER QUAD	39	32	37
1351	TOPICAL APPL OF SEALANT, PER TOOTH	24	26	29
1510	SPACE MAINTAINER-FIXED UNILATERAL	168	196	188
1515	SPACE MAINTAINER-FIXED BILATERAL	285	306	257

INSURANCE

ADOPTIONS

1550	RECEMENTATION OF SPACE MAINTAINER	33	33	33
2110	AMALGAM, ONE SURFACE, PRIMARY TOOTH	44	43	44
2120	AMALGAM, TWO SURFACES, PRIMARY TOOTH	57	64	64
2130	AMALGAM, THREE SURFACES, PRIMARY TOOTH	76	83	83
2131	AMALGAM, FOUR SURFACES, PRIMARY TOOTH	98	101	98
2140	AMALGAM, ONE SURFACE, PERM. TOOTH	42	45	49
2150	AMALGAM, TWO SURFACES, PERM. TOOTH	57	64	65
2160	AMALGAM, THREE SURFACES, PERM. TOOTH	74	81	86
2161	AMALGAM, 4+ SURFACES, PERMANENT	91	100	107
2170	RESTORATION AMALGAM PIN RETAINED	79	79	79
2190	PIN RETENTION, EXCLSV E OF AMLGM, PER PIN	20	20	24
2210	SILICATE RESTORATION, ONE SURFACE	18	16	20
2310	ACRYLIC OR PLASTIC RESTORATION	30	30	37
2330	COMPOSITE-ONE SURFACE	52	55	60
2331	COMPOSITE-TWO SURFACES	71	77	83
2332	COMPOSITE-THREE SURFACES	92	102	105
2334	PIN RETENTION	22	26	26
2335	COMPOSITE INVOLVING INCISAL ANGLE	114	125	135
2336	LIGHT CURED COMPOSITE-INCISAL	137	151	158
2337	LIGHT CURED COMPOSITE, 1 SUR W/ACID ETCH	59	64	70
2338	LIGHT CURED COMPOSITE, 2 SUR W/ACID ETCH	81	86	97
2339	LIGHT CURED COMPOSITE, 3 SUR W/ACID ETCH	112	118	135
2340	ACID ETCH FOR RESTORATION	28	26	31
2510	GOLD INLAY, 1 SURFACE	294	294	294
2520	GOLD INLAY, 2 SURFACES	423	423	415
2525	2 SURFACE INLAY INCLUDING ONLAY	545	545	551
2530	3-SURFACE GOLD FOIL	507	505	508
2535	3 SURFACE INLAY INCLUDING ONLAY	649	622	643
2540	ONLAY PER TOOTH (IN ADD'N TO INLAY)	481	501	505
2630	INLAY, PORCELAIN/CERAMIC, THREE SURFACES	495	495	492
2710	CROWN, PLASTIC (ACRYLIC)	201	206	246
2711	CROWN, PLASTIC (ACRYLIC-PREFABRICATED)	169	186	157
2720	CROWN, RESIN/HIGH NOBLE METAL	591	550	603
2722	CROWN, RESIN/NOBLE METAL	518	518	518
2740	CROWN, PORCELAIN	567	625	605
2750	CROWN, PORCELAIN/HIGH NOBLE	555	605	628
2751	CROWN, PROCELAIN/BASE METAL	540	552	580
2752	CROWN, PORCELAIN/NOBLE METAL	534	560	588
2790	GOLD/HIGH NOBLE METAL	626	608	648
2791	BASE METAL FULL CAST	474	438	482
2792	NOBLE METAL FULL CAST	553	537	589
2810	CROWN, 3/4 CAST-GOLD	656	613	672
2830	CROWN, STAINLESS STEEL (PREFABRICATED)	131	143	160
2840	TEMPORARY CROWN-FRACTURED TOOTH	106	91	102
2891	CAST POST & CORE (IN ADD'N TO CROWN)	1056	864	864
2892	PREFAB. POST & CORE (IN ADD'N TO CROWN)	158	170	182
2910	RE-CEMENT INLAY	39	41	45
2920	RECEMENT CROWN	37	41	42
2930	PREFAB STAINLESS STEEL CROWN-PRIMARY	124	133	151
2932	PREFABRICATED RESIN CROWN	153	153	153
2940	SEDATIVE FILLING	42	43	46
2950	CROWN BUILDUP, PIN OR POST RETAINED	126	134	148
2951	PIN RETN. PER TOOTH IN ADD'N TO RESTOR.	19	19	24
2952	CAST POST & CORE IN ADD'N TO CROWN	187	212	212
2954	PREFAB POST & CORE IN ADD'N TO CROWN	150	159	175
2960	LABIAL VENEER (LAMINATE) CLAIRSIDE	334	314	328
2962	LABIAL VENEER (PORCELAIN LAMINATE) LAB.	373	425	425
2980	REPAIR TO CROWN	133	123	133
3110	PULP CAP, DIRECT-OVER PULP EXPOSURE	31	30	37
3120	PULP CAP, INDIRECT	25	25	30
3130	RECALCIFICATION TEMPORARY PER TOOTH	40	40	40
3220	VITAL PULPOTOMY	85	82	80
3310	ROOT CANAL THERAPY, ONE CANAL	340	319	327
3315	RT CANAL THER 1 EXC RST-TRADITIONAL	324	351	351
3320	ROOT CANAL THERAPY, TWO CANALS	401	399	407
3325	RT CANAL THER 2 EXC RST-TRADITIONAL	405	432	459
3330	ROOT CANAL THERAPY, THREE CANALS	501	516	521
3335	RT CANAL THER 3 EXC RST-TRADITIONAL	497	541	568
3340	ROOT CANAL THERAPY, FOUR CANALS	539	610	591
3410	APICOECTOMY (AND/OR) CURETTAGE, SEP SURG PR	288	300	327
3411	APICOECTOMY PER TOOTH, EA ADD'L ROOT	186	186	186

ADOPTIONS

INSURANCE

3420	APICOECTOMY W/ENDODONTIC PROC PER ROOT	314	318	310
3430	RETROGRADE FILLING (PER ROOT)	101	90	92
3440	APICAL CURETTAGE	147	140	132
3450	ROOT AMPUTATION (PER ROOT)	217	195	238
3920	HEMISECTION	177	166	194
3940	RECALCIFICATION	20	20	20
3950	CANAL PREP & PREFITTING PREFORMED POST	56	56	52
3960	BLEACHING DISCOLORED TOOTH	73	72	73
4210	GINGIVECTOMY/GINGIVOPLASTY PER QUAD	259	273	264
4211	GINGIVECTOMY/GINGIVOPLASTY SINGLE SITE	104	106	106
4212	GINGIVECTOMY PER TOOTH LESS THAN 5	71	81	81
4220	GINGIVAL CURETTAGE PER QUADRANT	102	109	104
4240	GINGIVAL FLAP PROCEDURES	309	325	371
4250	MUCOGINGIVAL SURGERY PER QUADRANT	330	330	330
4260	OSSEOUS SURGERY, PER QUADRANT	628	570	597
4261	OSSEOUS GRAFT, SINGLE SITE	271	244	296
4262	OSSEOUS GRAFT, MULTIPLE SITES	380	380	380
4263	OSSEOUS SURGERY, SINGLE SITE	398	398	425
4270	PEDICLE SOFT TISSUE GRAFTS	391	391	391
4271	FREE SOFT TISSUE GRAFTS	365	419	422
4272	APICALLY REPOSITIONING FLAP	334	334	334
4320	PROVISIONAL SPLINT, INTRACORONAL	94	100	97
4321	PROVISIONAL SPLINT, EXTRACORONAL	80	80	98
4330	OCCCLUSAL ADJUSTMENT, LIMITED	45	50	52
4331	OCCCLUSAL ADJUSTMENT, COMPLETE	199	172	176
4340	PERIO SCALING & ROOT PLANING, FULL MOUTH	112	91	105
4341	PERIO SCALING & ROOT PLANING, PER QUAD	115	108	107
4345	SCALING-GINGIVAL INFLAMMATION	55	55	55
4360	APPLIANCE TO BREAK HARMFUL HABIT	270	270	296
4361	APPLIANCE FOR BRUXISM	266	266	292
4910	PERIODONTAL PROPHYLAXIS	65	69	75
5110	COMPLETE UPPER DENTURE	630	689	739
5120	COMPLETE LOWER DENTURE	633	705	739
5130	IMMEDIATE UPPER DENTURE	694	769	796
5140	IMMEDIATE LOWER DENTURE	685	745	804
5211	PARTIAL DENTURE, UPPER	431	468	506
5212	PARTIAL DENTURE, LOWER	569	555	601
5213	PARTIAL DENTURE, UPPER	872	827	871
5214	LOWER PARTIAL	723	794	830
5215	UPPER PARTIAL DENTURE	780	810	800
5216	PARTIAL DENTURE, LOWER	745	745	781
5217	DENT PART LOWER 2 GOLD CLASPS ACR	718	718	718
5218	PARTIAL DENTURE, LOWER	796	796	847
5230	PARTIAL DENTURE-LOWER	726	726	702
5231	PARTIAL DENTURE-LOWER	676	784	730
5240	DENT PART LWR LGL BAR 2 CLSP CST BS	750	750	750
5241	DENT PART LOWER CHROME LNGL BAR CST	745	757	757
5250	PARTIAL DENTURE-UPPER	702	702	701
5251	PARTIAL DENTURE-UPPER	676	756	703
5261	DENT PART UPPER CHROME PLTL BAR CST	750	757	757
5281	UNILATERAL PARTIAL DENTURE	388	388	388
5310	DENT PART ADDTL CLASP WITH RST EACH	81	81	81
5410	DENTURE ADJUSTMENT	36	35	38
5415	DENT ADJUST COMPL OR PART U OR L	35	35	35
5421	LOWER PARTIAL DENTURE ADJUSTMENT	31	31	31
5510	REPAIR BROKEN COMPLETE DENTURE BASE	81	74	89
5520	REPL. EA. MISS/BROKEN TOOTH COM. DEN.	61	55	68
5610	DENTURE REPAIR	69	80	80
5620	DENTURE REPAIR	83	80	87
5630	DENTURE REPAIR	60	66	74
5640	DENTURE REPAIR	60	64	72
5650	DENTURE REPAIR	75	80	88
5660	DENTURE REPAIR	102	103	123
5670	DENTURE REPAIR	76	76	76
5680	DENTURE REPAIR	84	82	90
5690	DENTURE REPLACE BROKN CLSPEA ADDTL	80	80	80
5725	REBASE U/L DENTURE PART OR COMPLETE	190	190	171
5730	DENTURE RELINING: UPPER COMPLETE	142	142	145
5731	DENTURE RELINING: LOWER COMPLETE	150	150	150
5735	RELIN U/L DENT PART OR COMP OFFICE	162	162	162
5740	DENTURE RELINE PARTIAL UPPER OFFICE	118	118	121

INSURANCE

ADOPTIONS

5741	DENTURE RELINE PARTIAL LOWER OFFICE	135	135	135
5750	DENTURE RELINE UPPER COMPLETE LAB	195	199	209
5751	DENTURE RELINE LOWER COMPLETE LAB	205	205	212
5755	RELINE U/L DENT PART OR COMP LAB	198	242	216
5760	DENTURE RELINE UPPER PARTIAL LAB	205	201	214
5761	DENTURE RELINE LOWER PARTIAL LAB	203	203	212
5820	DENTURE, TEMPORARY PARTIAL UPPER	266	270	269
5821	DENT TEMP PART-STAYPLATE LOWER	270	270	270
5850	TISSUE CONDITIONING	78	71	86
5974	ENDOSSEOUS IMPLANT (IN THE BONE)	948	948	948
6210	BRIDGE PONTIC CAST HIGH NOBLE METAL	594	594	606
6212	BRIDGE PONTIC CAST NOBLE METAL	517	517	517
6240	BRIDGE PONTIC PORCELAIN FUSED/HI NOBLE	579	604	629
6241	BRIDGE PONTIC PROCELAIN FUSED/BASE METAL	552	537	581
6242	BRIDGE PONTIC PROCELAIN FUSED/NOBLE	532	563	586
6250	BRIDGE PONTIC RESIN/HIGH NOBLE METAL	579	579	577
6251	BRIDGE PONTIC/PREDOM BASE METAL	438	438	438
6252	BRIDGE PONTIC RESIN WITH NOBLE METAL	533	533	533
6530	GOLD INLAY-THREE SURFACES	552	552	552
6545	BONDED RESIN RETAINER (MARYLAND BRIDGE)	197	224	233
6640	REPAIRS REPL BRKN FCNG WITH ACRYLIC	102	108	102
6710	BRIDGE ABUTMENT CROWN, PLASTIC	224	224	224
6720	BRIDGE ABUTMENT CROWN RESIN/HIGH NOBLE	565	565	574
6721	BRIDGE ABUTMENT CROWN PLASTIC/NON-PREC	486	486	486
6722	BRIDGE ABUTMENT CROWN RESIN/BASE METAL	553	553	553
6750	BRIDGE ABUTMENT CROWN RESIN/NOBLE METAL	588	612	632
6751	BRIDGE ABUTM CROWN PORCELAIN/NOBLE MTL	552	546	583
6752	BRIDGE ABUTM CROWN PROCELAIN/NOBLE MTL	538	562	588
6780	BRIDGE ABUTMENT CROWN 3/4 CAST NOBLE MTL	614	614	614
6790	BRIDGE ABUTM CROWN FULL CAST HIGH NOBLE	658	592	681
6792	BRIDGE ABUTM CROWN FULL CAST NOBLE METAL	566	566	589
6930	RECEMENT BRIDGE	53	55	57
6950	PRECISION ATTACHMENT	217	219	215
6960	DOWEL PIN METAL	161	161	151
6970	REPAIRS TO CROWNS	125	125	135
6980	REPAIR TO FIXED BRIDGE	148	159	154
7110	EXTRACTION, SINGLE TOOTH	60	69	69
7111	TOOTH EXTRACT. W/X-RAY & GENL ANAESTH	114	114	114
7120	SIMPLE EXTRACTION-ADDITIONAL TOOTH	56	64	65
7130	ROOT REMOVAL-EXPOSED ROOTS	78	70	81
7210	SURGICAL EXTRACTION	113	120	132
7220	SURGICAL EXTRACTION-TISSUE IMPACTION	161	176	170
7230	SURGICAL EXTRACTION-PARTIAL IMPACTION	236	234	232
7235	EXTRACTION SURG PARTIAL BONY IMPACT	238	243	216
7240	SURGICAL EXTRACTION-FULL IMPACTION	306	283	293
7241	SURGICAL EXTR-FULL IMPACT.-DIFFICULT	332	322	336
7245	EXTRACTION SURG COMPL BONY IMPACT	324	286	324
7250	SURGICAL REMOVAL, RESIDUAL ROOTS	110	117	124
7270	TOOTH REIMPLANTATION	233	233	233
7280	SURG. EXPOSURE OF TOOTH FOR ORTHO	272	272	296
7281	SURG. EXPOSURE OF TOOTH TO AID ERUPTION	191	207	172
7286	BIOPSY OF ORAL TISSUE, SOFT	124	131	115
7310	ALVEOPLASTY-PER QUAD W/EXTRACTIONS	137	116	138
7320	ALVEOPLASTY-PER QUAD W/O EXTRACTIONS	189	189	177
7425	EXCISION PERICORONAL GINGIVA	119	119	131
7430	SURGICAL EXCISION	214	211	226
7431	SURGICAL EXCISION	271	271	271
7450	REMOVAL OF CYST	168	151	181
7451	REMOVAL OF CYST	359	359	362
7460	REMOVAL OF CYST	238	238	238
7461	REMOVAL OF CYST	559	559	559
7470	REMOVAL OF EXOSTOSIS	355	355	366
7510	INCISION & DRAINAGE, INTRAORAL ABSCESS	65	70	69
7881	T.M.J. THERAPY	251	251	252
7910	SUTURE OF WOUND	78	78	78
7960	FRENECTOMY	227	222	236
7970	SURG. REPAIR EXCISION OF HYPERPLASTIC	158	150	174
8000	ORTHODONTIC PAYMENT	638	638	638
8001	ORTHODONTIC-FIRST PAYMENT	1657	1657	1657
8002	ORTHODONTIC-FINAL PAYMENT	1791	1791	1791
8010	ORTHODONTIC WORK-UP	183	188	186

ADOPTIONS

8110	TOOTH GUIDANCE APPLIANCE REMOVABLE
8120	TOOTH GUIDANCE APPLIANCE FIXED
8210	REMOVABLE APPLIANCE THERAPY
8220	FIXED APPLIANCE THERAPY
8360	REMOVABLE APPLIANCE THERAPY
8370	FIXED APPLIANCE THERAPY
8460	ORTHO TREATMENT MIXED DENT CL 1 MAL
8470	ORTHO TREATMENT MIXED DENT CL 2 MAL
8560	ORTHO TREATMENT PERM DENT CL 1 MAL
8570	ORTHO TREATMENT PERM DENT CL 2 MAL
8580	ORTHO TREATMENT PERM DENT CL 3 MAL
9110	EMERGENCY PALLIATIVE TREATMENT
9210	LOCAL ANESTHESIA
9220	GENERAL ANESTHESIA
9230	ANALGESIA
9240	INTRAVENOUS SEDATION
9310	CONSULTATION
9430	VISITS OFFICE REG HRS-NO OPER SV
9610	DRUGS THERAPEUTIC INJECTION
9630	DRUGS OTHER AND/OR MEDICAMENTS
9910	APPLICATION OF DESENSITIZING MEDICATION
9930	COMPLICATIONS UNUSUAL CIRCUMSTANCES
9950	OCCCLUSION ANALYSIS MOUNTED CASE
9951	OCCCLUSAL ADJUSTMENT

TRANSPORTATION

308	326	293
478	515	478
282	278	317
357	357	357
247	247	247
397	397	397
3354	3354	3354
3597	3462	3516
3240	3340	3354
3408	3354	3462
3380	3380	3570
39	41	46
27	25	30
115	99	102
25	27	30
92	88	102
54	47	53
36	31	37
35	35	35
18	20	21
21	22	22
41	41	41
75	75	75
29	26	32

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

LAW AND PUBLIC SAFETY

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS**

Fee Schedule

Adopted Amendment: N.J.A.C. 13:31-1.11

Proposed: January 7, 1991, at 23 N.J.R. 22(a).
 Adopted: February 7, 1991, by the State Board of Examiners of Electrical Contractors, John Q. Larkin, Chairman.
 Filed: February 25, 1991, as R.1991 d.163, 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. 45:5A-6; N.J.S.A. 45:1-3.2.
 Effective Date: March 18, 1991.
 Expiration Date: December 12, 1991.

The State Board of Examiners of Electrical Contractors afforded all interested parties an opportunity to comment on the proposed amendment to its fee schedule, N.J.A.C. 13:31-1.11. The official comment period ended on February 6, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on January 7, 1991 at 23 N.J.R. 22(a). Announcements were also forwarded to the Northern New Jersey Chapter of the National Electrical Contractors Association, Martin N. Piper, Esq., the Star-Ledger and the Trenton Times.

A full record of this opportunity to be heard can be inspected by contacting the State Board of Examiners of Electrical Contractors, Post Office Box 45006, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

No comments regarding the proposed amendment were received during the official 30-day comment period.

Summary of Changes Upon Adoption:

Pursuant to P.L. 1991, c.6, which became effective January 21, 1991, licenses and business permits issued to electrical contractors must be issued for periods of three years and be triennially renewable. Accordingly, the Board is amending the fee schedule upon adoption to change the existing biennial license and business permit renewal periods to triennial renewal periods, as mandated by the statute. The renewal fees remain

at the same level but have been prorated to reflect the change to a three-year renewal period.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

13:31-1.11 Fee schedule

(a) The following fees shall be charged by the Board:

1. Application fee \$25.00
2. Initial licensure 100.00
- 3.*[Biennial]* *Triennial* license renewal . . . *[100.00]* *150.00*
4. Initial business permit 25.00
- 5.*[Biennial]* *Triennial* business permit renewal . . . *[50.00]* *75.00*

TRANSPORTATION

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

Route N.J. 57 in Warren County

Adopted Amendment: N.J.A.C. 16:28-1.38

Proposed: January 7, 1991 at 23 N.J.R. 50(a).
 Adopted: February 13, 1991, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
 Filed: February 15, 1991 as R.1991 d.134, with **technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.A.C. 27:1A-5, 27:1A-6, and 39:4-98.
 Effective Date: March 18, 1991.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

The Department received one comment on the proposed amendment. COMMENT: Two typographical errors were noted: Coke Lane should read Cole Lane And Hillbrook Road should read Millbrook Road.

Additionally, from a policy standpoint, would a 50 miles per hour speed limit be appropriate in the area of Mansfield Township in the vicinity of the Allen Road/Newbury Road intersection and from there easterly to the Hackettstown line, in view of the amount of commercial and residential development in that area which might call for a lower speed limit?

RESPONSE: The typographical errors were also discovered during the review of the *New Jersey Register* and the Departments' Straight Line Diagram, and the necessary corrections have been effected.

Based upon traffic studies and analyses, a 50 miles per hour speed limit was considered appropriate for the area.

The Department thanks the commenter for the comment and expression of concern.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

16:28-1.38 Route 57

(a) The rate of speed designated for the certain part of State highway Route 57 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in Warren County:

i. Lopatcong Township:

(1) Zone 1: 45 miles per hour between Route U.S. 22 and 900 feet east of Red School Lane (approximate mileposts 0.00 to 0.27); thence

(2) Zone 2: 50 miles per hour between 900 feet east of Red School Lane and the Greenwich Township westerly line (approximate mileposts 0.27 to 2.07); thence

ii. Greenwich Township:

(1) Zone 1: 50 miles per hour between the Lopatcong Township easterly line and Liberty Road-North Main Street (County Road 637) (approximate mileposts 2.07 to 2.18); thence

(2) Zone 2: 40 miles per hour between Liberty Road-North Main Street and Richline Hill Road (approximate mileposts 2.18 to 3.07); thence

(3) Zone 3: 50 miles per hour between Richline Hill Road and Franklin Township westerly line (approximate mileposts 3.07 to 3.59); thence

iii. Franklin Township:

(1) Zone 1: 50 miles per hour between Greenwich Township easterly line and 815 feet west of Cole Lane (approximate mileposts 3.59 to 4.37); thence

(2) Zone 2: 40 miles per hour between 815 feet west of ***[Coke]* *Cole*** Lane and 1000 feet east of Edison Road (approximate mileposts 4.37 to 5.21); thence

(3) Zone 3: 50 miles per hour between 1000 feet east of Edison Road and 750 feet west of ***[Hillbrook]* *Millbrook*** Road (approximate mileposts 5.21 to 6.38); thence

(4) Zone 4: 40 miles per hour between 750 feet west of ***[Hillbrook]* *Millbrook*** Road and Halfway House Road (approximate mileposts 6.38 to 7.29); thence

(5) Zone 5: 50 miles per hour between Halfway House Road and the Washington Township westerly line (approximate mileposts 7.20 to 8.37); thence

iv. Washington Township:

(1) Zone 1: 50 miles per hour between the Franklin Township easterly line and 555 feet west of Brass Castle Road (approximate mileposts 8.37 to 9.63); thence

(2) Zone 2: 40 miles per hour between 555 feet west of Brass Castle Road and the Washington Borough westerly line (approximate mileposts 9.63 to 9.79); thence

(3) Zone 3: 40 miles per hour between the Washington Borough easterly line and the most easterly driveway to Warren Plaza Shopping Center (approximate mileposts 11.63 to 11.76); thence

(4) Zone 4: 50 miles per hour between the most easterly driveway to Warren Plaza Shopping Center and the Mansfield Township westerly line (approximate mileposts 11.76 to 12.67); thence

v. Washington Borough:

(1) Zone 1: 40 miles per hour between the Washington Township easterly line and Ramapo Way (approximate mileposts 9.79 to 10.09); thence

(2) Zone 2: 30 miles per hour between Ramapo Way and Prosper Way (approximate mileposts 10.09 to 11.19); thence

(3) Zone 3: 40 miles per hour between Prosper Way and Washington Township westerly line (approximate mileposts 11.19 to 11.63); thence

vi. Mansfield Township:

(1) Zone 1: 50 miles per hour between the Washington Township easterly line and 300 feet west of Komar Road (approximate mileposts 12.67 to 13.80); thence

(2) Zone 2: 45 miles per hour between 300 feet west of Komar Road and 1465 feet west of Old Turnpike Road (approximate mileposts 13.80 to 15.56); thence

(3) Zone 3: 50 miles per hour between 1465 feet west of Old Turnpike Road and Brantwood Terrace (approximate mileposts 15.56 to 18.93); thence

(4) Zone 4: 40 miles per hour between Brantwood Terrace and 1,100 feet east of Airport Road (approximate mileposts 18.93 to 19.54); thence

(5) Zone 5: 50 miles per hour between 1,100 feet east of Airport Road and the Town of Hackettstown westerly line (approximate mileposts 19.54 to 20.53); thence

vii. Town of Hackettstown:

(1) Zone 1: 50 miles per hour between the Mansfield Township easterly line and Lawrence Road (approximate mileposts 20.53 to 20.75); thence

(2) Zone 2: 40 miles per hour between Lawrence Road and Route N.J. 182 (approximate mileposts 20.75 to 21.10).

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Restricted Parking and Stopping
Routes U.S. 9 in Atlantic County; U.S. 22 in Hunterdon County; N.J. 28 in Union County; and U.S. 40-322 in Atlantic County**

Adopted Amendment: N.J.A.C. 16:28A-1.7, 1.13, 1.19 and 1.104

Proposed: January 7, 1991 at 23 N.J.R. 51(a).

Adopted: February 7, 1991, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: February 8, 1991 as R.1991 d.125, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-138.1 and 39:4-199.

Effective Date: March 18, 1991.

Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:
No comments received.**

Full text of the adoption follows.

16:28A-1.7 Route U.S. 9

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops.

1.-39. (No change.)

40. Along the southbound (westerly) side in Galloway Township, Atlantic County:

i. Near side bus stop:

(1) Quail Hill Boulevard—Beginning at the northerly curb line of Quail Hill Boulevard and extending 150 feet northerly therefrom.

(c) (No change.)

ADOPTIONS

16:28A-1.13 Route U.S. 22

(a) (No change.)
 (b) The certain parts of State highway U.S. Route 22 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-9. (No change.)
 10. Along the eastbound (southerly) side in Readington Township, Hunterdon County:

i. Mid-block bus stop:
 (1) Between Flemington-Whitehouse Road (County Road 523) (Old Route 28) and Cedar Drive—Beginning 260 feet east of the traffic signal on the island at Flemington-Whitehouse Road (County Road 523) and extending 135 feet easterly therefrom.

11. Along the westbound (northerly) side in Readington Township, Hunterdon County:

i. Near side bus stop:
 (1) Flemington-Whitehouse Road (County Road 523) (Old Route 28)—Beginning at the easterly curb line of Old Route 28 and extending 105 feet easterly therefrom.

16:28A-1.19 Route 28

(a) The certain parts of State highway Route 28 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.-2. (No change.)
 3. No stopping or standing in Cranford Township, Union County:

i. Along both sides:
 (1) For the entire length within the corporate limits of Cranford Township, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated Bus Stops and Time Limit Parking area. Signs to be posted only in areas where an official township resolution has been submitted.

4. (No change.)
 5. No stopping or standing in the Town of Westfield, Union County:

i.-ii. (No change.)
 6. No stopping or standing along both sides in Middlesex Borough, Middlesex County, from the westerly curb line of Locust Avenue to the Bound Brook Borough-Middlesex Borough line.

7. No stopping or standing in the Borough of Bound Brook, Somerset County:

i.-ii. (No change.)
 8.-13. (No change.)
 (b)-(e) (No change.)

16:28A-1.104 Route U.S. 40-322

(a) The certain parts of State highway Route U.S. 40-322 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-199.

1. (No change.)
 (b) The certain parts of State highway Route U.S. 40-322 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-2. (No change.)
 3. In the City of Atlantic City, Atlantic County:

i. (No change.)
 ii. Along the eastbound (northerly) side:
 (1) Far side bus stop:
 (A) Crossan Avenue—Beginning at the southerly curb line of Crossan Avenue and extending 100 feet southerly therefrom.

(2) Near side bus stops:
 (A) Filbert Avenue—Beginning at the northerly curb line of Filbert Avenue and extending 105 feet northerly therefrom.

TRANSPORTATION

(B) Porter Avenue—Beginning at the northerly curb line of Porter Avenue and extending 105 feet northerly therefrom.

(C) South Boulevard—Beginning at the northerly curb line of South Boulevard and extending 105 feet northerly therefrom.

iii. Along the westbound (southerly) side:
 (1) Near side bus stop:

(A) Porter Avenue—Beginning at a point on the easterly curb line directly to the east of the point where the southerly curb line of Porter Avenue intersects with the westerly curb line of Albany Avenue (also being the southerly curb line of the south entrance drive to Bader Field) and extending 105 feet southerly therefrom.

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
 BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Restricted Parking and Stopping
 Routes N.J. 23 in Morris County and N.J. 35 in Ocean County**

Adopted Amendments: N.J.A.C. 16:28A-1.15 and 1.25

Proposed: January 7, 1991 at 23 N.J.R. 52(a).
 Adopted: February 13, 1991, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
 Filed: February 15, 1991 as R.1991 d.133, **without change**.
 Authority: N.J.A.C. 27:1A-5, 27:1A-6, and 39:4-138.1.
 Effective Date: March 18, 1991.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
 The Department received three comments concerning the proposed restriction along Route N.J. 35 in Dover Township, Ocean County. There were no comments received regarding Route N.J. 23 in Morris County.

COMMENTS: The comments reflected the following:
 1. Opposition to any change to the current no stopping or standing zone designations on Route 35 in Dover Township, Ocean County;
 2. That the proposal will have substantial impact on virtually all businesses on Route 35 in Dover Township; and
 3. Opposition to the proposal as it may affect parking along Route 35 North in the Ocean Beach I area.

RESPONSE: The proposed amendment effects "no stopping or standing" along both sides of Route N.J. 35, only in areas where an official township resolution has been submitted. The Department is not changing the current no stopping or standing zones designation on Route N.J. 35. The only area affected by this rule wherein a resolution has been submitted at this time is from Strickland Boulevard to Surf Road.

The Department thanks the commenters for their comments and expression of concerns.

Full text of the adoption follows.

16:28A-1.15 Route 23 and Route 23 (Temporary)

(a) The certain parts of State highway Route 23 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. No stopping or standing:
 i. Along both sides:
 (1)-(2) (No change.)
 (3) In Morris County:
 (A)-(B) (No change.)
 (C) Kinnelon Borough:

1. For the entire length within the corporate limits of Kinnelon 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, and No Parking certain hours. Signs shall be posted only in areas where an official borough resolution has been submitted.

TRANSPORTATION

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

16:28A-1.25 Route 35

(a) The certain parts of State highway Route 35 described in this subsection are designated and established as "no stopping or standing" zones.

- 1.-6. (No change.)
- 7. No stopping or standing in Dover Township, Ocean County:
 - i. Along both sides:
 - (1) (No change.)
 - (2) For the entire length within the corporate limits of Dover 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 or an Ordinance has been submitted.
- 8.-21. (No change.)
- (b)-(e) (No change.)

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Mid-Block Crosswalk
Route N.J. 33 in Mercer County**

Adopted Amendment: N.J.A.C. 16:30-10.4

Proposed: January 7, 1991 at 23 N.J.R. 53(b).
 Adopted: February 7, 1991, by John F. Dunn, Jr., Director,
 Division of Traffic Engineering and Local Aid.
 Filed: February 8, 1991 as R.1991 d.126, **without change**.
 Authority: N.J.A.C. 27:1A-5, 27:1A-6, and 39:3-34.
 Effective Date: March 18, 1991.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:30-10.4 Route 33

(a) The certain parts of State highway Route 33 described in this subsection shall be designated as a mid-block crosswalk.

- 1. In Freehold Borough, Monmouth County:
 - i. From a point 390 feet east of the easterly curb line of Phyllis Road to a point 10 feet easterly therefrom.
- 2. In Hamilton Township, Mercer County:
 - i. From a point 395 feet west of the westerly curb line of Ward Avenue to a point six feet westerly therefrom.

(b)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Mid-Block Crosswalk
Route N.J. 91 in Middlesex County**

Adopted New Rule: N.J.A.C. 16:30-10.13

Proposed: January 7, 1991 at 23 N.J.R. 54(a).
 Adopted: February 7, 1991, by John F. Dunn, Jr., Director,
 Division of Traffic Engineering and Local Aid.
 Filed: February 8, 1991 as R.1991 d.127, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-34.

ADOPTIONS

Effective Date: March 18, 1991.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:30-10.13 Route 91

(a) The certain parts of State highway Route 91 described in this subsection shall be designated as a mid-block crosswalk.

- 1. In the City of New Brunswick, Middlesex County:
 - i. From a point 1,050 feet north of the northerly curb line of Triangle Road to a point six feet northerly therefrom.

(c)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Left Turn Prohibition
Route N.J. 27 in Somerset and Middlesex Counties
Adopted Amendment: N.J.A.C. 16:31-1.26**

Proposed: January 7, 1991 at 23 N.J.R. 55(a).
 Adopted: February 7, 1991, by John F. Dunn, Jr., Director,
 Division of Traffic Engineering and Local Aid.
 Filed: February 8, 1991 as R.1991 d.128, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-123 and 39:4-183.6.

Effective Date: March 18, 1991.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:31-1.26 Route 27

(a) Turning movements of traffic on the certain parts of State highway Route 27 described in subsection are regulated as follows:

- 1. (No change.)
- 2. In Franklin Township, Somerset County, and South Brunswick Township, Middlesex County:
 - i. Left turns are prohibited from Route 27 northbound onto Vliet Road.

TREASURY-GENERAL

(d)

**DIVISION OF PENSIONS
State Police Retirement System
Retirement Credit: Back Pay Awards
Adopted Amendment: N.J.A.C. 17:5-5.6**

Proposed: November 19, 1990, at 22 N.J.R. 3474(a).
 Adopted: February 11, 1991, by the Board of Trustees, State
 Police Retirement System, Michael Weik, Secretary.
 Filed: February 14, 1991, as R.1991 d.131, **without change**.
 Authority: N.J.S.A. 53:5A-30h.

Effective Date: March 18, 1991.
 Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

ADOPTIONS

TREASURY-TAXATION

17:5-5.6 Retirement credit

(a) (No change.)
(b) A member who appeals the suspension or termination of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of such suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay awarded, provided a full normal pension contribution is received from the member or deducted from the value of the award. The amount of the pension contribution will be determined by the provisions of the award. If the member receives full back pay, including normal salary increases, then the contribution will be computed on the base salaries that the employee would have earned for the reinstated suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment. In the event that the amount of back payment is insufficient to deduct the value of the normal pension contributions due, such contribution shall be paid by the member.

(c) It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.

(a)

GOVERNOR'S COUNCIL ON ALCOHOLISM AND DRUG ABUSE

Annual Funding Formula

Adopted Amendment: N.J.A.C. 17:40-1.3

Adopted New Rule: N.J.A.C. 17:40-3.6

Proposed: January 7, 1991 at 23 N.J.R. 26(b).
Adopted: February 19, 1991 by the Governor's Council on Alcoholism and Drug Abuse, J.P. Miele, Chairman.
Filed: February 20, 1991 as R.1991 d.150, **without change**.
Authority: N.J.S.A. 26:2BB-1 et seq., specifically 26:2BB-3j.
Effective Date: March 18, 1991.
Expiration Date: November 19, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

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.

...
"Arrests" means all arrests reported in the 1988 New Jersey Uniform Crime Report, compiled by the New Jersey State Police.

"Collection rate" means the amount of DEDR fines collected divided by the amount assessed.

...
"DEDR" means the July 1990 cumulative list of the Drug Enforcement Demand Reduction funds compiled by the Administrative Office of the Courts.

...
"Income" means three year average per capita income in the county or the State, according to 1988 New Jersey Department of Labor estimates.

...
"Need" means the estimates of the prevalence of alcoholism, as delineated in the current Behavioral Health Services Plan prepared by the New Jersey Department of Health.

"Population" means the county or State population, according to 1988 New Jersey Department of Labor estimates.

...

"Youth" means all persons in the county or State up to, but not including, the age of 18, according to the 1988 New Jersey Department of Labor population estimates.

17:40-3.6 Annual funding formula

Drug Enforcement Demand Reduction funds, as appropriated, will be distributed by the Council in accordance with the following formula:

$$\left(\text{Total Program Funding} \right) \left\{ .66 \left(\frac{\text{County population}}{\text{State population}} \right) \left[.50 \frac{\text{State income}}{\text{County income}} + .50 \left(\frac{\text{County need}}{\text{State need}} \right) \right] + .20 \left(\frac{\text{County youth}}{\text{State youth}} \right) + .10 \left(\frac{\text{County arrests}}{\text{State arrests}} \right) + .04 \left(\frac{\text{County DEDR collections}}{\text{State average DEDR collections}} \right) \right\} = \text{County allotment}$$

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Local Property Tax

Senior Citizens

Adopted Amendments: N.J.A.C. 18:14-1.1, 2.1, 2.2, 2.3, 2.4, 2.8, 2.10, 3.1, 3.3, 3.7, 3.8, 3.9 and 3.10

Proposed: October 15, 1990 at 22 N.J.R. 3200(b).
Adopted: January 30, 1991 by Benjamin J. Redmond, Acting Director, Division of Taxation.
Filed: January 31, 1991 as R.1991, d.104, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:4-8.47, 54:4-8.56.

Effective Date: March 18, 1991.

Expiration Date: July 29, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:

The provisions of P.L. 1989, c.252 effected change in the concept of ownership for the purpose of extending tax deduction benefits to resident-shareholders in cooperatives and mutual housing corporations. It therefore becomes necessary to reflect this change in the affected existing rules. The changes are being made upon the adoption of amendments to N.J.A.C. 18:14, since the changes are directly related to the amendments and are merely clarifications of existing statutory requirements.

The changes made upon adoption standardize procedures with which tax officials must comply, as required by statute, and do not place an additional burden on taxpayers. The changes outlined below further clarify the rules, for the benefit of the public.

Expansion of the limited definition of "owned" as set forth in N.J.A.C. 18:14-1.1 has been added, to provide that share ownership in said entities is tantamount to ownership of an estate in fee.

The standard of proof previously required of claimants under N.J.S.A. 54:4-8.44 was inapplicable to the new class of beneficiaries; therefore, an alternate standard of proof has been added which is applicable to the new class of beneficiaries.

The changes made to N.J.A.C. 18:14-3.1 will permit local officials to maintain a sub listing of qualified claimants residing in cooperatives and mutual housing associations for the purpose of determining the contingent liability of the ownership entity in case of disallowance. This change will enable continuation of current office procedures undertaken to meet the requirements of N.J.S.A. 54:4-8.55.

The changes to N.J.A.C. 18:14-3.8 further implements N.J.S.A. 54:4-8.55 by requiring the ownership entity to give direct notice to the tax collectors whenever a person claiming the deduction under its aegis is no longer a qualified tenant-shareholder.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

18:14-1.1 Words and phrases defined

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

...
 "Cooperative" means a housing corporation or association incorporated or organized under the laws of New Jersey which entitles a shareholder thereof to possess and occupy for dwelling purposes a house, apartment or other structure owned or leased by the corporation or association.

...
 "Mutual housing corporation" means a not for profit corporation incorporated under the laws of New Jersey on a mutual or cooperative basis within the scope of section 607 of the "National Defense Housing Act," Pub. L. 76-849 (42 U.S.C. §§ 1521 et seq.), which acquired a National Defense Housing Project authority.

...
 "Owned" means ownership of an estate in fee*,* *[or a]* life estate*, or ownership of qualifying shares in a cooperative or mutual housing corporation,* individually or as joint tenants, tenants in common or tenants by the entirety, but shall not include an estate for a term of years, a leasehold estate or an estate of less than a fee interest.

18:14-2.1 Application for deduction

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

(d) Application forms for the senior citizen deduction, for the permanently and totally disabled and for surviving spouses in certain cases will be termed "property tax deduction forms" and identified as follows:

1. Form PTD (June 1986) Claim for deduction by a person aged 65 years or over, or permanently and totally disabled or a surviving spouse of the age of 55 years or over, on a dwelling house located in;

Recodify existing 4. and 5. as 2. and 3. (No change in text.)

18:14-2.2 Proof required to establish right to deduction of persons of the age of 65 or more years or less than 65 years of age who are permanently and totally disabled

(a) Every fact essential to support a claim for deduction must exist on October 1 of the year preceding the tax year with respect to which a deduction claimed, except that the age requirement or the date claimant was permanently and totally disabled must be met as of December 31 of the pretax year. It is essential that claimant, as of the said October 1, except with respect to the age requirement, or permanently and totally disabled prerequisites, establish that he or she was:

1.-2. (No change.)

3. The owner of a dwelling house which is a constituent part of the real property for which deduction is claimed; or the owner of a dwelling house which is assessed as real property but which is situated on land owned by another or others; or residing as a tenant shareholder in a cooperative or mutual housing corporation; and

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

18:14-2.3 Proof required to establish right to deduction for a surviving spouse

(a) Every fact essential to support a claim for deduction must exist on October 1 of the year preceding the tax year with respect to which a deduction is claimed, except claimant therefor shall establish that he is or will be on or before December 31 of the pretax year 55 or more years of age and was 55 or more years of age at the time of the death of the decedent and unmarried. It is essential that claimant,

as of the said October 1, except with respect to the age requirement and marital status, establish that he was:

1.-2. (No change.)

3. The owner of a dwelling house which is a constituent part of the real property of which the deduction is claimed; or the owner of a dwelling house which is assessed as real property but which is situated on land owned by another or others; or residing as a tenant shareholder in a cooperative or mutual housing corporation; and

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

18:14-2.4 Proof of totally and permanently disabled

Every claim for a deduction by a person who is permanently and totally disabled shall include a physician's certificate or Social Security award certificate, Form SSA-30, or a report of Confidential Social Security Benefits Information, Form SS-2458, or a Social Security Third Party Query Response, verifying the claimant's permanent and total disability and in the claim by a person who is blind, he or she may additionally submit a certificate from the New Jersey Commission of the Blind certifying to blindness as defined. (See N.J.A.C. 18:14-1.1 for a definition of "blindness.")

18:14-2.8 Proof of ownership

(a) The act requires that the claimant be the owner of the dwelling house which is a constituent part of the real estate on which the deduction is claimed or the owner of a dwelling house which is assessed as real property but which is situated on land owned by another or others, or residing as a tenant shareholder in a cooperative or a mutual housing corporation. See N.J.A.C. 18:14-1.1 for a definition of dwelling house. A claimant should be prepared to furnish, on request of the assessor or collector, proof of ownership of the property for which deduction is claimed. Deduction cannot be allowed on a dwelling house on which the claimant has only an estate for a term of years, a leasehold interest or an interest of any other nature less than an estate in fee. Deduction may be allowed where the claimant's interest in the dwelling house is that of a tenant for life provided the tenant is responsible for the payment of taxes on the property on which the deduction is granted. Where the claimant asserts that his or her interest in the dwelling house on which deduction is claimed arises from a will or the interstate laws of this State, care should be exercised to make certain that he or she is the owner of the legal title to such property, individually or jointly, or has a life estate in such dwelling house.

(b) (No change.)

(c) Where a claimant is a resident-shareholder in a cooperative or mutual housing corporation, claimant must submit such proof as may be required to establish residency therein as of October 1 of the pre-tax year. ***If claimant's name appears on the official notice of resident-shareholders provided to assessors by the corporation or association on or before October 15 of the pretax year, claimant's proof of ownership shall be satisfied.***

18:14-2.10 Proof of income; post-tax year statement

(a) Every person allowed a real property tax deduction is required to file with the collector of the taxing district on or before March 1 of the post-tax year a statement under oath of his or her income for the tax year and his or her anticipated income for the current tax year as well as any other information deemed necessary to establish the right of the claimant to a tax deduction for such current tax year.

1. The collector may grant a reasonable extension of time for filing the statement required, which extension shall terminate no later than May 1 of the post-tax year, in any event which it shall appear to the satisfaction of the collector that the failure to file by March 1 was due to the illness of the claimant and the claimant has filed with the collector a physician's certificate stating that the claimant was physically incapacitated and unable to file on or before March 1. In any case where such an extension is granted by the collector, the required statement shall be filed on or before May 1 of the post-tax year.

(b) (No change.)

(c) The failure of any person to file the statement within time herein provided or to submit such proof as the collector deems

necessary to verify a statement that has been filed, or if it is determined that the income of any such person exceeded the applicable annual income limitation for said tax year, his or her tax deduction for said tax year will be disallowed and his taxes to the extent represented by the amount of said deduction will be payable on or before June 1 of the post-tax year.

(d) Any taxes due under (c) above and not paid on or before June 1 of the post-tax year, constitute a lien on the property of the person liable for the tax and in addition become a personal debt of such person.

(e) (No change.)

18:14-3.1 Procedure upon allowance of claim for deduction

(a) Where an application is filed and allowed by the assessor he shall note in his records the existence of a contingent liability for taxes in the amount of the claimant's deduction in the event the deduction is subsequently disallowed on the basis of the taxpayer's income, the transfer of title to the property to a person not entitled to such a deduction, or on the basis of the failure to meet any other prerequisites required by the act for real property tax deduction.

Claims by resident-shareholders residing in cooperatives or mutual housing associations allowed by the assessor or collector shall be recorded on an official notice listing residents to be provided assessors by qualified cooperatives or mutual housing associations pursuant to N.J.S.A. 54:4-8.62(d). Assessors shall provide a copy of said list to collectors noting individual amounts approved.

(b) (No change.)

18:14-3.3 Deduction where property owned by partnership, fiduciary or corporation

The right to claim a deduction extends to property the title to which is held by a partnership, to the extent of the claimant's interest as a partner therein, and by a guardian, trustee, committee, conservator or other fiduciary for any person who would otherwise be entitled to claim such deduction hereunder, but not to property, the title to which is held by a corporation; except that a residential shareholder in a cooperative or mutual housing corporation shall be entitled to claim a deduction he or she is otherwise eligible to receive to the extent of the proportionate share of the taxes assessed against the real property of the corporation, or any other entity holding title, attributable to his or her unit therein.

18:14-3.7 Deduction where claimant dies

(a) Where a claimant files a claim for deduction on form PTD (June 1986) with the local assessor in the pretax year and the claimant dies prior to January 1 of the ensuing tax year, the claim for deduction for such tax year shall be disallowed.

(b) If it is determined that the claimant's application form PTD (June 1986) satisfied all the prerequisites essential to the deduction on October 1 of the pretax year and the claimant dies on January 1 of the tax year or subsequent thereto, the claim for deduction shall be allowed. There shall be no need for proration and no post-tax year statement need be filed during the year following such tax year, except as hereinafter provided.

(c) Where a claimant files an application form PTD (June 1986) for deduction with the tax collector during the tax year and the claimant dies after approval of such application, there shall be no need for proration and no post-tax year statement need be filed during the year following such tax year, except as hereinafter provided.

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

(g) An executor, administrator or any other person on behalf of a claimant who dies without having filed an application for deduction on form PTD (June 1986) may not file an application for deduction on behalf of said decedent since this deduction is deemed to be a personal one.

18:14-3.8 Change in status; notice

(a) Any person receiving a deduction is required to notify the collector or assessor immediately upon the occurrence of any transfer of title or other change in status which affects a person's eligibility or right to the deduction.

***(b) Any cooperative or mutual housing corporation with respect to which claims for the deduction have been allowed for units therein and**

any person receiving a deduction are required to notify the collector or assessor immediately upon the occurrence of any transfer of title or other change in status which affects a person's eligibility or right to deduction.*

18:14-3.9 Pro rata or complete revocation of deduction

(a) (No change.)

(b) Upon the failure of any such person to file the statement within the time prescribed or to submit such proof as the collector deems necessary to verify a statement that has been filed, or if it is determined that the income of any such person exceeded \$10,000 for the tax year during which the change of circumstances occurred, his or her tax deduction for said tax year shall be disallowed and his or her taxes to the extent represented by the amount of said deduction shall be payable on or before June 1 of the post-tax year or, where an extension of time for filing has been granted no later than 30 calendar days after the expiration of said extension, after which date if unpaid, said taxes shall be delinquent, constitute a lien on the property, and, in addition, the amount of said taxes shall be a personal debt of said person.

18:14-3.10 Disallowance of claim; notice

(a) If the application for deduction has been disapproved, a notice of disallowance form (PD 4, April 1981) shall be forwarded to the claimant by regular mail and shall set forth the reason or reasons for disallowance of the claim and shall also set forth a statement notifying the taxpayer of his right to appeal to the county board of taxation on or before August 15 of the tax year.

1. By the assessor: Where an initial application for deduction under N.J.S.A. 54:4-8.40 et seq. form PTD (June 1986) has been filed with the assessor on or after October 1 and no later than December 31 of the year preceding the tax year for which the deduction is claimed and it has been denied, notice of disallowance form (PD 4, April 1981) shall be forwarded by the assessor to the claimant on or before June 1 of the tax year.

2. By the collector:

i. Where an initial application for deduction under N.J.S.A. 54:4-8.40 et seq. form PTD (June 1986) has been filed with the collector on or after January 1 and not later than December 31 of the tax year and it has been denied, notice of disallowance form (PD 4, April 1981) shall be forwarded by the collector to the claimant within 30 days of receipt of the application;

ii. Where the deduction has been denied by the collector because the claimant failed to prove his or her entitlement to the deduction for the tax year or to the continuation of the deduction for the ensuing tax year, as required by N.J.S.A. 54:4-8.44a, notice of disallowance form (PD 4, April 1981) shall be forwarded to the claimant on or before April 1 of the post-tax year or, where an extension of time for filing has been granted, no later than 30 calendar days following the expiration of said extension.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Definitions

Slot Booths

Accounting Controls Within the Slot Booths

Procedure for Control of Coupon Redemption and

Other Complimentary Distribution Programs

Procedures and Requirements for the Use of an

Automated Coupon Redemption Machine (New Rule)

Adopted Amendments: N.J.A.C. 19:45-1.1, 1.34, 1.35 and 1.46

Adopted New Rule: N.J.A.C. 19:45-1.46A

Proposed: December 17, 1990 at 22 N.J.R. 3708(b).

Adopted: February 20, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: February 22, 1991, as R.1991 d.152, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c), 5:12-69(e) and 5:12-99(a).

Effective Date: March 18, 1991.

Expiration Date: March 24, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Roberto Rivera-Soto, Vice President and Corporate Counsel of Sands Hotel and Casino, supports the proposed amendments and new rule.

RESPONSE: Accepted.

COMMENT: Anthony P. Rodio, Controller—Operations of Resorts International Hotel, Inc., recommends that the automated coupon redemption machine be permitted to be located adjacent to the casino floor as well as on the casino floor and that the proposed new rule N.J.A.C. 19:45-1.46A address the capability of the automated coupon redemption machine to accept currency.

RESPONSE: With regard to the use of automated coupon redemption machines in an area located adjacent to the casino floor, the Commission has additional security and surveillance concerns which need to be investigated, and, therefore, this suggestion will not be addressed at this time. The feasibility of automated coupon redemption machines being located adjacent to the casino floor will be referred to the regulatory review committee for consideration.

With regard to the proposal referencing the acceptance of currency, this concern is addressed through the proposed revisions to N.J.A.C. 19:45-1.1 and subsection (p) of the proposed new rule.

COMMENT: Thomas C. Bonner, Vice President General Counsel of Atlantic City Showboat Hotel and Casino, supports the proposed amendments and new rule.

RESPONSE: Accepted.

COMMENT: Bessie A. Sacco, Assistant Corporate Counsel of TropWorld Casino and Entertainment Resort, supports the proposed amendments and new rule.

RESPONSE: Accepted.

COMMENT: The Division of Gaming Enforcement supports the proposed amendments and new rule.

RESPONSE: Accepted.

Summary of Agency-Initiated Changes:

The Commission has revised the format of the presentation of the requirements in N.J.A.C. 19:45-1.46A for clarity. No new requirements are imposed. The definition of "automated coupon redemption machine" in N.J.A.C. 19:45-1.1 is grammatically revised, and the last sentence of the "change machine" definition recodified as N.J.A.C. 19:45-1.35(f).

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

19:45-1.1 Definitions

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

...
 "Automated coupon redemption machine" means any mechanical, electrical or other device which operates independently of a slot machine and which*,* upon insertion of a valid casino coupon or currency*,* *[will dispense]* *dispenses* an amount of coin or slot tokens equivalent to the face value of the coupon or currency*,* and *[shall]* *which* immediately upon exchange cancel*s* the coupon.

...
 "Change machine" means any mechanical, electrical or other device which operates independently of a slot machine which, upon insertion of currency therein, shall dispense an equivalent amount of loose or rolled coin or slot tokens. *[Change machines shall be governed by the accounting and internal control procedures pursuant to N.J.A.C. 19:45-1.35 with said procedures submitted to the Commission for review and approval.]*

...

19:45-1.34 Slot booths

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

1.-7. (No change.)

8. The issuance of Payouts in conformity with N.J.A.C. 19:45-1.40;

9. The issuance of coin or slot tokens to automated coupon redemption machines in exchange for proper documentation; and

10. (No change in text.)

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

19:45-1.35 Accounting controls for slot booths and change machines

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

(e) The slot booth inventory may be used to supply automated coupon redemption machines with an imprest inventory of coin or slot tokens.

f) Change machines shall be governed by the accounting and internal control procedures required by this section, which shall be submitted to the Commission for review and approval.

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

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

(i) Coupons redeemable for cash or slot tokens shall only be redeemed by changepersons or at the slot change booths or the cashiers' cage located on the casino floor. A changeperson, slot cashier or general cage cashier shall accept the coupons in exchange for the stated amount of cash or slot tokens and shall cancel the coupons upon acceptance. Cancellation of coupons by changepersons shall be in a manner that will permit subsequent identification of the individual who accepted and cancelled the coupon. Redeemed coupons shall be maintained by the slot or general cashier and shall be exchanged with the Main or Master Coin Bank for a like amount of cash at the conclusion of gaming activity each day, at a minimum. Changepersons shall exchange redeemed coupons with slot booths for a like amount of cash at the conclusion of each shift, at a minimum. Notwithstanding the above, an automated coupon redemption machine may be utilized to accept coupons, provided that the acceptance of coupons by an automated coupon redemption machine complies with the procedures and requirements established by this section and N.J.A.C. 19:45-1.46A.

(j)-(n) (No change.)

19:45-1.46A Procedures and requirements for the use of an automated coupon redemption machine

(a) All coupons utilized with or accepted by an automated coupon redemption machine shall be accounted for and controlled pursuant to N.J.A.C. 19:45-1.46 unless otherwise authorized by the Commission.

(b) All coupons accepted by an automated coupon redemption machine shall have encoded thereon, in addition to the requirements of N.J.A.C. 19:45-1.46(d), a bar code which contains the dollar value of the coupon and a unique code or other security measure as approved by the Commission, that is readable only by the automated coupon redemption machine to ensure that the coupon is valid.

(c) Each automated coupon redemption machine shall have the capability of establishing the validity of the coupon by comparing the unique code programmed into the machine to the bar code on the coupon referenced in (b) above. Each automated coupon redemption machine shall also have the capability to read the dollar value of the bar coded coupon.

(d) The method or methods utilized to comply with the requirements referenced in (c) above shall be submitted to and approved by the Commission.

(e) Each automated coupon redemption machine shall, at a minimum, accumulate the following data on a meter or a computer generated tape:

1. The total amount of coin or slot tokens dispensed by the automated coupon redemption machine; and

2. The total dollar amount of coupons accepted by the automated coupon redemption machine.

(f) Each automated coupon redemption machine shall have imprinted, affixed or impressed on the outside of the machine a unique asset identification number. Each automated coupon redemption machine shall contain a lockable coupon storage box which retains the coupons accepted by the machine. Each coupon storage box located inside the machine shall also have imprinted, affixed or impressed thereon the asset identification number of the corresponding machine.

(g) Each automated coupon redemption machine shall have, at a minimum, the following:

1. One lock securing the compartment housing the coupon storage box and one lock securing the coupon storage box within the compartment, the keys to which shall be different from each other. Such keys shall be controlled by two separate departments;

2. Two separate locks securing the compartment housing the coin storage container, the keys to which shall be different from each other. Such keys shall be controlled by two separate departments; and

3. One lock securing the contents of the coupon storage box, the key to which shall be different from the keys referenced in (g)1 and 2 above. Such key shall be controlled by a department independent of the two departments controlling the keys referenced in (g)1 and 2 above.

(h) On a daily basis, a slot cashier, accompanied by a security department representative, shall remove the coupons accepted by the automated coupon redemption machine. Any coin or slot tokens removed from the automated coupon redemption machine during the removal of coupons or during any other time shall be placed in a secured container, as approved by the Commission, with the automated coupon redemption machine asset identification number attached or recorded thereon. Upon removal of the coupons and/or coins or slot tokens from the automated coupon redemption machine, a serially prenumbered three-part form, at a minimum, shall be prepared by the slot cashier. Each series of forms shall be used in sequential order, and the series numbers of all forms received by a casino shall be accounted for by employees with no incompatible functions. All original, duplicate and triplicate void forms shall be marked "VOID" and shall require the signature of the preparer. The following copies shall contain, at a minimum, the following information:

1. The original*[,] *and the* duplicate and triplicate *copies of the form shall contain, at a minimum, the following information*:

- i. The date and time of preparation;
- ii. The denomination of the automated coupon redemption machine;
- iii. The automated coupon redemption machine asset identification number;
- iv. The total number of coin or slot tokens appearing on the meter or computer generated tape as dispensed by the automated coupon redemption machine;
- v. The total dollar amount of coupons or the converted value of coupons appearing on the meter or computer generated tape as accepted by the automated coupon redemption machine;
- vi. The signature of the slot cashier who removed the coupons and/or coin or slot tokens from the automated coupon redemption machine; and
- vii. The signature of the security department representative who witnessed the removal of coupons and/or coin or slot tokens and who escorted the coupons and/or coin or slot tokens to the slot booth or master coin bank.

2. The original form shall contain the following *[additional]* information ***in addition to the information in (h)1 above***:

- i. The total dollar amount of coupons received from the security representative referenced in (h)1vii above and counted by a master coin bank cashier or a slot cashier, other than the slot cashier who removed the coupons from the machine;
- ii. The total dollar amount of coin or slot tokens received from the security department representative referenced in (h)1vii above and counted by a master coin bank cashier or a slot cashier, other than the slot cashier who removed the coins from the machine;

iii. Any additional information as may be required by the Commission to reconcile the coupons removed from the automated coupon redemption machine; and

iv. The signature of the master coin bank cashier or slot cashier who received and counted the coupons and/or coin or slot tokens.

(i) *After meeting the signature requirements as described in (h)1vi and vii above, the coupons and any coin or slot tokens removed from the automated coupon redemption machine and the original and duplicate copies of the form referenced in (h) above shall be transported directly to a slot booth or master coin bank by the slot cashier in the presence of the security department representative. The triplicate form referenced in (h) above shall be placed in the automated coupon redemption machine until forwarded to accounting at the end of the gaming day. The duplicate copy of the form shall be given to the security department representative upon arrival at the slot booth or master coin bank. The security department representative shall immediately deposit the duplicate copy of the form into a locked accounting box maintained at the security podium.]* ***The slot cashier shall:**

1. Prepare the form referenced in (h) above by recording the information in (h)1i through v above;

2. Sign the form;

3. Obtain the signature of the security department representative who witnessed the removal of coupons and/or coin or slot tokens;

4. Place the triplicate copy of the form in the automated coupon redemption machine for subsequent forwarding, at the end of the gaming day, to accounting;

5. Transport the coupons, coin or slot tokens removed from the automated coupon redemption machine, and the original and duplicate copy of the form referenced in (h) above, directly to a slot booth or master coin bank, in the presence of the security department representative; and

6. Present the duplicate copy of the form referenced in (h) above to the security department representative.

(j) The security department representative shall accompany the slot cashier to the slot booth or master coin bank, and shall immediately deposit the duplicate copy of the form into a locked accounting box maintained at the security podium.*

[(j)](k)* A master coin bank cashier or a slot cashier, other than the slot cashier who removed the coupons and any coin or slot tokens from the automated coupon redemption machine, shall*:*

1. Count *[count]* the coupons and coin or slot tokens and ***record such amounts on the original copy of the form;**

2. Reconcile *[reconcile]* the amount(s) counted to the amount(s) recorded in accordance with (h)1iv and v above*;* *[and shall]*

3. Sign *[sign]* the original form attesting to the reconciliation*[,]**; and*

4. Retain the *[The]* original copy of the form *[shall be maintained by the slot cashier or master coin bank cashier who verified the counts until forwarded]* ***for subsequent forwarding*** to accounting at the end of the gaming day.

[(k)](l)* All coupons accepted by an automated coupon redemption machine shall be *[immediately]* cancelled ***by such machine immediately upon exchange*** in ***such*** a manner *[which anyone]* ***that it*** can ***be*** visually *[ascertain]* ***ascertained*** ***[so]*** that they are not redeemable in accordance with N.J.A.C. 19:45-1.34(a) or acceptable by another automated coupon redemption machine.

[(l)](m)* ***[A slot cashier shall prepare a form to authorize the distribution of]* ***Whenever*** coins or slot tokens ***are distributed*** to an automated coupon redemption machine*[,]**,* ***[The slot cashier shall deliver all parts of the form to the master coin bank cashier for preparation of the funds. The form shall be, at a minimum,]* a serially prenumbered three-part form*[,]**,* ***at a minimum shall be prepared by a slot cashier.*** Each series of forms shall be used in sequential order, and the series numbers of all slips received by a casino shall be accounted for by employees with no incompatible functions. All original, ***and*** duplicate and triplicate ***copies of*** void forms shall be marked "VOID" and shall require the signature of****

the preparer. *The following information, at a minimum, shall be recorded on all copies of the form:*

The slot cashier shall:

1. Record the following information on the original and all copies of the form:

[1.]**i. The date and time of preparation;

[2.]**ii. The automated coupon redemption machine asset identification number;

[3.]**iii. The number of bags and the dollar amount of each bag to be distributed; ***and***

[4.]**iv. The total dollar amount of the fill*[*]; and]**.*

2. Present the original and all copies of the form to the master coin bank cashier;

[5. The]* *3. Obtain the signature of the master coin bank cashier who prepared the coins or slot tokens for distribution to the automated coupon redemption machine*[*]**;*

***4. Present the original copy of the form to the master coin bank cashier;**

5. Transport the duplicate and triplicate copies of the form, along with the funds, to the automated coupon redemption machine, in the presence of the security department representative;

6. Sign the duplicate and triplicate copies of the form and obtain the signature of the security department representative on such copies;

7. Present the duplicate copy of the form to the security department representative; and

8. Place the triplicate copy of the form in the automated coupon redemption machine until forwarded to accounting at the end of the gaming day.

(n) A security department representative shall:

1. Escort the slot cashier to the automated coupon redemption machine and observe the filling of the machine;

2. After meeting the signature requirements in (m)6 above, immediately place the duplicate copy of the form into a locked accounting box at the security podium.*

[(m) Upon meeting the signature requirements as described in (l)5 above, the master coin bank cashier shall retain the original copy of the form. The duplicate and triplicate copies of the form shall be given to the slot cashier filling the machine. A security department representative shall escort the slot cashier or above along with the funds and the duplicate and triplicate copies of the form to the automated coupon redemption machine and shall observe the filling of the machine. The security department representative and the slot cashier shall sign the duplicate and triplicate copies of the form. The duplicate shall be given to the security department representative who shall immediately deposit the duplicate form into a locked accounting box at the security podium. The triplicate shall be placed in the automated coupon redemption machine until forwarded to accounting at the end of the gaming day.]

[(n)](o)*** At the end of the gaming activity each day, at a minimum, the original, duplicate and triplicate copies of the forms referenced in (h), *(i), (j), (k),* *[(l) and]* (m) ***and (n)*** above shall be forwarded to the accounting department for agreement and shall be used to reconcile each automated coupon redemption machine in a manner as approved by the Commission.

[(o)](p)*** Notwithstanding this section, in addition to accepting coupons, an automated coupon redemption machine may accept currency provided the procedures governing the control and reconciliation of coupons and currency removed from the machine are submitted to the Commission for approval.

HEALTH

(a)

PUBLIC HEALTH COUNCIL

State Sanitary Code

Preparation, Handling, Transportation, Burial and Disinterment of Dead Human Bodies

Readoption with Amendments: N.J.A.C. 8:9

Proposed: November 19, 1990 at 22 N.J.R. 3458(a).

Adopted: February 11, 1991 by the New Jersey Public Health Council, Louise Chut, Ph.D., M.P.H., Chairperson.

Filed: February 14, 1991 as R.1991 d.130, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:1A-7.

Effective Date: February 14, 1991, Readoption; March 18, 1991, Amendments.

Expiration Date: February 14, 1996.

Summary of Public Comments and Agency Responses:

The Public Health Council received one set of comments on several aspects of the proposal from the New Jersey State Funeral Directors' Association. Several of the comments with which the Council agrees would constitute substantive changes in the proposal that would necessitate a reproposal. The Council has decided to make several non-substantive changes at this time. In the near future, the Council will propose to delete several sections, thus allowing further public comment on those substantive changes.

COMMENT: The list of diseases given in N.J.A.C. 8:9-1.2 appear to be inconsistent with N.J.A.C. 8:9-1.4 and also with N.J.A.C. 8:57; this is confusing. In addition, the list of diseases differs from certain Federal lists of diseases that require "isolation."

RESPONSE: The Council agrees that the lists are confusing. More to the point, the Council has decided that such lists are unnecessary and will, in the near future, propose extensive changes to these rules that will delete N.J.A.C. 8:9-1.2, thus eliminating the list entirely.

COMMENT: N.J.A.C. 8:9-1.3 requires the disinfection of body fluids prior to final disposition. Disinfection violates septic system requirements and may be environmentally unsound.

RESPONSE: The Council agrees and has added wording to N.J.A.C. 8:9-1.3 mandating treatment of bodily fluids as required by existing State, Federal, and local requirements.

COMMENT: N.J.A.C. 8:9-1.4 requires funeral directors to notify health officials when they encounter a body which has died from certain diseases. This is not needed because: (1) it is not now done; (2) notification about diseases is the primary responsibility of physicians and others, not funeral directors; (3) funeral directors are not medical professionals; and (4) funeral directors do not know what infectious disease the body has had, if any.

RESPONSE: The Council agrees and will, in the near future, propose deletion of N.J.A.C. 8:9-1.4, thus relieving funeral directors of any responsibility to notify local health officials about bodies with infectious diseases.

COMMENT: N.J.A.C. 8:9-1.5 requires special permits for funerals of persons who have died of certain diseases. This is not now done; it is doubtful that a public health purpose exists for this rule; and there are no standards which a local health official could use to grant or deny such a permit.

RESPONSE: The Council agrees, and will, in the near future, propose to delete N.J.A.C. 8:9-1.5 entirely, because it does not serve a public health purpose.

COMMENT: If the list of diseases is retained, AIDS should be added to that list.

RESPONSE: The list will not be retained; in addition, complete AIDS rules exist elsewhere in the New Jersey Administrative Code.

COMMENT: N.J.A.C. 8:9-1.9, regarding disinterments, should reflect a State Cemetery Board rule allowing final entombment without a disinterment permit for bodies temporarily stored.

RESPONSE: The Council agrees and has added the Cemetery Board's wording to N.J.A.C. 8:9-1.9.

COMMENT: The inclusion of "universal precautions" is strongly supported.

RESPONSE: The Council has retained this requirement.

Summary of Agency-Initiated Changes:

To be consistent with State law (N.J.S.A. 26:6-23), the Council has incorporated into N.J.A.C. 8:9-1.6 the names of five diseases that require transportation in sealed caskets.

Full text of the reoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:9.

Full text of the amendments follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 9

PREPARATION, HANDLING, TRANSPORTATION, BURIAL AND DISINTERMENT OF DEAD HUMAN BODIES

8:9-1.2 Disposition of a body dead of certain communicable diseases

(a) The person or persons responsible for the burial or cremation of a human body dead of cholera, suspect cholera, plague, suspect smallpox, yellow fever, diphtheria, infectious tuberculosis, or viral hemorrhagic fevers (including, but not limited to, Lassa fever, Ebola and Marburg viral disease, and Congo-Crimean hemorrhagic fever) shall not allow the same to remain without burial or other lawful disposition for a period longer than 24 hours after death unless said body is thoroughly embalmed and disinfected. If said body is to be buried or lawfully disposed of within 24 hours after death without embalming, said body, before removal from the place of death, shall be placed in a tight covered casket which shall not thereafter be opened.

(b) (No change.)

8:9-1.3 Preparation of a dead body

In the preparation for burial or transportation of a dead body, the funeral director, the embalmer and assistants shall use universal precautions according to the Centers for Disease Control recommendations (see Morbidity and Mortality Weekly Reports, Volume 38, S-6, June 23, 1989, available from the Centers for Disease Control, Atlanta, Georgia 30333), incorporated herein by reference, which shall include taking due care to prevent any spread of infection in the handling of such body during transportation, in preparation and during embalming, and after contact with such body, and shall disinfect their hands and remove any soiled clothing. All instruments, gloves, coverings and utensils used in embalming or in handling the body shall be disinfected immediately after being used. All fluids or other matters removed from such body in the process of embalming shall be *[disinfected before final disposition]* ***disposed of in accordance with all applicable State, Federal and local laws and regulations governing medical and infectious waste***.

8:9-1.4 Notification to be given to health officer by funeral director

(a) It shall be the duty of the funeral director in charge of a human body dead from any of the diseases listed in N.J.A.C. 8:57-1.3(b) to immediately notify by telephone the local health officer or local board of health of the municipality or district in which the funeral is to be held. Such notice shall include the name of the deceased person, the cause of death and the time and place at which it is proposed to hold the funeral.

(b) Diseases listed at N.J.A.C. 8:57-1.3(a) should be reported by the funeral director to his or her local health department in writing within 24 hours after the funeral director has been notified of a human dying from any of those diseases.

8:9-1.5 Permit requirements for certain public funerals

No public funeral shall be held of any person who has died of any disease referred to in N.J.A.C. 8:57-1.3(b) unless a permit therefor shall first have been secured from the health officer or the local board of health of the municipality or district in which such funeral is to be held.

8:9-1.6 Transportation of certain bodies in sealed caskets

A person shall not convey or aid in conveying to a common carrier to be transported across or within this State, and a common carrier shall not accept for transportation or transport into or within this State, the body of a person who has died of any of the diseases referred to in N.J.A.C. 8:9-1.2 ***or from smallpox, Asiatic cholera, yellow fever, typhus fever or bubonic plague*** unless the body is enclosed in a hermetically sealed casket and a license for such transportation has been first obtained in writing from the State Department of Health. (N.J.S.A. 26:6-23.)

8:9-1.7 Transportation of bodies generally

(a) A human body dead from causes other than those included in N.J.A.C. 8:9-1.2 shall not be transported by a common carrier unless embalmed by arterial and cavity injection and enclosed in a leak-proof casket, or a leak-proof box, provided, however, that embalming shall not be required if destination can be reached within 24 hours after death and provided, further, that regulation shall not apply to disinterred bodies.

(b) This regulation shall not be construed to prevent the moving of the body of any person who has died on the property of or as a result of the activities of a common carrier, to a funeral director's establishment or the home of the deceased without embalming or encasing.

8:9-1.8 Necessity of transit permit

A dead human body shall not be transported out of the State by common carrier unless accompanied by a transit permit of the form adopted by the State Department of Health. (N.J.S.A. 26:6-26.)

8:9-1.9 Disinterments; when allowed; permits

A dead human body shall not be disinterred or removed from any grave, tomb, or burial place except by direction of a competent court of this State, or upon permit being given therefor by the local board of health having jurisdiction in the locality where the body is interred or entombed*[.]* (N.J.S.A. 26:6-37)*, **provided, however, that no disinterment permit shall be required for a transfer subsequent to a period of storage prior to final entombment or interment in accordance with N.J.A.C. 3:41-7.4.***

(a)

HOSPITAL REIMBURSEMENT

Procedural and Methodological Regulations

Adopted Concurrent Amendments: N.J.A.C. 8:31B

Proposed: January 22, 1990 at 23 N.J.R. 227(a).

Adopted: February 22, 1991 by Frances J. Dunston, M.D.,

M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: February 25, 1991 as R.1991 d.157, **with substantive technical changes** not requiring public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: February 25, 1991, Concurrent Amendments;

March 18, 1991, Changes Upon Adoption.

Expiration Date: August 17, 1995.

Summary of Public Comments and Agency Responses:

N.J.A.C. 8:31B-3.24 Reasonable indirect patient care costs

COMMENTERS:

Bergen Pines County Hospital

Blue Cross and Blue Shield of New Jersey

Cathedral Healthcare System

Cohen, Shapiro, Polisher, Shiekman and Cohen, on behalf of:

Community Medical Center, Deborah Heart and Lung Center, Elizabeth General Medical Center, General Hospital Center at Passaic, The Hospital Center at Orange, The Medical Center at Ocean County, The Mountainside Hospital, Newark Beth Israel Medical Center, Our Lady of Lourdes Medical Center, Paul Kimball Hospital, St. Joseph's Hospital

and Medical Center, South Jersey Hospital System, United Hospitals Medical Center, Warren Hospital and West Hudson Hospital Elizabeth General Medical Center Jersey City Medical Center Kaden Arnone Inc. Monmouth Medical Center Morrissy and Company New Jersey Hospital Association Newark Beth Israel Medical Center Overlook Hospital Robert Wood Johnson University Hospital St. Barnabas Medical Center St. Clare's Hospital St. Elizabeth Hospital St. Joseph's Hospital and Medical Center St. Peter's Medical Center U.S. Healthcare

University Health System of New Jersey, representing:

Atlantic City Medical Center Cooper Hospital Hackensack Medical Center Helene Fuld Medical Center Jersey Shore Medical Center Kennedy Memorial Hospital (Stratford) Robert Wood Johnson University Hospital University of Medicine and Dentistry of New Jersey University Hospital University Hospital Valley Hospital West Jersey Health System

COMMENT: Because of the large number of commenters responding to this proposed change, comments are divided into two sections, those favoring the change, and those opposed. Comments in favor of the proposal are as follows:

One supporter of the Department's plan to change the payment of indirect costs from a per case basis to a per diem basis believes that the new methodology is more reflective of a hospital's overall resource consumption for individual patient stays. Others believe that using a "per diem" method is preferable to the "adjusted admission" calculation used in 1990 because the "per diem" method more accurately accounts for legitimate differences between hospitals. Still others mentioned "alleviation of the current inequity" as a reason for support, and pointed out that the "small minority" of hospitals protesting the new methodology still enjoy the highest incentives in the State.

The 15 hospitals represented by Cohen et al. support the change in the indirect reimbursement methodology for the following reasons:

- The existing method is unfair and inequitable.
- The proposed change will provide more accurate indirect cost reimbursement.
- The regulation fulfills earlier commitments by the Department.
- The effects on the hospital industry will be much less onerous than in previous years because most of the hospitals negatively impacted will continue to have incentives; in addition, many of them experienced wind-fall levels of incentives in 1989 and 1990.

Commenters critical of the proposed changes made these points:

COMMENT: Reimbursement tied to length of stay (LOS) discourages movement toward low lengths of stay and primary care services, and encourages movement to long length of stay DRGs. Given that the indirect methodology is based upon a peer group untrimmed average length of stay, any revenue incentives through length of stay reductions become direct payment disincentives as cases migrate to/from the trimmed inliers and to/from the length of stay outlier categories. The major reason for these disincentives is that revenue reductions far exceed reductions in fixed (staffing) expenditures.

RESPONSE: The proposed methodology provides incentives to reduce LOS, because any hospital which has a LOS below the peer average receives an incentive under this method. Further, any reduction of LOS within DRGs between the base year and the rate year results in an advantage to hospitals. Unlike the direct patient care cost methodology, this method provides incentives for every day it lowers LOS from the base year. The direct patient care payment rate provides an incentive to reduce the length of stay for all inlier patients. Therefore the Department does not agree with the assertion that the amendments encourage movement to longer length of stay DRGs. These amendments neutralize the

incentive of the current method, which encourages hospitals to treat more patients low LOS DRGs.

COMMENT: Because the proposed methodology does not include a case-mix intensity measure in calculating adjusted admissions, it penalizes high case-mix intensity hospitals by understating the equivalent outpatient admissions.

RESPONSE: The Department acknowledges that a higher case-mix results in the assigning of more indirects to the inpatient area than to the outpatient area. This may be appropriate. The Department will continue to refine the allocation of indirect costs between inpatients and outpatients as an all-inclusive rate is developed. The acuity within DRGs is not addressed by this methodology. However, the move to specific DRG add-ons is an improvement to the present methodology.

COMMENT: The proposed methodology does not take into account differences in acuity of illness within DRGs. Therefore hospitals with appropriately longer lengths of stay due to sicker patients are penalized.

RESPONSE: The refinements contained in the proposed method are consistent with the Department's prior commitments to improve upon the current system, and particularly to address concerns about the insensitivity of the current system to case-mix. Statistical analysis confirms that the CVs of the proposed method are stronger than those of the existing method, indicating that the variation between cost and reimbursement across all hospitals is less under the proposed method than it is currently. This means that the incentives and disincentives associated with this part of the payment system are also smaller. While the proposed method is not yet perfect—not all indirect costs vary with case-mix or LOS to the same degree—it is a demonstrated improvement over the current method, and a step toward further refinements planned for 1992 with the introduction of an all-inclusive rate.

COMMENT: Payment on the basis of patient days is inappropriate for certain cost centers. Commenters disagreed on which centers should be excluded from this methodology, but Administrative and General/Fiscal, Plant and PCC/Phy cost centers were each suggested by at least one commenter. An alternative suggestion was that, while there may be a relationship between length of stay and costs in these centers, an increase in cost is not directly proportional to one in LOS. In addition to excluded centers some commenters mentioned certain types of hospitals that should be excluded from the proposed methodology, including hospitals with old physical plants and hospitals with high percentages of uncompensated care and Medicaid patients, or with many admissions through the ER.

RESPONSE: The proposed amendments reflect continued movement toward a simpler, more prospective system through the use of volume-variable standard payment and the substitution of increased prospective adjustments for hospital-specific appeals. Under such a system some hospitals may believe that their particular needs or circumstances are unaddressed. It is expected that the reimbursement contained in the prospective adjustments, which is 1.5 percent greater than in 1990, will be adequate to cover their expenses. If it is not, hospitals have the option of undergoing a full rate review.

The fact that further refinements will be introduced in 1992 does not warrant deferring these changes. The demonstrated improvements of this methodology are sufficient justification for moving ahead with this more equitable system immediately. Meanwhile, as we move to an all inclusive rate, the Department intends to address legitimate differences in cost. The system is moving in this direction with the methodology being proposed, and the Department remains committed to continuing this trend.

COMMENT: Several commenters criticized the Department for not providing modeling by which hospitals can assess individual impacts of the proposed change in methodology. They are concerned that some hospitals will lose reimbursement and should be protected from large losses by a corridor or maintenance of appeals for indirects.

RESPONSE: It is not necessary to provide modeling of the impact since the Department has issued to each hospital the necessary data to estimate the effects of the proposed change on its own institution. Additionally, all hospitals were issued their actual rate packages on November 15, 1990, and therefore have the information needed to determine the impact of this methodological change.

COMMENT: According to one commenter, the proposed methodology has not been shown to be budget neutral. It removes \$7 million from reimbursement statewide. One hospital says that it will lose \$2.3 million under this methodology.

RESPONSE: The new methodology will redistribute existing indirect cost reimbursement dollars among the State's hospitals. Although some hospitals will experience reductions in revenue due to this change, all

hospitals have increased revenue overall from rate year 1990 to 1991. Most hospitals that will lose money will remain in incentive positions; indeed, some of the hospitals that will lose the largest sums under the new methodology will remain in some of the strongest incentive positions. Those few hospitals that will move from an incentive to a disincentive position will have longer than average LOS for their DRGs, or lower than average case-mix, or both.

COMMENT: While some recommended deferral of action on indirects, anticipating further changes in 1992, others suggest corridors of protection against windfall profits and losses under this proposed amendment.

RESPONSE: Corridors of protection would not be an appropriate response to the redistributive effects of the new methodology. Reductions in revenue associated with the above characteristics do not merit corridors of protection. The DOH is opposed to segmenting out any piece of the reimbursement system for special treatment. Any consideration of corridors would have to be related to the entire group of proposed rule changes. Furthermore any hospital that does find itself in a financially precarious position can opt for a full rate review. As noted above, the improvement in this system over the existing system is significant, and therefore delay in implementation is not warranted.

COMMENT: One commenter mentioned several issues relating to the specific calculations used to set rates using the proposed amendment. These issues are not ones appropriately addressed in regulation. However, for purposes of clarification, the Department will briefly discuss each of these issues:

- 1. Same day surgery cases have been included as inpatient cases which lowers the ALOS and the per diem.
- 2. There has been no consideration for known database corrections.
- 3. Neonatal DRG assignment is a problem.
- 4. Gross up/down to SHARE Actuals was not performed in developing standards.

RESPONSE:

- 1. Patients billed as same day surgery patients were not classified as inpatients for purposes of this payment method. Payment for same day surgery patients remains unchanged from the current methodology.
 - 2. Database changes were not incorporated into the calculation of standards because, as in all other areas of the rates, standards are not recalculated.
 - 3. Neonatal rates were calculated using the data submitted by hospitals who, by regulation, were responsible for its accuracy. Whatever data problems exist here are not sufficient reason not to move to another indirect payment method.
 - 4. Since only actual length of stay data were used to develop standards, no gross-up/down between actual data and UBPS data was necessary.
- For consistency with N.J.A.C. 8:31B-3.5(b), the phrase "unless so ordered by the Commission" is deleted from the proposed amendment.

N.J.A.C. 8:31B-3.26 Update factors

COMMENTERS:

- Barnert Memorial Hospital
- Bergen Pines County Hospital
- Besler and Company
- Blue Cross and Blue Shield of New Jersey
- Cathedral Healthcare System
- Department of the Public Advocate, Division of Rate Counsel, State of New Jersey
- Elizabeth General Medical Center
- Hackensack Medical Center
- Helene Fuld Medical Center
- Kaden Arnone Inc.
- Morrisy and Company
- New Jersey Hospital Association
- Overlook Hospital
- St. Barnabas Medical Center
- St. Clares Riverside Medical Center
- St. Elizabeth Hospital
- St. Francis Medical Center (Trenton)
- St. Joseph's Hospital and Medical Center
- St. Peter's Medical Center
- U.S. Healthcare
- West Jersey Health System

COMMENT: There is some controversy over the actual percent increase in payment that the prospective operating adjustment and the legal and clinical adjustment add to hospital rates. Some commenters argue that the increase is inadequate to cover costs of MME, CN operating

costs, or costs of mergers and acquisitions. One party questions the 0.5 percent legal and clinical adjustment, and asks about studies quantifying those costs. Some state that the listed update factors do not address cash flow needs, particularly those due to uncompensated care and/or the Medicare payment shortfalls. Some request a listing of the type of appeals this amendment replaces. To cover all the identified items of costs, some suggest a four or five percent operating margin.

Other commenters disagree with these comments, contending that the proposed payment increase is too generous. One believes that increased payments in excess of the economic factor are inflationary, and the update factors should pay less than the proposed amount; a prospective operating adjustment of one percent, rather than the proposed two percent, is recommended. Another recommends deletion of the Technology Factor and the 0.5 percent legal and clinical adjustment, on the basis that they are in excess of the two percent recommended by the Governor's Commission, and would permit "dangerously inflationary rate escalation." A third believes that the amendment would give hospitals an "acceptable level" of payment to continue current services without endangering the quality of patient care.

One commenter mentions the possibility of a reduction in reimbursement for bad debts, and makes the point that if the two percent prospective operating adjustment is expected to cover increases in bad debt costs, inner city hospitals may be disadvantaged.

RESPONSE: If increases are inadequate to cover MME, CN operating costs, or costs of mergers and acquisitions, then a hospital should elect a full rate review. Such costs are not universally experienced by all hospitals on an annual basis, and therefore do not justify an automatic increase to the prospective operating adjustment. MME, CN operating costs, and costs of mergers and acquisitions may well result in increased reimbursement after a full review of the hospital's entire base. Other components of costs should be covered by increased volume which should result form mergers and from CNs related to new services.

The Department has conducted several studies evaluating the total dollar impact of the appeals process. Extensive research was done to measure the amount of money placed into the system each year through legal and clinical appeals. This research, and development of the voluntary rate settlements accepted by 79 of the State's hospitals, suggest that the proposed .5 percent is well in excess of the new dollars that were, or would have been, granted to hospitals through such appeals in each of the past five years.

The issues noted by commenters that are not accounted for by the update factors include uncompensated care, the Medicare cost shift, and cash flows. It should be noted that the first two are cost shifts, thus they add no costs and no reimbursement. Medicare and uncompensated care are paid in 1991 at full reasonable cost as updated by update factors. Cash flow is never addressed by update factors, which affect revenue.

These adjustments exceed actual costs, and the 2.5 percent more than covers the additional payments received in past years. The time spent in adjudication has been an underlying problem in undercollections, and in fact, has threatened the responsiveness of the entire Chapter 83 system, and created cash flow problems for hospitals.

In comparison to existing update factors, the proposed changes will increase the payments to hospitals by approximately 1.5 percent:

Proposal:

- The prospective operating adjustment, based on total direct and indirect costs: +2.0%
- The legal and clinical adjustment, also based on total direct and indirect costs: +0.5%

CURRENT:

- The one percent incentive for accepting rates is based on direct patient care only, or approximately half of total direct and indirect costs: -0.5%
- The existing operating margin is applied only to the standard portion of direct and indirects, and standard costs are approximately 50 percent of direct and indirect costs: -0.5%

DIFFERENCE:

- Proposed payment percentage minus current +1.5%
- In addition, the technology factor remains as a component of the update factors. The 1991 portion of the technology factor is 0.85 percent. Compounded with the 1989 and 1990 technology factors, 1988 base year rates have been increased by 1.77 percent to account for technological advances.

Regarding the question of potential changes in reimbursement for bad debt costs in relation to the two percent prospective operating adjustment, it would be impossible for the Department to take any action on the basis

of speculation as to what effect future legislation may have on the reimbursement system.

COMMENT: Commenters expressed concern about the threshold that would cause the Department to recommend rate adjustments to the Commission. They believe that very few issues would have a financial impact in excess of the total percentage added by the update factors. One requested that the amendment be changed to include adjustments not only for inadequate levels of hospital payment, but also for overpayment to hospitals.

RESPONSE: A single issue does not have to exceed all of the update factors to be considered for an adjustment under this section. Appropriate issues are those of such magnitude that, if left unaddressed, would with all the other changes in the hospital environment, result in update factor inadequacy. It should be noted that the two percent prospective operating adjustment and the 0.5 percent legal and clinical adjustment noted above are expected to compensate hospitals adequately. The Department does not expect to use N.J.A.C. 8:31B-3.26(h) very often. The Department also agrees with the comment that such an adjustment could be used to correct both for inadequate and over-adequate payment levels.

COMMENT: Some commenters suggested that the Department's ability to make determinations under subsection (h) be circumscribed by "limiting language" that deals with the "quality of the data used to support the recommendation," or that the "exception threshold be more finitely stated in citation," with dollar values and impacts on hospitals, and that an independent group be established as a forum for presentation of such issues prior to HRSC review.

RESPONSE: The Department's experience with dollar thresholds suggests that this is not the best approach to use in reducing appeals. It was tried unsuccessfully with legal appeals, where it proved ineffective in screening the magnitude of issues. The outcome was that either the threshold was ignored by hospitals, issues were submitted without quantification, or all quantified issues were valued at the threshold amount. Even though the total number of appeals increased, only a small proportion of the appeals truly exceeded the threshold. The goal of eliminating minor appeals was not achieved. There is no reason to expect use of thresholds to be more successful if it is continued, as the commenter suggests.

In addition, dollar thresholds would limit the Department's flexibility in determining the issues of greatest need for the industry, as would some of the other suggested mechanisms. The Department believes that such flexibility is an entirely appropriate exercise of its administrative discretion.

COMMENT: Others stated that relief under subsection (h) should be immediate so that hospitals will not have to wait until the next year for their payment.

RESPONSE: Some confusion seems to have resulted from the proposed language which does not make it clear that it will be implemented prospectively. The Department is changing the proposed language, from present to future tense, to make clearer that all adjustments under this section are prospective, and will be implemented in the rate year following consideration of the issue.

COMMENT: The Department of the Public Advocate, State of New Jersey, recommends that, in addition to the Department of Health, payers, hospitals, the Public Advocate, or any interested party be permitted to request adjustments from the HRSC.

RESPONSE: The Department agrees with the comment of the Public Advocate, and is changing the proposed amendment to include the Public Advocate as one of the parties consulted in accordance with subsection (h).

COMMENT: Rather than focusing on the percentage increase generated by the update factors, some commenters address the way in which it is calculated. Some suggest that the prospective operating adjustment of two percent be calculated in the same way as economic factors, that is, applied to rate year volume-variable approved revenues; others suggest similar methods of calculating the technology factor and the adjustment in lieu of clinical and legal appeals of 0.5 percent. Other changes suggested were annual compounding, application to both inpatient and outpatient approved revenue, use of rate year case-mix and volume, and inclusion of capital when an all-inclusive rate is implemented. One party suggested that wording should change from "actual" to "rate year" volume and case-mix, in both subsections (c) and (d).

RESPONSE: The Department agrees that use of the rate-year volume and case-mix would be a more equitable way of calculating the prospective operating adjustment and the Statewide legal and clinical adjustment. Accordingly, the proposed text at subsection (c) is revised upon adoption.

Annual compounding of the prospective operating adjustment and the Statewide legal and clinical adjustment would be inappropriate. It will result in an amount far in excess of that recommended by the Governor's Commission or intended by the Department. The Department will continue to examine the inclusion of capital in an all-inclusive rate.

COMMENT: Regarding the issues for which payment was added in 1991 only, one commenter noted that the additional reimbursement is both welcome and warranted by the higher costs especially for staff. Other commenters stated that additional payment should be included to cover costs such as those associated with designation as a trauma facility and performance of bone marrow transplants.

RESPONSE: The Department acknowledges this comment as it applies to qualified units. Under subsection (h) of this rule, the Department would be able to recommend such adjustments in the future if the issues met the criteria.

COMMENT: Several suggest that a "mid-year correction" be allowed in 1991 because it is a transition year.

RESPONSE: As noted above, the update factors provide payment in excess of reported costs. Therefore the Department believes it is not unrealistic for hospitals to expect these factors to cover the additional costs for the year in which they arise. It is the purpose of the prospective operating adjustment and the legal and clinical adjustment to provide sufficient payment for hospitals to cover these costs in the year in which they occur.

COMMENT: Some of the commenting parties noted that the Governor's Commission on Health Care Costs recommended a review of the appropriateness of the Prospective Operating Adjustment for adequacy after two years and asked that this be addressed in the proposal. One requested annual review to consider market fluctuations.

RESPONSE: Accompanying its recommendation to provide a two percent automatic prospective adjustment to hospitals, the Governor's Commission stated that, "The adequacy of the 2 percent adjustment will be reviewed after it has been in place 24 months." The Department fully expects to implement this recommendation at the appropriate time.

COMMENT: Hospitals would like clarification of the 0.5 percent update factor.

RESPONSE: The Department has deleted the word "Statewide" to clarify its intent in subsection (d), which is to make the 0.5 percent adjustment in lieu of legal and clinical appeals an additional update factor that is available to all hospitals choosing to implement their rates as issued.

N.J.A.C. 8:31B-3.42 Schedule of rates—effective date

COMMENTERS:

Bergen Pines County Hospital
Department of the Public Advocate, Division of Rate Counsel, State of New Jersey
Elizabeth General Medical Center
Kaden Arnone Inc.

COMMENT: Two commenters noted that the proposed amendments permit the Commission to adjust a hospital's rates for "a substantial inequity", but that this adjustment would be implemented prospectively in the following rate year. The commenters seek clarification on the following points: (1) Will this adjustment not be considered statutory revenue at final reconciliation for the first year that the inequity occurs? or (2) Will the hospital not receive the adjustment as cash flow through a mark-up factor adjustment until the following year, but will receive this amount at final reconciliation the year the adjustment was identified?

RESPONSE: The commenters misconstrue the use of the term "a substantial inequity;" they apparently believe that this is a type of adjustment that hospitals can qualify for under this section. Instead, it refers to whether the delay of the collection of an adjustment until the following rate year would be problematic, and allows the possibility for an exception to the annual mark-up provision.

However, the Department believes that the commenters intended to inquire whether Commission-approved adjustments relating to the current rate year would be considered retroactive or only prospective if implemented on January 1 of the following rate year. Under the full rate review option, any adjustments approved by the Commission would be completed by January 1. If it happens that the Department recommends a rate adjustment to the Commission pursuant to N.J.A.C. 8:31B-3.26(h), that adjustment will be effective in the following rate year.

COMMENT: One commenter suggests that hospitals should not have to wait until the following rate year to receive Commission approved adjustments. The commentator believes that it is unreasonable and punitive to limit hospitals electing full rate review to the prior year's rates increased

ADOPTIONS

by the economic factor; this information would likely exacerbate existing cash flow problems.

RESPONSE: To be consistent, the Department has inserted a reference in the proposed regulation that cites N.J.A.C. 8:31B-3.26(h), verifying that such an adjustment would be included in the rates for the following rate year.

COMMENT: One commenter expressed the opinion that the term "substantial inequity" is ambiguous.

RESPONSE: The Department agrees that the phrase "substantial inequity" may be misinterpreted. Therefore it has changed the phrase in the three different sections in which it appears: N.J.A.C. 8:31B-3.42, 3.65, and 3.72.

N.J.A.C. 8:31B-3.51 Rate notification, approval, and implementation

COMMENTERS:

Barnert Memorial Hospital
Bergen Pines County Hospital
Besler and Company
Department of the Public Advocate, Division of Rate Counsel, State of New Jersey
Elizabeth General Medical Center
Helene Fuld Medical Center
Kaden Arnone Inc.
KPMG Peat Marwick
Morrisy and Company
Newark Beth Israel Medical Center
New Jersey Hospital Association
N.J. Hospital Rate Setting Commission
Our Lady of Lourdes Medical Center
Overlook Hospital
St. Barnabas Medical Center
St. Clares Riverside Medical Center
St. Elizabeth Hospital
St. Joseph's Hospital and Medical Center
St. Francis Medical Center (Trenton)
St. Joseph Hospital and Medical Center
St. Peter's Medical Center
University Hospital
Valley Hospital

COMMENT: Commenters contend that rate errors do occur, and the proposed amendment should include some way to correct them, other than via a full rate review, and a timeframe in which it may occur. Absent that, they request a statement of the Department's intent to correct such errors.

RESPONSE: The Department is proposing to eliminate the formal process through which hospitals notify the Department of calculation errors. The reason for so doing is that, based on the Department's experience for the last several years, calculation error letters fell into one of four categories which would be better addressed through another mechanism:

1. Requests for additional information to be used in determining whether to implement rates: The Department routinely supplies such information to hospitals in rate packages or upon request, and there is no need to state this in regulation.

2. Requests to reclassify our change data: Such requests are appropriately addressed in N.J.A.C. 8:31B-3.16, Current Cost Base.

3. Notification of calculation errors in rates: To Department staff's best knowledge, all legitimate rate calculation requests received during the past three years were corrected. Under the amendment, the Department's ability to make such adjustments will be improved by earlier issuance of rates.

4. Significant reporting errors on the part of hospitals: Cases of this type would be considered as part of a full rate review process.

COMMENT: Commenters also suggested that the Department meet with industry and consultants to establish additional information that could be sent with rate packages to "enhance a hospital's review process," thereby decreasing the volume of calculation error letters received by the Department.

RESPONSE: Regarding the comment that additional information could be sent out with rate packages to assist the hospital in its review process, the Department accepts this suggestion, and will explore ways in which it might be implemented.

COMMENT: Some suggest that appeal rights should not be denied without providing protection for unusual changes that might affect hospitals. Specifically noted were CN operating costs; MME; mergers, acquisitions, and consolidations; 1987-1988 Commission-approved adjust-

HEALTH

ments not captured in the base year; costs associated with lost resident positions; high degree of teachingness; "specialized hospitals;" and plants older than 10 years. Suggested provisions were a more limited appeals process that would incorporate these issues; corridors, at least on an interim basis, or perhaps until an all-inclusive rate is developed; appeals for items greater than 0.5 percent of a hospital's DPC; or a "one time around adjustment" to rates.

RESPONSE: The reasons for not maintaining appeal rights for specific issues have been discussed in detail in the comments to other sections above, but the can be summarized briefly here:

- The prospective increase in payment based on automatic update factors to hospitals is generous.

- Many of the issues for which appeals are requested are final reconciliation issues or cash flow issues, which are not appropriate rate appeal issues, even under the current system. A hospital's ability to seek adjustment for these issues is unchanged by proposed regulations.

- The Department has the regulatory responsibility to recommend to the HRSC additional payments in excess of the update factors, if circumstances warrant it.

- If hospitals believe that their needs are not met through any of these avenues, they can elect a full rate review, and request unlimited exceptions.

- The appropriate emphasis for the rate determination is a more global examination of a hospital's total need. The Department will be moving away from consideration of single issues, or specific elements of cost.

COMMENT: Commenters suggested that the prospective operating adjustment would be more equitable if it were volume variable. Commenters also indicated that they would like for the percentage to be reviewed every other year for adequacy and appropriateness, as recommended by the Governor's Commission.

RESPONSE: The Department agrees that making the prospective operating adjustment and the legal and clinical adjustment volume variable in 1991, as well as in subsequent years, would be equitable, and that change is made upon adoption at N.J.A.C. 8:31B-3.26.

COMMENT: One commenter added that, because issues impact institutions in different ways, the legal and clinical adjustment should relate to particular hospital situations, and the technology factor, to particular DRGs and services.

RESPONSE: The suggested change, to make the proposed legal and clinical adjustment responsive to hospital-specific situations, is not in keeping with current rule, or the proposed amendment which maintains the intent of the current rule. Statewide legal and clinical appeals are by definition not hospital-specific.

COMMENT: Other commenters are concerned that hospitals electing not to implement their initial rates would not receive the update factors, and after 1991, the economic factor. One hospital suggested retention of the economic factor after 1991, while others suggested that the Department's actual costs of processing appeals be used to penalize hospitals for burdensome appeals, rather than removal of the update and economic factors.

RESPONSE: It is the sole purpose of a full rate review to determine the most appropriate payment level for a hospital. That determination can result in payment higher or lower than any or all of the update factors, but if the payment from these factors is deemed to be needed, it will be forthcoming.

COMMENT: One commenter expressed the opinion that the Department should not be allowed to initiate a full rate review for a hospital that has already elected to implement its rates as initially issued.

RESPONSE: The Department will make every effort to conduct full rate reviews as expeditiously as possible, for the very reasons cited by the commenters. It is anticipated that staff will have the necessary time for such endeavors because they will not be burdened with numerous issue-specific rate appeals as has been the case in the past.

COMMENT: The Public Advocate suggested that, regardless of a hospital's decision about implementing its rates or not, they should receive notification of the decision. This party also maintained that it has statutory authority to initiate a full rate review, and recommends that the rule be changed to include both them and the HRSC as potential initiators of this process.

RESPONSE: The response to this comment is given below on the discussion of N.J.A.C. 8:31B-3.52.

N.J.A.C. 8:31B-3.52 Full rate review

COMMENTERS:

Barnert Memorial Hospital
Bergen Pines County Hospital

Besler and Company
 Department of the Public Advocate, Division of Rate Counsel, State of New Jersey
 Elizabeth General Medical Center
 Kaden Arnone Inc.
 KPMG Peat Marwick
 Morrissey & Company, Inc.
 New Jersey Hospital Association
 Overlook Hospital
 St. Barnabas Medical Center
 St. Clares Riverside Medical Center
 St. Francis Medical Center (Trenton)
 St. Joseph's Hospital and Medical Center
 St. Peter's Medical Center
 U.S. Healthcare
 University Hospital

COMMENT: Commenters asked about the circumstances and timeframe under which the Department would initiate a full rate review.

RESPONSE: The Department has not initiated any full rate reviews for the 1991 rate year. Prior to initiating any full rate reviews, the Department will be more specific in its regulatory proposals for 1992 regarding the conditions which would lead it to initiate such a review.

COMMENT: Commenters questioned the short 30-day timeframe for submitting documentation and asked about the Department's response time for completing full rate reviews.

RESPONSE: The Department plans to complete full rate reviews prior to implementation of the rates. However, this schedule will require that the hospital provide appropriate information within specified time lines. The hospital is allowed 30 days to submit the required documentation; however, this information is primarily general information about hospital finances and operations. For example, the 1991 rate packages included data specification for a full rate review. Such information will not require extensive time to produce. The amendment specified no notification date for full rate reviews initiated by the Department. In response to several comments, the Department is adding upon adoption that its rights to initiate full rate review be subject to a 10 day timeframe, beginning with hospitals' notification to the Department of their intent regarding implementation of their rates. The Department would also be authorized to initiate a full rate review in response to rate adjustments in accordance with N.J.A.C. 8:31B-3.64. By adding to regulation the date for notification of DOH-initiated full rate reviews, a source of potential retrospectivity can be avoided; that is the situation in which the HRSC approves a hospital's rates for the following year, and then the Department specifies a full rate review for that hospital, thus negating payment of update factors, and countering the prior rate approval.

COMMENT: Some commenters requested benchmarks to be used in evaluating hospital data, and information about the way in which they will be applied. They also asked about the outcome of a full rate review as related to the party initiating it, including possible differences in outcome depending upon whether the Department or the hospital initiated the process, and whether a hospital would receive update factors if the Department initiated a full rate review.

RESPONSE: The Department will be developing indicators which can be used to describe hospital finances and operations. These indicators will be used to evaluate hospitals which undergo full rate review. The evaluation process will be the same whether the hospital or the Department initiates it. Therefore the same results would be anticipated. As noted in the response to N.J.A.C. 8:31B-3.26, the purpose of a full rate review is to determine the most appropriate level of payment for a hospital, a level than may be higher or lower than that based on update factors. This is true whether the hospital or the Department initiates the full rate review.

COMMENT: The application of full rate review to "high cost" hospitals is questioned by one commenter, who maintains that these hospitals are already penalized by standard payment that pays them less than their costs. They also note that financial distress can occur at any time during the year, yet hospitals may elect a full rate review only at the beginning of the rate year. Conversely, another party asserts that "efficient hospitals with exceptional issues" are left without a forum for their hospital-specific issues precisely because they are not "financially distressed" or a "potential extraordinary rate relief hospital."

RESPONSE: The rules are designed to support efficient and effective institutions and improve the prospectivity of the reimbursement system. These goals are consistent with Chapter 83 legislation. Examination of the entire cost base as part of a full rate review is appropriate when a

hospital maintains that its rates are inadequate or the Department wishes to question the individual hospital's costs.

It is true that standard payment penalizes high cost hospitals. However, it is appropriate to subject these facilities to further evaluation since high costs may unreasonably inflate standards. In addition, the reimbursement system directly recognizes some percentage of a hospital's costs (that is, approximately 50 percent of direct patient care costs are directly reflected in payment.) Further, these high costs and the resulting disincentive may be the reason the hospital is in financial distress.

COMMENT: One commenter suggested a potential conflict between the proposed amendment and the "general intent of chapter 83, P.L. 1978," as to the HRSC authority to hear hospital appeals without consideration of its entire cost base. The commenter also cited Recommendation 52 of the Governor's CARE Report in this regard.

RESPONSE: The Governor's CARE Report was quite specific in its reference to HRSC consideration of a hospital's entire cost base. It urges a return to "the original intent of the full rate review as part of Chapter 83 statutes regarding hospital appeals," and supports the full rate review as a means of assuring that a hospital's entire financial condition is considered before it is allowed increased revenues.

COMMENT: Commenters asked for a definition of "significant."

RESPONSE: As previously described a full rate review will consider total operations. A payment shortfall must result in some critical impact on the hospital's ability to provide services, that is, "significant."

COMMENT: The Public Advocate requested expansion of the authority to initiate a full rate review to include that office, and asked that it also receive copies of all documentation supplied by hospitals.

RESPONSE: The Department's proposal does not address at this time the role of the HRSC. The Department is, however, concerned about the current statutory basis for its enforcement of submission of documents to parties outside the Department of Health.

COMMENT: One commenter expressed concern about automatic increases and recommended full detailed reviews of each hospital's submissions to assure that costs are reasonable and justifiable, including review of minutes of committee meetings such as Tissue Committees, and ambulatory surgery payment methodologies.

RESPONSE: The Department agrees that cost increases should be monitored to insure that these expenses are justified. In addition, a consideration of costs should be part of any Departmental decision relating to hospital policy or practice.

N.J.A.C. 8:31B-3.55 Capital facilities

COMMENTERS: Elizabeth General Medical Center

COMMENT: This paragraph is proposed for deletion from the rules. Of particular concern is the elimination of the hospital's abilities to petition the Hospital Rate Setting Commission at any time regarding the Capital Facilities Formula Allowance and the interest associated with the purchase of major moveable equipment.

RESPONSE: At the present time, hospitals may elect not to accept their rates in order to seek payment for CFFA or interest associated with the purchase of major moveable equipment. Under the proposed change, hospitals may do this by electing a full rate review. Thus the deletion reflects simply a change in process, not loss of an opportunity.

N.J.A.C. 8:31B-3.57 Same Day Surgery

COMMENTERS: Blue Cross and Blue Shield of New Jersey

COMMENT: Because of their concern that coverage limitations of health insurance contracts are being circumvented for such outpatient services as chemotherapy and endoscopies, this commenter favors an expansion of this section to include specific regulations related to the treatment of same day medical cases. They suggest that same day medical cases be considered outpatient services for reimbursement purposes, using a definition similar to Medicare's.

RESPONSE: This is an issue the Department has worked on in the past, and will continue to address in the future. Industry groups have explored the development of an appropriate method to pay for same day medical and same day surgical cases, and the recommendation from the most recently-convened working group was that the first priority is to make the indirect payment for both similar. The particular methodology employed was of much lesser concern.

This goal of more similar payments is one component of the Department's proposal at N.J.A.C. 8:31B-3.24 for changing the methodology for indirect payment. As adopted, the payment for same day medical and same day surgical cases can be expected to be more comparable than they have in the past. Certainly this is an issue the Department will continue to monitor.

ADOPTIONS

N.J.A.C. 8:31B-3.59 (Reserved)

COMMENTERS: West Jersey Health System

COMMENT: This commenter believes the deletion of this regulation is punitive in nature.

RESPONSE: As noted in the response to N.J.A.C. 8:31B-3.26, Update factors, the 2.5 percent adjustments for Statewide legal and clinical issues and prospective operations provided payment in excess of the new dollars that were, or would have been, granted in each of the past five years. Thus they should be sufficient to cover hospital-specific clinical rate appeals.

N.J.A.C. 8:31B-3.63 Commission: Procedures

COMMENTERS:

Bergen Pines County Hospital

Kaden Arnone Inc.

Department of the Public Advocate, Division of Rate Counsel,
State of New Jersey

COMMENT: The commenters request that the Department elaborate on this proposed change, and give examples of situations to which it would apply.

RESPONSE: The change proposed here is the elimination of the section of the rules that applies to appeals. This appeal mechanism no longer exists and therefore the reference to appeals is deleted. The change also allows the HRSC to direct arguments it feels appropriate to an administrative law judge and removes the condition that more than one hospital be involved. This section gives the Commission, not the Department, the discretion to refer. The Department would refer to the HRSC for examples of circumstances under which it might choose to make such a referral.

COMMENT: The Public Advocate questioned whether the authority of the HRSC to selectively recall witnesses when it reviews reports from an Administrative Law Judge was consistent with the right to a fair and impartial hearing.

RESPONSE: No change is being proposed in the portions of this rule that relate to the Commission's calling of witnesses.

Clarifying language was added in this section to describe the process by which the HRSC directs requests for rate adjustments to an Administrative Law Judge.

N.J.A.C. 8:31B-3.65 Schedule of Rates—Adjustments

COMMENTERS:

Barnert Memorial Hospital Center

Besler & Company, Inc.

Department of the Public Advocate, Division of Rate Counsel,
State of New Jersey.

Elizabeth General Medical Center

Morrissey & Company, Inc.

New Jersey Hospital Association (NJHA)

Newark Beth Israel Medical Center

New Jersey Department of the Public Advocate

Overlook Hospital

St. Barnabas Medical Center

St. Elizabeth Hospital

St. Francis Medical Center (Trenton)

St. Joseph's Hospital and Medical Center

Valley Hospital

COMMENT: Several commenting hospitals claim that allowing no adjustments during the rate year will expose them to extreme financial risk and uncertainty, since the financial impact of this proposed change has not been modeled. They suggest reissuing mark-up factors at mid-year to adjust revenue misprojections or volume changes. The Medicare cost shift and uncompensated care costs were also mentioned as a significant source of undercollection; hospitals believe that these adjustments should be recalculated and reissued semiannually as in the past.

RESPONSE: The Department has taken several steps to prepare for the implementation of an annual mark-up factor. The negotiated settlement process, which finalized all rate appeals up to and including 1990 and Final Reconciliation up to and including 1988, was very successful since it was accepted by over ninety percent of the hospitals. The effect of these settlement adjustments is twofold: (1) for the majority of hospitals, there are very few significant prior period adjustments outstanding due to their acceptance of their settlement offers; and (2) these settlement adjustments, which were implemented in the 1991 mark-up factors, will significantly improve many hospitals' cash position and for many hospitals will extend into 1992 due to the cap limitation.

It should be noted that all Chapter 83 hospitals have already effectively accepted their 1991 rates. If rate implementation is selected in 1991, the

HEALTH

automatic update factors are included in the rates in lieu of rate appeals which before 1991 would have traditionally taken years to settle before the Commission.

On the uncompensated care issue, the Department has implemented a refinement in the Trust Fund calculations which bases each hospital's payment upon the most recent historical uncompensated care cost percentage applied to the hospital's 1991 Preliminary Cost Base. This new method should provide more accurate uncompensated care payments during 1991, reduce undercollections and lessen the need for a mid-year recalculation.

A mid-year recalculation of the Medicare cost shift was likely raised because the 1990 mid-year recalculation yielded significantly different numbers. It should be noted that in 1990 there were major refinements made to the methodology which were in response to industry concerns. The Department believes that the cost shift methodology is now developed to the point where any future modifications are expected to be minor in scope. Therefore, it is unlikely that a mid-year recalculation would yield numbers significantly different from the approved 1991 Statewide cost shift of \$369 million. For these reasons, a mid-year mark-up change for recalculation of the Medicare cost-shift appears to be unnecessary.

COMMENT: Commenters requested a definition of the term "substantial inequity" which is included in this section. The commenter recommends that the impact on a given hospital be based on a percentage of its Preliminary Cost Base, and that any definition the Department intends to use be clearly stated in the rules. Other commenters believe that "substantial inequity" is vague and ambiguous.

One commenter adds that the amendment should be clarified to allow the hospital industry to present Statewide issues to the HRSC to receive rate adjustments of any time during the rate year.

RESPONSE: The suggestion to expand the exception for annual adjustments due to "substantial inequity" so that it includes a provision to allow hospitals to appeal and collect Statewide adjustments during the rate year, is in the Department's view, inappropriate. First, it introduces an appeal provision into a section that is clearly limited to addressing collection issues. Second, hospitals accepting their 1991 rates generally forfeit their right to appeal for Statewide adjustments due to the inclusion of the update factors. For those hospitals electing full rate review, the ability to seek adjustments for particular reimbursement issues is retained. Third, the proposed amendment to N.J.A.C. 8:31B-3.26(h) would permit the Department to recommend adjustments to the Commission for issues affecting a significant number of hospitals, which is similar to what the commenter is suggesting. Finally, in instances where an individual hospital experiences severe financial difficulties, N.J.A.C. 8:31B-3.64 remains an avenue to seek relief.

The Department has changed the term "substantial inequity" in response to comments, but no thresholds or benchmarks are included in regulation. It is important to note that an arbitrary benchmark may inadvertently preclude raising legitimate issues, regardless of merit, by either the Department or the hospitals. Also important is the fact that, in the past, thresholds, such as the \$10,000 threshold for legal appeals, have been ineffective in limiting the invocation of a section of the rules.

COMMENT: One commenter suggested that the proposed amendment is unrealistic and would be detrimental to both hospitals and payers. The commenter believes that delays in implementing mark-up changes will have a cumulative impact on future rate years for Chapter 83 hospitals, and that the implementation of rate adjustments on a scheduled basis would reduce rate fluctuations and would result in more equitable rates for payers. The commenter recommends quarterly mark-up adjustments with corridor limits for rate year 1991.

RESPONSE: The Department believes that since most of the backlog of appeals and final reconciliations has been eliminated, there should be no cumulative effect on the markup factors due to delay in the implementation of adjustments until the beginning of the following rate year. The Department does not agree with the comment that implementation of rate adjustments during the year will result in a reduction in rate fluctuations; in the past the reverse has been true, hence the current proposal. The statement that reductions in rate fluctuations result in more equitable rates for payers is only partially true. For major payers, whether or not there are fluctuations over the long term, the same rates will be paid. For smaller payers and individuals, fluctuations may indeed have caused inequities in the past depending on which month the bill was generated for a given hospital. Therefore, the Department believes that quarterly mark-up factor changes in 1991 are unnecessary.

COMMENT: Also recommended is the inclusion of a provision which would allow correction of all material rate calculation errors.

Two hospitals suggest that a possible long-term alternative to the proposal would be to create a working capital pool, through the Financing Authority, that would allow hospitals to borrow funds for Commission approved adjustments. The commenters note that this alternative would require legislation to establish the pool, and the rules should be changed to allow hospitals reimbursement for short term interest expense.

RESPONSE: The comment that a provision should be included to allow correction of all material rate calculation errors has been addressed in the response to comments on N.J.A.C. 8:31B-3.51. Generally, hospitals cannot request the correction of calculation errors unless the hospital has opted for full rate review. However, for the past three years the Department has identified and corrected all bona fide calculation errors before January 1 and would expect to continue to do so in future rate years.

The Department believes that the suggestion to create a working capital pool is worthy of consideration, but this is not the appropriate forum to address it. In this document, the Department is discussing only those comments that address the proposed regulatory amendments. The legislation to establish such a pool, and a possible regulation change to allow reimbursement of short term interest, also are not related to the proposal; therefore, the Department will not discuss these issues here.

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

8:31B-3.9 Conditional proposal

The Commissioner may issue an otherwise prospective Proposed Schedule of Rates in which particular aspects of the rates are made conditional. Any such aspects shall be specified and, with respect to these aspects, the rate shall be considered interim and may be implemented pursuant to N.J.A.C. 8:31B-3.44 through 3.45. A hospital may implement the rate; however, such implementation shall be considered conditional until final rates are issued.

8:31B-3.11 Same Day Surgery

(a) (No change.)

(b) Hospitals shall report to the Commissioner in writing the existence, removal or other change in status of same day surgery programs and a description of the type of procedures performed and a list of the affected DRGs no later than November 15 of the year prior to the issuance of the Proposed Schedule of Rates or Adjusted Rate Order.

8:31B-3.24 Reasonable indirect patient care costs

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

(c) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) shall be determined for those hospitals that shall receive an initial PCB/CRB. Disincentive amounts shall be calculated in the Physician and Teaching Related Centers, according to N.J.A.C. 8:31B-3.22. The screening methodology shall compare base year actual cost data. Screens shall not be applied to sales and real estate taxes, outside collection costs, employee health insurance, malpractice insurance, PCC (Phy), EDR (Non-Phy) and OGS. The above indirect costs are not considered volume variable and are therefore included in the Preliminary Cost Base/Certified Revenue Base spread to all rates through the use of the overhead mark-up factor.

1. The following indirect costs shall be equalized and then totaled by peer group: Administrative and General/Fiscal (A&G/FIS), Plant (PLT), and Patient Care Coordination/non-physician (PCC/non-physician). The inpatient portion of this peer group total equalized cost shall be divided by the total patient days to yield a peer group per diem amount. For each DRG, a peer group average length of stay shall be calculated. The peer group per diem shall be unequalized by the hospital unequalization factor and multiplied by the DRG specific peer group average length of stay to derive a DRG-specific payment rate.

2. The Utilities (UTC) indirect costs are totaled (but not equalized) by peer group, and the inpatient portion of these costs divided by the total patient days to derive a peer group standard per diem by DRG. The peer group standard per diem shall be multiplied by the

peer group average length of stay by DRG to create a DRG-specific payment rate.

3. The costs used to calculate peer group indirect per diem standards shall be the actual base-year costs. The inpatient portion is determined by total actual indirect costs divided by adjusted admissions multiplied by admissions. The DRG-specific average length of stay shall be calculated from base-year length of stay data. Standards so developed shall remain unaffected during the rate period, and no adjustments, modifications, or changes to the standards shall be made during a rate period*, unless so ordered by the Commission]*.

4. If a change in graduate medical education would result in a hospital's reclassification into a different peer group, that change shall be implemented in the rate year following the change.

5. Inpatient indirect costs are volume variable with the exception of those cost centers described in this subsection. These costs shall be reconciled as described in N.J.A.C. 8:31B-3.73. Projected total indirect costs shall be collected during the year through the use of the overhead mark-up factor. Outpatient indirect costs shall remain fixed except for same-day surgery patients. Outpatient costs are calculated by multiplying the hospital unit cost by the outpatient equivalent cost, defined as the difference between adjusted admissions and admissions. Same-day surgery indirect costs shall be volume variable, subject to a unit cost which represents the pro rata portion of outpatient indirect costs which were attributable to same-day surgery in the base year.

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

8:31B-3.26 Update factors

(a) (No change.)

(b) Technology Factor: Base-year direct patient care and indirect rates shall be multiplied in succeeding years by a technology factor to provide prospective funds to support hospital adoption of quality-enhancing technologies. The technology factor shall be based on the Scientific and Technological Advancement Allowance recommended annually to the Secretary of the United States Department of Health and Human Services by the Prospective Payment Assessment Commission (ProPAC). The factor shall be composed of the proportion of incremental operating costs associated with ProPAC's identified cost-increasing technologies, and ProPAC's allowances for technologies not included in the technology-specific projections, less the proportion of incremental operating costs of cost-decreasing technologies identified by ProPAC.

1. (No change.)

2. For each year that a hospital implements its rates as initially issued, and does not undergo a full rate review, the rates shall be updated prospectively by the technology factor calculated for that rate year.

(c) Prospective Operating Adjustment: For hospitals not receiving a full rate review, an additional two percent of direct and indirect costs shall be added to their current cost base.

1. The purpose of this adjustment is to compensate hospitals prospectively for expenses that may arise subsequent to the base year, including, but not limited to, the purchase of equipment, unusual cost increases in goods or services used by hospitals, changes in service mix, capital improvements, costs of mergers, acquisitions, and consolidations, and operating costs associated with Certificate of Need.

2. For direct patient care and indirects, if a portion of payment is based on standard, this adjustment shall assume 100 percent standard; if there is no standard in the rate, it shall be based on 100 percent of the payment rate. The rates thus generated shall be increased by the amount of the prospective operating adjustment, based on base year volume and case-mix. For ***[1992]* *1991*** and subsequent years, it shall be based on actual volume and case-mix.

(d) In lieu of ***[Statewide]*** clinical and legal adjustments, hospitals not receiving a full rate review shall also have added to their current cost bases an additional 0.5 percent of direct and indirect costs, calculated as described in (c) above.

(e) For 1991 only, payment for CN-approved psychiatric short-term care facility beds shall be in accordance with the Hospital Rate Setting Commission approved methodology for 1990 based on FTE

cost per closed bed. The amounts shall be inflated by the appropriate economic factor as described in (a) above.

(f) For 1991 only, payment for patients in CN-approved child/adolescent psychiatric units shall be based on average costs for the hospitals reporting rates in base year 1988, inflated by the appropriate economic factor as described in (a) above, and resulting in an appropriate DRG adjustment.

(g) For 1991 only, educational costs related to sickle cell disease shall be based on 1990 annualized Commission-approved adjustments inflated by the economic factor as described in (a) above.

(h) Beginning in 1991, on or before July 1 of each year, the DOH, in consultation with representatives of hospitals, payers, **the Public Advocate**,* and other interested parties, may recommend to the Hospital Rate Setting Commission other **prospective*** adjustments to hospital rates if it is determined that changes **may be anticipated*** in the hospital environment that **will*** affect a significant number of hospitals **[have been so extraordinary as to]*** **and will*** substantially exceed the **projected*** update factors described in (a) through (d) above. Taking into account the effectiveness and efficiency of the health care system as a whole, the Commission may approve such adjustments for inclusion in the following year's Preliminary Cost Base/Certified Revenue Base.

(i) Once a hospital has had its rates determined by a full rate review, those rates shall not be increased by any of the update factors described in (a) through (h) above. Rates for years subsequent to the full rate review shall be adjusted by annual update factors. If additional full rate reviews are undergone only update factors for the rate years after the most recent full rate review shall be used in calculating rates until a new base year is used.

8:31B-3.38 Derivation from Preliminary Cost Base

(a) Apportionment of full financial elements based on direct costs shall be as follows:

1.-2. (No change.)

3. An operating margin shall be calculated and added to hospital rates as follows:

i. The standard amount in each DRG shall be multiplied by 1.01 in rate years 1989, 1990 and 1991. For 1991 and subsequent rate years, the 1 percent operating margin shall be replaced by the 2 percent prospective operating adjustment as described in N.J.A.C. 8:31B-3.26(c). For 1991 only, the 1 percent operating margin that is included in direct standard costs shall be netted from the 2 percent prospective operating adjustment. After that time, the 1 percent operating margin shall be removed from direct standard costs and shall no longer be netted from the prospective operating adjustment. The 1 percent operating margin shall be removed from indirect standards for 1991, and shall therefore not be netted from the prospective operating adjustment for 1991 or beyond.

(b) Revenue requirements: Definition and calculation:

1. Revenue requirements shall be defined as the Gross Revenue Related to Patient Care estimated to produce New Revenue Related to Patient Care equal to an institution's Preliminary Cost Base as defined in N.J.A.C. 8:31B-3.20. Gross Revenue Related to Patient Care shall be projected by each hospital based upon the hospitals' projections of volumes and projected price increases, uncompensated care, Commission approved payer differentials and prompt payment discounts for each hospital in order to set payment rates. Appendix IV illustrates the calculation of gross revenue requirements relative to the Preliminary Cost Base for Commission approved deductions from revenue. Once the gross revenue requirements have been established (i.e., Revenue Budget) hospitals shall be required to align charges in direct patient care volume and case-mix as estimated by each hospital as reported on Appendix V.

2. Appendix IV shall be produced for each hospital at the time the Schedule of Rates is issued by the Commission, detailing the relationship of Commission approved gross to net revenue requirements. All approved deductions from revenue shall be shown on Appendix IV at Current Cost Base levels. Hospitals may project increases or decreases in these levels (except for increases in prompt payment discounts) subject to the Commissioner's review.

3.-4. (No change.)

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

8:31B-3.42 Schedule of rates—effective date

(a) Subject to N.J.A.C. 8:31B-3.71 through 3.86 Reconciliation, all rates issued pursuant to this subchapter, as approved or modified, ***including adjustments approved as a result of action taken in accordance with the provisions of N.J.A.C. 8:31B-3.26(h),*** shall be effective as of January 1 of the rate year except for fiscal year hospitals whose rates shall be effective as of the first day of the "fiscal" rate year. However, except where a ***[substantial inequity]*** ***substantial danger to the ability of a needed hospital to provide adequate care*** may result, any adjustment or modification approved by the Commission pursuant to these regulations shall be implemented prospectively in the following rate year. For hospitals currently on Chapter 83, rates and charge masters in effect prior to January 1 of the rate year should be adjusted by the appropriate update factors until such time as a new Rate Order is issued. The Commission shall notify payers of the hospital's rate adjustments no less than 10 working days prior to implementation of changes. Any subsequent changes to the Schedule of Rates or mark-up factors shall be effective with discharges as of a particular date.

(b) If a hospital is to receive a full rate review, and does not have Commission approved rates for implementation, that hospital shall continue on the previous schedule of rates until the new rates are issued, effective on the first day of the month following 30 days after the issuance of the rates (see also 8:31B-3.65). For 1991 only, the previous schedule of rates shall be increased by the economic factor.

8:31B-3.51 Rate notification, approval, and implementation

(a) Within 30 days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify in writing both the Commissioner and the Commission, of their decision to:

1. Implement rates as initially issued

i. Rates set prospectively in accordance with N.J.A.C. 8:31B-3.26 through 3.38, and approved by the Commission, shall constitute the hospital's Certified Revenue Base or Preliminary Cost Base, whichever is appropriate, and shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45.

ii. Hospitals electing implementation of rates as initially issued shall have added to their rates a rate year technology factor and a prospective operating adjustment of two percent, calculated and implemented as described in N.J.A.C. 8:31B-3.26. Also added shall be 0.5 percent in lieu of statewide clinical and legal adjustments.

iii. Implementation of rates precludes a full rate review (as defined in N.J.A.C. 8:31B-3.52), unless initiated by the Department.

iv. Within 30 days of hospitals' notification of intent to implement initial rates, the Commission shall take action on the initial rates.

2. Undergo a full rate review and not implement rates as initially issued

i. If a hospital elects not to implement its initial rates, it shall receive neither the technology factor, the prospective operating adjustment, the 0.5 percent adjustment in lieu of statewide clinical and legal adjustments as described in N.J.A.C. 8:31B-3.26(b)-(d), nor, for rate years 1992 and subsequently, the economic factor.

ii. The hospital shall automatically undergo a full rate review, as defined in N.J.A.C. 8:31B-3.52, that shall include total review of hospital operations, including but not limited to management structure, service components, efficiency, and finances.

iii. As part of the process of the full rate review thus initiated, the Department shall determine the appropriateness of an adjustment to the hospital's Preliminary Cost Base/Certified Revenue Base. This adjustment shall take the place of all update factors described in N.J.A.C. 8:31B-3.26.

iv. Based on the results of a full rate review, the Department shall make a recommendation to the Hospital Rate Setting Commission regarding the need for a rate adjustment and any related conditions. The Commission shall take action on the rates prior to implementation.

(b) Should a hospital fail to notify the Department of its decision within the allotted time, it shall be assumed to have elected implementation of rates as initially issued.

8:31B-3.52 Full rate review

(a) A full rate review may be initiated by a hospital*, **within 30 days of receipt of its proposed schedule of rates,*** or by the Department of Health*, **within 10 days of a hospital's notification to the Department concerning implementation of its rates. The Department may also institute a full rate review in response to rate adjustments under N.J.A.C. 8:31B-3.64*.**

(b) A hospital which believes that the proposed rates are inadequate to support operation of an efficient and needed institution may request a full rate review. A hospital must submit a request for a full rate review, together with all information required in (d) below, within 30 days of receipt of the proposed Schedule of Rates. The hospital shall submit two copies to the Department of Health, and one to the Hospital Rate Setting Commission.

(c) A full rate review shall consist of an evaluation of the hospital's total operations, including its management, services, and finances in order to assess the adequacy of proposed payment and to determine the reasons for any shortfall. Specific components to be evaluated shall include, but not be limited to financial stability, role of the hospital in relation to identified patient care needs in the area, efficiency of operations, management structure, relationship with affiliated organizations, payment issues, service mix, and management initiatives. Specific areas in which a hospital experiences shortfalls shall be considered only in the context of total operations, including all areas in which revenues exceed costs.

(d) A full rate review shall include, but not be limited to, an evaluation of the following information:

1. Audited financial statements for the hospital and all related entities;
2. Financial ratios;
3. Efficiency indexes;
4. Current budget, income statements, cash flow, and liabilities;
5. Current incentives and disincentives in proposed schedule of rates;
6. Debt structure;
7. Occupancy, case-mix, acuity, and LOS information;
8. Occupancy and services in the surrounding area;
9. Changes in revenue, costs, services;
10. Comparison to appropriate state and national norms; and
11. Analysis of patient care needs in the geographic area.

(e) Based on its assessment using the data listed in (d) above, the Department may propose an adjustment in the Preliminary Cost Base/Certified Revenue Base for an efficient and needed facility. The adjustment may represent an increase or a decrease in payment, compared to the initial rates. This adjustment shall consider the extent to which any payment shortfall has a significant negative impact on total hospital operations. The Department may use the overspending challenge at N.J.A.C. 8:31B-3.32 in recommending a rate adjustment; it may also make recommendations regarding Certificate of Need restrictions, expense reductions, service composition changes, or any other aspect of hospital operations, and may pursue further review and monitoring of hospital operations as a condition of any recommended adjustment.

8:31B-3.55 Capital facilities

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

8:31B-3.57 Same Day Surgery

The Commission or the Commissioner may inquire why hospitals that do not provide same day surgical services are not providing these services and the Commission may make appropriate adjustments to the inpatient DRG rates in such hospitals.

8:31B-3.58 (Reserved)

8:31B-3.59 (Reserved)

8:31B-3.63 Commission: Procedures

(a) Where appropriate, ***and in its discretion,*** the Commission may direct that ***[the appellant's arguments be consolidated and that the issue]* *requests for rate adjustments*** be heard by an administrative law judge. Following issuance of the report of the Adminis-

trative Law Judge, the hospital and the Department shall have 10 days in which to petition the Commission concerning objections to the report. Such a petition should state what issues the petitioner wishes to have reviewed and what relevant facts were not addressed fully by the Law Judge in reaching his recommendation. The Commission shall review the petitions in reaching its final determination, and, at its discretion may recall witnesses from the hospital, the Department of Health, and any other parties involved to hear additional testimony on the issues. Final Determination by the Commission on all issues shall be made within 45 days of receipt of the recommendations from the Law Judge.

(b) The Commission shall render its final decision within 120 working days of receipt of notification by the appellant, except for matters referred to an Administrative Law Judge and except where a hospital fails to submit financial, statistical, or patient information required by law, or to fully document its appeal without demonstrating good cause for its failure to provide the information.

8:31B-3.65 Schedule of Rates Adjustments

(a) For 1991 rates issued pursuant to these ***[regulations,]* *rules,*** except as modified, shall be effective as of January 1 of the rate year, except for fiscal year hospitals whose rates shall be effective as of the first day of the "fiscal" rate year. Unless a ***[substantial inequity]* *substantial danger to the ability of a needed hospital to provide adequate care*** shall result, adjustments or modifications which may be approved during the rate period shall be implemented through an appropriate adjustment to the Schedule of Rates for a given hospital, group of hospitals, DRG or group of DRGs, and shall take effect at the beginning of the following rate year. At the direction of the Commission, the Commissioner shall make an appropriate adjustment to the Schedules of Rates for affected Diagnosis Related Group(s), indirect costs, revenue, or payer adjustments. The hospital(s) shall make an appropriate adjustment to its charge master(s), and third party payers shall make appropriate adjustments to their case-mix adjusted periodic intermittent payment. However, where appropriate, the Commission may order lump sum, pro rata, automatic, periodic or deferred adjustments. All adjustments shall be made prospectively. (See also N.J.A.C. 8:31B-3.42.)

(b) (No change.)

(a)

HOSPITAL REIMBURSEMENT**Hospital Reporting of Uniform Bill-Patient Summaries (Inpatient)****Procedural and Methodological Regulations Financial Elements and Reporting****Adopted Amendments: N.J.A.C. 8:31B**

Proposed: December 17, 1990 at 22 N.J.R. 3724(a).

Adopted: February 14, 1991 by Frances J. Dunston, M.D.,

M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: as R.1991 d.158, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3), **and with a portion not adopted, but still pending** (N.J.A.C. 8:31B-3.73(a)1i).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: March 18, 1991.

Expiration Date: August 17, 1995.

Summary of Public Comments and Agency Responses:

N.J.A.C. 8:31B-1.2 Definitions

COMMENTER: St. Francis Medical Center (Trenton)

COMMENT: This commenter asks for clarification of the term "operating structure" as it applies to examination associated with a full rate review.

RESPONSE: "Operating structure" includes every phase of a hospital's operations that is relevant to its fiscal status and capacity for efficient provision of needed services.

N.J.A.C. 8:31B-2.5 Health Data Submissions to the Department of Health

COMMENTERS: Bergen Pines County Hospital, Besler and Company, Elizabeth General Medical Center, Kaden Arnone Inc., KPMG Peat Marwick, Morrissey and Company, St. Francis Medical Center, University Hospital, West Jersey Health System.

COMMENT: The commenters object to closure of the data base with 30 days notice by the Department of Health. Several note that the 30 days notice cannot be given prior to the end of the second quarter following the end of the rate year and, therefore, not before June 30. One commenter indicates that N.J.A.C. 8:31B-3.73(a)1i states that notice shall be given no earlier than the end of the rate year, and suggests that N.J.A.C. 8:31B-2.5 and 3.42 be amended to be consistent with this proposal. Some commenters believe that if a specific date is not included in the text of the proposal, there is a possibility that the Department may give notice on a date unreasonably early in the rate year. It is suggested that no change should be made to the existing rule.

RESPONSE: Some commenters appear to be addressing the notice for closing the cost base as well as notice for closing the billing data base. N.J.A.C. 8:31B-2.5 only applies to billing data referred to in the text as "cases." The proposal which addresses the change in notice for the cost base is covered separately under N.J.S.A. 8:31B-3.16(d).

The Department, when selecting a base year, uses the billing data from that year along with cost data to set the rates. This change should not be interpreted as a limitation of the Department's ability to use, for purposes of rebasing, the data submitted to the Department prior to July 30.

The proposed change to N.J.A.C. 8:31B-3.73(a)1i specifies that 30 days notice would "... be given no earlier than the end of the second quarter following the rate year." This means that, because the Department cannot give notice to close the data base earlier than June 30, the earliest hospitals will be required to submit these data 30 days after this date. Therefore, the proposal gives hospitals at least 30 days beyond the current deadline on June 30, the date after which fines can now be imposed.

COMMENT: Others suggest that in the case of data that are inaccurate or incomplete due to circumstances beyond the hospital's control, the hospital should be allowed to make data base changes in the rate year. There was also a suggestion that hospitals with a significant amount of data outstanding should be allowed to pay a penalty per day until the data submission is complete and accurate.

RESPONSE: Hospitals have been submitting billing data to the Department for more than 10 years, and this extensive experience should enable reporting of accurate data in a timely fashion. The Department believes that seven months after the end of the rate year is more than sufficient time for hospitals to resolve any problems with such data. The Department will continue to move toward faster resolution of billing and reporting problems because a delay of even this length decreases prospectivity and system timeliness.

The stated goal of prospectivity overrides the concern that an exception should be permitted for hospitals that cannot comply with the deadline in the proposal. The existing practice, which allows submission beyond the deadline with the imposition of a penalty, has resulted in delays of data submission of up to five years after the end of the rate year. Finally it is the Department's belief that the penalty provision has not been effective in encouraging hospitals to submit these data in a timely manner.

Any hospital that experiences a significant loss of revenue due to this regulation has the ability to appeal for these dollars through election of full rate review. Therefore the Department recommends no change to this proposal.

N.J.A.C. 8:31B-3.2 Derivation of Preliminary Cost Base (PCB)

COMMENTER: St. Peter's Medical Center

COMMENT: The commenter requests clarification of the definition of a Certified Revenue Base.

RESPONSE: This question is answered in the response to N.J.A.C. 8:31B-3.15, Certified Revenue Base.

N.J.A.C. 8:31B-3.5 Development of standards

COMMENTER: Elizabeth General Medical Center

COMMENT: This commenter states that the methodological concept by which a hospital undergoes a full rate review is unclear and has not been defined, and as a consequence, any reference to this concept in

defining the development of standards is unwarranted. They also object to deletion of language which "provides the Commission with the ability to modify or change the standards."

RESPONSE: Since the inception of the Chapter 83 Reimbursement System, the Department has maintained a long-standing precedent of not adjusting standards based on changes in hospital-specific cost data. This precedent has not been violated, regardless of whether the change would result in an increase or decrease to the standard.

Changing a standard requires the re-issuance of rates to all hospitals, thereby losing prospectivity and protection to payers and hospitals with respect to rate fluctuation.

By electing a full rate review, a hospital would have all aspects of its performance reviewed by the Department, including comparisons to State norms and standard rates. Since there will no longer be appeals, reference to appeals is deleted. The Commission retains the ability to approve adjustments for a particular hospital through the full rate review process.

N.J.A.C. 8:31B-3.7 Incentive Standard, Preliminary Cost Base: Proposed Schedule of Rates

COMMENTER: Blue Cross and Blue Shield of New Jersey.

COMMENT: The comment states that current year rates should recognize all changes in costs from the base year, whether the costs have increased or decreased. A change in wording to this effect is recommended.

RESPONSE: The Department appreciates this comment, and has deleted the proposed insertion that addresses increases only. Absent this insertion, the intent will clearly be to adjust both for increases and decreases.

N.J.A.C. 8:31B-3.10 Extraordinary expense

COMMENTERS: Kaden Arnone, KPMG Peat Marwick.

COMMENT: Commenters believe that April 15 is not a realistic cutoff date because extraordinary expenses can occur after that time. Suggested solutions to this problem include allowance for immediate adjustments at any time during the year, or access to a working capital pool.

RESPONSE: While it is true that hospitals have less time under this proposal, the Department believes that the advantages of earlier issuance of rates outweigh this potential problem. It is the Department's intent to issue rates before November, the month of issuance in previous years.

As always, issues of major proportions may be addressed through a full rate review. Lesser issues can be addressed by the 2 percent prospective operating adjustment, and then reported the following year before April 15.

N.J.A.C. 8:31B-3.15 Certified Revenue Base

COMMENTERS: Bergen Pines County Hospital, Kaden Arnone Inc., St. Peter's Medical Center.

COMMENT: The commenters request answers to questions related to a certified revenue base: how it is obtained; what is defined as the re-establishment of rates; what is the possibility of selecting the 1990 Schedule of Rates as the CRB; and what is the difference between a preliminary cost base and a certified revenue base.

RESPONSE: As stated in N.J.S.A. 26:2H-1 et seq., a certified revenue base (CRB) is distinguished from a preliminary cost base (PCB) in that with a PCB a hospital may be reimbursed for costs in excess of those that would be determined reasonable for a properly utilized hospital to provide efficient and effective delivery of appropriate and necessary health care services of high quality.

Prior to obtaining a CRB, a hospital must eliminate these excess costs in a timely and reasonable manner. By definition, prior to designating a CRB for any hospital, the Hospital Rate Setting Commission must first identify any excess costs and determine whether the hospital is properly utilized and delivers effective and efficient high quality services that are appropriate and necessary. This has not occurred for any hospital to date. Therefore, electing a prior year as a CRB would be inappropriate.

Once a hospital has obtained a CRB, it remains on the CRB, adjusted for update factors, until it determines that the CRB no longer meets its needs. At that point, the hospital could request a full rate review, or choose to wait until the Hospital Rate Setting Commission re-establishes rates, or until the system is rebased.

It is the Department's intent to move toward a CRB for every hospital in the future, consistent with Chapter 83, P.L. 1978 legislation.

N.J.A.C. 8:31B-3.16 Current Cost Base

COMMENTERS: Bergen Pines County Hospital, Besler and Company, Blue Cross and Blue Shield of New Jersey, Kaden Arnone Inc., St. Barnabas Medical Center, West Jersey Health System.

COMMENT: Commenters disagree with the proposed deletion of the rule that allows hospitals to correct base year cost reports subsequent to receipt of notice that the actual cost submission is suitable for entry into the data base. They argue that "hospitals who make errors" will undergo "unnecessary hardships" in this regard, thus allowance should be made for "significant" data changes, with "significant" defined as to dollar amount, percent of the revenue base, etc.

RESPONSE: Hospitals have had more than 10 years experience in reporting cost information to the Department of Health. It is now reasonable to expect accuracy and timeliness in reporting. If an error does occur, and is considered to be of sufficient magnitude, the hospital can elect to address it as part of a full rate review to protect itself from unnecessary hardship.

(Additional related comments and responses can be found below, in text related to N.J.A.C. 8:31B-3.51.)

COMMENT: Blue Cross and Blue Shield request confirmation of payer data from the Medicare intermediary before data base closure.

RESPONSE: Sections of the rule which concern payer data confirmation were not considered for changes.

N.J.A.C. 8:31B-3.17 Financial Elements Reporting Audit Adjustments

COMMENTERS: Blue Cross and Blue Shield of New Jersey, Cathedral Healthcare System, West Jersey Health System.

COMMENT: The first commenter supports the Department's proposal to include a timetable to limit and/or to identify outstanding issues, to resolve open prior years sooner, and to keep the New Jersey DRG system as current as possible.

The other commenters believe the time limit unrealistic under some circumstances, and recommend greater flexibility in the rules.

The Department believes that the proposed schedule will contribute to the timeliness of the Chapter 83 system, while allowing hospitals sufficient latitude to resolve outstanding issues. Leaving the issues unsettled for long periods of time would seriously compromise prospectivity in future years, as it has in the past.

N.J.A.C. 8:31B-3.22 Standard costs per case

COMMENTERS: Bergen Pines County Hospital, Besler and Company, Elizabeth General Medical Center, Kaden Arnone Inc., KPMG Peat Marwick, Morris and Company, St. Barnabas Medical Center, St. Francis Medical Center (Trenton), St. Peter's Medical Center, University Hospital.

COMMENT: Commenters contend that hospitals wishing to increase the size of their resident programs are unfairly disadvantaged, because the rule has precluded movement to a higher teaching peer group in cases of changes in number of resident positions, yet it does not preclude movement to a lower peer group. Some also state that a change in teaching peer group status should not cause a hospital to receive a full rate review, if it meets all the criteria for the new peer group.

RESPONSE: It should be noted that this rule is effectively unchanged from existing rules; the proposal simply transferred requirements from N.J.A.C. 8:31B-3.31(c) and (d), to N.J.A.C. 8:31B-3.22(b), the section which addresses criteria for peer group determination. In addition, in the Department's experience, there has not been a transfer request that would have caused a hospital to move to a higher peer group.

COMMENT: In regard to transfers, some commenters believe the April 15 deadline is unrealistic, and suggest it be more consistent with the December deadline for markup factor revisions. Another commenter recommended that rate adjustments be made "in the year of the transfer." One commenter suggested that N.J.A.C. 8:31B-3.22(b)10 be made consistent with N.J.A.C. 8:31B-3.24(c) and 3.22(b)11, to clarify the timing of these GME adjustments. Regarding the costs associated with transfers, one commenter asked whether approved costs can increase, and if so by what process.

RESPONSE: Only one new issue, the notification date for transfers of residents, is introduced in this proposal. The Department anticipates only prospective rate adjustments for transfers. Thus, hospitals notifying the Department by April 15 will have the adjustments in their rates issued for implementation the following January 1. It is true that notification by April 15 for a resident beginning employment on July 1 will result in no payment for the first half of that resident's year. However, the Department's experience in previous transfer situations has indicated that hospitals were often able to provide notice so far in advance of the July 1 starting date that no payment was lost.

N.J.A.C. 8:31B-3.27 Capital Facilities

COMMENTERS: Barnert Memorial Hospital Center, Bergen Pines County Hospital, Department of the Public Advocate, Division of Rate Counsel, State of New Jersey, Elizabeth General Medical Center, Kaden Arnone Inc., Our Lady of Lourdes Medical Center, Overlook Hospital, St. Clare's Riverside Medical Center, St. Elizabeth Hospital, St. Francis Medical Center (Trenton), Valley Hospital, West Jersey Health System.

COMMENT: The commenters believe the Department should publish guidelines stating how it would evaluate requests for increased payment in excess of the amount that would be approved under the proposed capital limitation methodology. The Public Advocate requested receipt of any such requests to increase hospital rates, so that it may fulfill its mandate to represent and protect the public interest.

RESPONSE: It should be noted that this comment addresses a portion of the rule for which no change is being proposed. The Department agrees that more specific guidelines are appropriate. At a later time, the Department will consider the development of guidelines, with examples in written form, which summarize the specific methodology to be utilized for capital reimbursement, in accordance with the requirements of the Administrative Procedure Act.

COMMENT: The commenters state that it is their understanding that "regardless of whether a hospital has old or new capital, their reimbursement will be their actual CFA per adjusted admission, up to the maximum Statewide cap."

RESPONSE: New capital and old capital are subject to different payment methods. New capital will be reimbursed according to a hospital's actual CFA requirements up to the maximum Statewide capital cap. Old capital, pursuant to N.J.A.C. 8:31B-3.27(a)1vii, is reimbursed as follows: a) If a hospital's 1988 capital cost per adjusted admission is below the cap, then they receive their actual cost up to the cap. b) If a hospital's cost are above the cap, but at or below 1988 actual cost per adjusted admission, then they receive their actual cost per adjusted admission. c) If a hospital's costs are above the cap and increase, they will not receive the increase without HRSC approval. If volume or cost changes would result in payment above the cap, HRSC approval is needed in order to increase payment correspondingly. For all hospitals, there will be protection of the principal and interest associated with capital incurred through 1988.

COMMENT: Several respondents asked specific technical questions, including the following:

1. One commenter stated that they find the following statements confusing: "based on the most recent available Actual Financial Data," and "by submitting to the Department, at least thirty days prior to the beginning of a rate year, documentation substantiating their costs. Increases deemed reasonable by the Department shall be recommended for action by the Hospital Rate Setting Commission."

2. One hospital asks whether hospitals requesting such capital cap exceptions will trigger a full rate review;

3. One commenter requested examples of how the cap will be applied in the rate year; another expressed the opinion that decreases in volume should not initiate a need to request a capital cap exception;

4. Another commenter said that the Department should be required to recommend adjustments to a hospital's CFA up to the current cap with appropriate documentation, since the hospital would be reconciled to actual capital facilities expenses at final reconciliation;

5. One commenter stated that the cap amount should be calibrated for cost changes, such as those in technology and plant replacement.

RESPONSE: 1. Although capital reimbursement will be reconciled at Final Reconciliation to actual data for the rate year, a prospective amount for CFA will be included in the rates at the beginning of the rate year. The prospective CFA unit cost per adjusted admission will be based on the latest available financial data and projected volume.

2. The need for capital cap exceptions will not, in itself, trigger a full rate review; however, as part of a group of criteria, it could be influential in triggering a full rate review.

3. Prospective CFA amounts to be included in the rate package that do not cover all prospective CFA requirements will require documentation in order to receive all prospective CFA requirements in the following year. Information such as principal and interest obligations is known well in advance of the rate year, and compliance should pose no difficulty for hospitals.

4. If a hospital believes the prospective CFA amount in the rate package to be incorrect, it must notify the Department with supporting documentation before November 1 of the year preceding the rate year in which a change to the amount is requested. This request must include

ADOPTIONS

appropriate documentation. As long as this change does not exceed the cap, supporting documentation that substantiates volume changes and/or the addition or deletion of capital costs will be deemed sufficient, and the Department will make a recommendation to the HRSC accordingly.

5. No change was proposed in the capital cap calculation at this time. The current method does include replacement costs; technology costs are included in the technology factor.

N.J.A.C. 8:31B-3.32 Overspending challenge

COMMENTERS: Bergen Pines County Hospital, Kaden Arnone Inc.

COMMENT: Can the Department elaborate on how an overspending challenge would be developed if a hospital elects a Certified Revenue Base?

RESPONSE: The overspending challenge may be the outcome of a full rate review for any hospital requesting a certified revenue base. It requires that the hospital's base year costs be adjusted to eliminate any costs which are identified as in excess of what is determined to be reasonable for a properly utilized hospital for the efficient and effective delivery of high quality services that are appropriate and necessary. Reasonable costs will be determined by comparison with other Chapter 83 hospitals. Costs eliminated may be all costs in excess of standard payment, in excess of approved revenue, or they may result in payment above the standard if the hospital can demonstrate that due to unique circumstances higher costs are essential for the delivery of appropriate, necessary services of high quality.

Additionally, the word "expended" was deleted to conform the rule to the overall requirements of this chapter.

N.J.A.C. 8:31B-3.56 Reserved

COMMENTERS: Bergen Pines County Hospital, Kaden Arnone Inc.

COMMENT: The commenters believe that hospitals should continue to be allowed to contest the adequacy of revenue adjustments for income from other sources, expense recoveries, and uncompensated care. Further, if "significant adjustments" result from this process, hospitals should be allowed to revise their mark-up factors accordingly.

RESPONSE: As noted in the response to comments on N.J.A.C. 8:31B-3.26 and 3.51, above, these are final reconciliation issues, and no changes were proposed in this methodology. A hospital's ability to seek such adjustments is unchanged.

N.J.A.C. 8:31B-3.72 Periodic adjustments

COMMENTER: Department of the Public Advocate, Division of Rate Counsel, State of New Jersey

COMMENT: The Public Advocate suggests changing the term "substantial inequity" to a less ambiguous term, as it applied to benchmarks for determining the need for additional adjustments.

RESPONSE: The Department acknowledges this comment and has deleted the term "substantial inequity", adding the phrase "substantial danger to the ability of a needed hospital to provide adequate care," specifying the requirement further; as requested, within the intent of the Chapter 83 requirements. (See also the adoption of concurrent proposal published elsewhere in this issue of the New Jersey Register.)

N.J.A.C. 8:31B-3.73 Reconciliation: Hospitals

COMMENTERS: Barnert Memorial Hospital Center, Bergen Pines County Hospital, Besler and Company, Blue Cross and Blue Shield of New Jersey, Cathedral Healthcare System, Elizabeth General Medical Center, Jersey City Medical Center, Hackensack Medical Center, Kaden Arnone Inc., Monmouth Medical Center, Morrissy and Company, Newark Beth Israel Medical Center, New Jersey Hospital Association, N.J. Hospital Rate Setting Commission, Our Lady of Lourdes Medical Center, Overlook Hospital, Shore Memorial Hospital, St. Clare's Riverside Medical Center, St. Elizabeth Hospital, St. Francis Medical Center (Trenton), St. Joseph's Hospital and Medical Center, St. Peter's Medical Center, Valley Hospital, West Jersey Health System

COMMENT: Commenters believe that reconciliation to the lower of aggregate charges or approved revenue for the rate year will add to uncompensated care costs, increase the need for cross-subsidization waivers, and put hospitals in noncompetitive positions in both the outpatient and inpatient areas.

RESPONSE: The proposal to reconcile hospitals to the lower of charges or approved revenue was intended to assure that charges accurately reflect approved revenue. When charges are below approved revenue, as has been the case in recent years, the following problems arise:

- hospitals experience severe undercollections, especially for outpatient services. Later, these are made up by increasing mark-up factors,

HEALTH

retrospective rate adjustments, and rate variability for inpatients, shifting costs inappropriately;

- Medicare and Medicaid revenue are not maximized when outpatient charges are kept low;

- patient appeals increase as discrepancies between charges and DRG rates increase.

The proposal will result in patients paying rates, especially for outpatient services, that as appropriately as possible reflect the costs of their care. If all hospitals raise their charges in response to this rule, no competitive disadvantages will result. Also, we agree that this change could affect the amount of uncompensated care, but it is important that trust fund dollars accurately reflect the cost of the care given, especially in light of the current discussion over financing and uses of the Uncompensated Care Trust Fund dollars.

COMMENT: There were also questions about the calculations to be used in deriving aggregate charges and approved revenue. Commenters asked about terminology and definitions, data comparability, gross revenue NAC (non-acute care) charges, and final reconciliation for this issue. Comparison of inpatient charges to the DRG rate on the uniform bill was mentioned as an inappropriate comparison because the DRG rate does not reflect the hospital's approved revenues, since it includes prior year adjustments and Medicare cost-shift mark-ups. In addition, inpatient charges are not comparable to DRG rates, and the UB-82 billing information will provide only inpatient data. Recommendations for changes to the rule as proposed included: use of the UB-82 for inpatient data and the E-form of the Chapter 83 Actuals for outpatient data; determination of approved revenue according to the approved final reconciliation methodology for the year appropriate to the reconciliation; and calculation of approved revenue net of prior year adjustments. A different suggestion was to limit this proposed change to the Inpatient and Outpatient Without Rates categories, or preferably, delay action pending further study.

RESPONSE: In response to technical questions, the rule has been changed to indicate that the Department will use both UB and cost data. Further clarification will be included in the Final Reconciliation methodology that the Department recommends to the Hospital Rate Setting Commission.

COMMENT: One commenter felt that the 30 days notice was inadequate for hospitals undergoing data system conversions. Another felt it was inadequate because of prior year and cash flow adjustments being rolled over into 1991. It was asked whether exceptions would be considered for such cases.

RESPONSE: The proposed language concerning closure of the data base is added here to be consistent with the intent stated in N.J.A.C. 8:31B-2.5 and 3.16. See responses to those comments for a more detailed discussion.

COMMENT: Commenters suggested that cross-subsidization penalty corridors should be widened, and that hospitals be allowed to seek waivers during the current year of operation, not at final reconciliation, as is currently the practice.

RESPONSE: The appropriateness of cross-subsidization penalties and/or their waiver will continue to be addressed under 3.75(b)(2) and 3.43(d) and associated final reconciliation methodology approved by the Hospital Rate Setting Commission.

COMMENT: The issuance date for final reconciliation methodologies was mentioned in the context of this rule by one commenter who said that, since hospitals would be disadvantaged in making radical charge adjustments late in the year, they would need to know final reconciliation methodologies at the start of the rate year.

One commenter supported this proposed change as an incentive for hospitals to set charges in accordance with existing Chapter 83 regulations. Another requests that the change include a "reasonable margin for error," perhaps a 5 percent allowable differential.

RESPONSE: No change is being proposed at this time in the schedule for final reconciliations. The Department encourages commenters to make known their concerns regarding the final reconciliations schedule whenever it is proposed for change.

COMMENT: It was also requested that the Department develop, with hospitals' assistance, an outpatient allocation methodology for 1992 rate implementation.

RESPONSE: The Department is actively working to develop an outpatient allocation methodology and will seek guidance from hospitals and other interested parties as appropriate.

N.J.A.C. 8:31B-3.73(a)li, of the proposed amendments, is not included at this time as part of the current adoption, but may be adopted in the

future. In view of the comments received, the Department is reconsidering the requirements of N.J.A.C. 8:31B-3.73(a)1i.

N.J.A.C. 8:31B-4.66 Administrative Items

COMMENTERS:

Blue Cross and Blue Shield of New Jersey, Department of the Public Advocate, Division of Rate Counsel, State of New Jersey, New Jersey Hospital Association, Our Lady of Lourdes Medical Center, St. Elizabeth Hospital, West Jersey Health System.

COMMENT: The first commenter supports the recommended change, but requests that a time limit of one year be applied so that gains put aside to offset future years' pension costs above the economic factor would revert back to payers as a reduction in expenses after that period. The Public Advocate recommends no exception at all for gains used to offset future pension costs.

RESPONSE: The commenter suggesting a time limit of gains put aside to offset future years' pension costs above the economic factor does not state the reasons to mandate a timeframe, or the reason for choosing one year as appropriate. If the goal is to allow hospitals to save against future cost increases, it is not clear why costs in later years should be less protected than costs in the first year. Thus, the Department believes that there should be no limit on pension reversions used to offset these costs.

COMMENT: Another commenter does not support the Department's position that pension reversions should be reported as Case B exclusions, arguing that they should be Case C because they are not related to patient care, and are the result of elective management decisions. They believe this course would be consistent with previous HRSC rulings. Another recommends no action pending further study.

RESPONSE: The Department's recommendations for treatment of excess gains or pension reversions was sent to all interested and affected parties with a comment period. The Department recommended that for years prior to 1991, hospitals should report pension plan reversions as a "Case C" item; and for 1991 and future final reconciliations, pension reversions should be reported as "Case B" items. The only exception beginning in 1991 would be if the gain is used to offset future pension costs above the economic proxy.

At the September 19, 1990 Hospital Rate Setting Commission meeting, the Commission approved the Department's recommendation for "Case C" treatment for the years 1986, 1987, and 1988, since the final reconciliation methodology for these years had already been approved by the Commission.

On October 26, 1990 the Commission discussed the treatment of pension reversions for 1990. The only discussion of 1991 related to the treatment of specific hospitals that had pension reversions in 1990 that also had a gain carried forward into 1991. The Commission chose not to grandfather any hospital that had a pension reversion in 1990 or 1991. The Department's recommendation was again approved.

At this time, it was publicly announced that it was the Department's intention to propose a rule change in 1991, in accordance with these Commission approvals, with the addition of an exception if the gain was to be used to offset future pension costs above the economic factor. This addition is based on the Department's contention that those originally paying for pension costs (payers) should also benefit from pension reversions.

There was adequate notice to all hospitals, so that any hospital contemplating a pension reversion in 1991 was aware it would be at risk of its pension reversion treatment as a "Case B."

Comments received from the following hospitals did not specifically address proposed regulatory changes, therefore no response is provided:

Bergen Pines County Hospital, Besler and Company, Blue Cross and Blue Shield of New Jersey, Elizabeth General Medical Center, Helene Fuld Medical Center, Kaden Arnone Inc., KPMG Peat Marwick, Morris, Department of the Public Advocate, Division of Rate Counsel, State of New Jersey, Shore Memorial Hospital, St. Elizabeth Hospital, St. Francis Medical Center (Trenton), St. Joseph's Hospital and Medical Center, St. Peter's Medical Center, University Hospital.

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 1. GENERAL PROVISIONS

8:31B-1.2 Definitions

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

"Full Rate Review" means an examination of a hospital's entire cost base and operating structure in order to evaluate proposed payment.

"Prospective Operating Adjustment" means that amount by which hospital payment rates are increased if hospitals choose to implement their rates upon issuance and not undergo a full rate review. This adjustment is not related to an operating margin as defined in Generally Accepted Accounting Principles.

8:31B-2.5 Health data submissions to the Department of Health

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

(g) Data shall be submitted to the Department of Health as follows:

1. (No change.)

2. Records not received by the Department of Health (including corrections of fatal errors), within the time frames specified, shall not be included in the hospital's Final Reconciliation, and the direct costs associated with them shall be foregone by the hospital. The Department shall provide 30 days notice of its intent to close the data base, and no additional cases shall be added after that time, except under the provisions cited in N.J.A.C. 8:31B-3.73.

3. (No change.)

(h) (No change.)

8:31B-3.2 Derivation of Preliminary Cost Base (PCB)

(a) For a group of hospitals the Commissioner, on or before January 31 of the rate year shall propose to the Commission a Preliminary Cost Base/Certified Revenue Base (PCB/CRB) for the initial rate period. For hospitals on a fiscal year beginning other than January 1, but before July 1, the rate year shall be the year the fiscal year begins; for hospitals on a Fiscal Year beginning between July 1 and December 31, the rate year shall be the year the fiscal year ends. A PCB/CRB for fiscal year hospitals shall be proposed to the Commission at least 30 days prior to the hospital's "Fiscal" rate year. The proposed Preliminary Cost Base for each hospital shall include:

1.-7. (No change.)

8:31B-3.5 Development of standards

(a) (No change.)

(b) The median cost per case, the Efficiency Standard, shall be used to identify presumptively excess cost; however, supplementary standards including, but not limited to, the lowest cost per case at any institution which has treated more than ten patients in a given Diagnosis Related Group during the current cost base year, shall be used to identify potential areas for management review and action, and may be used by all parties in a full rate review. The Commissioner shall also calculate the mean cost per case, the Incentive Standard, which shall be used in developing the Proposed Schedule of Rates. Standards so developed and issued for a rate year shall remain unaffected and no adjustments, modifications or any other changes to the standards shall be made. All standards developed herein may be used in evaluating effectiveness and efficiency of the health care system taken as a whole.

8:31B-3.7 Incentive standard, Preliminary Cost Base: Proposed Schedule of Rates

(a) Consistent with the purposes and intent of Chapter 83, P.L. 1978, the Commissioner shall propose for each institution a Preliminary Cost Base using the ***[reasonable]* *reasonable*** direct cost per case for each DRG as described in N.J.A.C. 8:31B-3.23. The Preliminary Cost Base shall be adjusted for reasonable indirect patient care costs, net income from other sources, and update factors ***[to adjust for cost increases since the base year]***. These adjustments are described in N.J.A.C. 8:31B-3.24 through 3.26.

(b) In order to determine reasonable physician costs, hospitals shall report to the Commissioner any significant changes in the

contractual basis of any and all physician compensation arrangements which may have occurred since the Current Cost Base. Hospitals that fail to report such changes prior to the issuance of the Proposed Schedule of Rates or during the course of the rate year shall have said amount removed (plus interest thereon) from their Preliminary Cost Base at final reconciliation. The dollar amount of indirect patient care cost so derived shall remain fixed for the rate period, except as adjusted for inflation or deflation as described in N.J.A.C. 8:31B-3.71 through 3.86.

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

8:31B-3.10 Extraordinary expense

If supported by adequate documentation, the Proposed Schedule of Rates may include an appropriate adjustment for items of extraordinary expense of nonrecurring nature which occurred in the Current Cost Base, and which are reported to the Commissioner by April 15, of the year prior to the issuance of the Proposed Schedule of Rates. Conversely, failure to report extraordinary items of a nonrecurring nature which were included in costs reported to the Department of Health shall entitle the Commissioner to recommend an adjustment under N.J.A.C. 8:31B-3.52.

8:31B-3.15 Certified Revenue Base

A Certified Revenue Base shall be defined as the preliminary cost base as approved by the Hospital Rate Setting Commission which is sufficient to meet a hospital's needs in providing adequate and appropriate health care. A hospital may elect to request a CRB, and remain on that CRB adjusted by update factors (see N.J.A.C. 8:31B-3.26), for as long as the hospital determines the CRB meets its needs or until such time as the Hospital Rate Setting Commission re-establishes rates for all hospitals. N.J.A.C. 8:31B-3.51, Rate notification, approval, and implementation, provides the procedures for determining the CRB.

8:31B-3.16 Current Cost Base

(a) (No change.)

(b) The Current Cost Base is used to develop the Preliminary Cost Base and Schedule of Rates through:

1.-3. (No change.)

4. Calculation of update factors as defined in N.J.A.C. 8:31B-3.26.

(c) (No change.)

(d) Hospitals' actual cost reports cannot be substituted or rearranged once the Department has determined that the actual cost submission is suitable for entry into the data base. The Department shall provide 30 days' notice of its intent to close the data base.

8:31B-3.17 Financial Elements Reporting Audit Adjustments

(a) The aggregate Current Cost Base is developed from financial elements reported to New Jersey State Department of Health and includes:

1. (No change.)

2. Less net income from specified sources (as defined in N.J.A.C. 8:31B-3.25);

3. (No change.)

4. Adjustment to prompt payment discount (as defined in N.J.A.C. 8:31B-3.40).

(b) (No change.)

(c) Hospitals shall submit a complete list of exceptions to the proposed audit adjustments, together with appropriate written documentation, within 60 days of receipt of the Department's written summary of these adjustments, or these adjustments shall be implemented in accordance with (b) above. Consideration shall be given only to documentation submitted in accordance with this schedule. Items previously reviewed under final reconciliation and other rate appeals shall not be included in this list of exceptions. Adjustments approved by the Rate Setting Commission shall be implemented in subsequent years' rates.

(d) The Department must obtain Commission approval to make additional recommendations regarding any audit that has received final approval by the Commission. Reasons for obtaining Commission approval include, but are not limited to, fraud and material misrepresentation.

8:31B-3.20 Preliminary Cost Base

The proposed Preliminary Cost Base is the reasonable cost of the Financial Elements of the Current Cost Base, as adjusted for update factors and the Capital Facilities Allowance and as modified or approved by the Commission pursuant to N.J.A.C. 8:31B-3.63 through 3.70.

8:31B-3.21 Reasonable Cost of Services Related to Patient Care

(a) (No change.)

(b) The Reasonable Cost of Services Related to Patient Care shall be adjusted by the update factors and changes approved by the Commission pursuant to N.J.A.C. 8:31B-3.63 through 3.70.

8:31B-3.22 Standard costs per case

(a) (No change.)

(b) Classification of Teaching (Major and Minor) and Non-Teaching Hospitals for purposes of determining indirect costs shall be as follows:

1.-4. (No change.)

5. Hospitals, because of their specialized acute nature, having a majority of active medical staff in specialties which have an Accreditation Council for Graduate Medical Education (ACGME) approved residency may apply to the Commissioner for teaching status pursuant to N.J.A.C. 8:31B-3.51 and 3.52.

6.-8. (No change.)

9. The transfer of residents and associated costs between hospitals is permitted under the following conditions:

i. The number of positions transferred does not exceed the number relinquished;

ii. Both parties to the transfer must submit letters of agreement to the DOH; and

iii. The Advisory Graduate Medical Education Council of New Jersey (AGMEC) must have recommended the transfer as being consistent with maintenance or improvement of program quality.

10. An addition of resident positions by transfer may not result in a change to higher teaching status peer group. A reduction of resident positions by transfer may result in a change to a lower teaching status peer group. The approved costs associated with a transferred resident position may not increase solely as a result of the transfer.

11. Beginning in rate year 1992, the changes in number of residents and associated costs shall be reflected in each hospital's rates for the following rate year if the Department is so advised on or before April 15.

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

(e) Calculation of standards shall be as follows:

1. The calculation of standards shall be based on an appropriate sample of hospitals and/or cases submitted pursuant to N.J.A.C. 8:31B-2.5. The cost per case of each hospital's patients with UB-PS records categorized by inpatient DRGs is multiplied by each hospital's equalization factor (see N.J.A.C. 8:31B-3.24(c)) and for the appropriate DRGs and hospitals, reduced by a rate expressing the amount and type of graduate medical education (see Appendix XI) for the hospital pertaining to each DRG. The mean equalized cost of all such records in all hospitals calculated after teaching costs have been removed from hospitals' Preliminary Cost Bases, is the incentive standard for each DRG.

2. (No change.)

8:31B-3.27 Capital Facilities

(a) Capital Facilities as defined in N.J.A.C. 8:31B-4.42, shall be included in the Preliminary Cost Base/Certified Revenue Base in the following manner:

1. Building and fixed equipment:

i.-vii. (No change.)

viii. Reimbursement for capital facilities which does not require Certificate of Need approval, or which requires Certificate of Need approval but does not require Batching, incurred on or after January 1, 1988 shall be in accordance with the following requirements.

(1) (No change.)

(2) Hospitals with costs per Adjusted Admission below the capital cap, or costs below their 1988 costs per Adjusted Admission, will

be reimbursed their actual costs for additional Capital Facilities Allowance in accordance with (a)lii through v above.

(3) Hospitals with costs per Adjusted Admission, based on the most recent available Actual financial data, that are above the capital cap, and also above their 1988 capital cost per adjusted admission, will receive the higher of their 1988 capital costs per adjusted admission, or the capital cap calculated for the rate year. Such hospitals may request an increase to their Capital Facilities Allowance by submitting to the Department, at least 30 days prior to the beginning of a rate year, documentation substantiating their costs. Increases deemed reasonable by the Department shall be recommended for action by the Hospital Rate Setting Commission.

2. (No change.)

8:31B-3.31 Commission adjustments and approvals

(a) (No change.)

(b) Prior to the issuance of rates each year, the Department shall also determine prospective adjustments to hospitals' Schedules of Rates for 1988 and subsequent years as necessary to subtract approved costs associated with residents not meeting the minimum requirements as defined in N.J.A.C. 8:31B-3.22(b)6 or participating in programs which have lost accreditation as defined in N.J.A.C. 8:31B-3.22(b)7. Similar adjustments shall be made for any costs associated with residents in excess of the total number of FTE residents approved by the Commission for payment for the period beginning July 1, 1985, plus or minus subsequent adjustments as approved by the Commission; and for any costs associated with previously approved but now vacant residency positions which are unfilled as a result of a hospital's inability to recruit residents meeting these minimum standards. These costs shall include, but not be limited to, resident salaries and fringes, faculty salaries, malpractice and supplies. In the case of a transfer of residents between hospitals, the procedures described in N.J.A.C. 8:31B-3.22 shall apply.

8:31B-3.32 Overspending challenge

Hospital base year costs may be adjusted to eliminate any costs *[expended]* in excess of Hospital Rate Setting Commission total approved revenues for rate setting purposes should the hospital elect a full rate review or implementation of the Certified Revenue Base (N.J.A.C. 8:31B-3.15). The actual costs of the hospital shall be used, however, in the calculation of standards for rate setting purposes. The overspending challenge shall be applied as an indirect adjustment net of the estimated percent of standard for direct patient care to the hospital's approved revenue.

8:31B-3.43 Adjustment of charges

(a) Unless otherwise ordered by the Commission, the proposed Schedule of Rates shall be implemented on the first day of the month following 30 days after receipt of the Schedule of Rates. Fifteen working days prior to this implementation a hospital shall:

1.-3. (No change.)

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

8:31-3.56 (Reserved)

8:31B-3.72 Periodic adjustments

(a) Certain periodic adjustments are made to the Schedule of Rates which are not dependent upon new submissions of reports. These adjustments are made independently of the yearly reconciliations of the Schedule of Rates, but shall affect the calculation of Commission Approved Revenue. Periodic adjustments are made for any adjustments explicitly ordered by the Commission pursuant to N.J.A.C. 8:31B-3.64, Modification of Proposed Schedule of Rates. The following periodic adjustments shall be implemented by the Commission and the affected hospitals pursuant to N.J.A.C. 8:31B-3.42, and shall become effective in the subsequent rate year, unless a substantial *[inequity]* ***danger to the ability of a needed hospital to provide adequate care*** shall result.

1.-2. (No change.)

3. Application of periodic adjustments to Schedule of Rates: Pursuant to N.J.A.C. 8:31B-3.42 through 3.45, on January 1 of each year (staggered as appropriate for hospitals with other than a calendar year reporting period), direct and indirect patient care costs (as

offset by the previous year's net income from other sources) shall be adjusted, as appropriate, for the new projection of the update factors and other adjustments. The Capital Facilities Allowance portion of the Schedule of Rates is also adjusted accordingly, and a compliance adjustment to the Rate Order determined by the Commissioner and implemented by the hospitals and payers.

8:31B-3.73 Reconciliation: Hospitals

(a) Following receipt of actual patient specific information pursuant to Rules on Hospital Reporting for Uniform Bill-Patient Summaries (inpatient), as described in N.J.A.C. 8:31B-2, or N.J.A.C. 8:31A-8.1, whichever is appropriate: determination of actual case-mix as determined by the same GROUPER used to establish rates; and calculation of the actual economic factor, the Commissioner shall determine consistent with the Commission's Order, for each hospital, for the calendar year or rate period, whichever is appropriate, reconciliation for:

1. Variable financial elements:

i. Except as specified above, reconciliation for direct patient care costs shall be made on the basis of the approved Schedule of Rates for Diagnosis Related Groups and outpatient visits. The Schedule of Rates so developed and approved, adjusted to actual measured economic inflation, shall be multiplied by the hospital's actual case-mix and volume which was necessary and appropriate. Outliers, subject to appropriateness review by an approved utilization review, shall be included in the calculation of reconciliation.

ii.-v. (No change.)

2. Fixed financial elements:

i. Indirect patient care costs: The indirect patient care revenue requirements as initially determined shall remain fixed during the rate period except as modified for actual inflation for those components of indirect costs not included in (a)lii above. Any under or over collection of indirect patient care revenue from revenue centers which are not volume variable as indicated in N.J.A.C. 8:31B-3.24 shall be compensated by a Schedule of Rates Variance as described below.

ii. Capital costs: Only capital indebtedness incurred before September 1, 1986 (as defined in N.J.A.C. 8:31B-3.27(a)1) is considered a fixed financial element. With the exception of the Capital Facilities Formula Allowance and Major Moveable Equipment, these costs shall be reconciled to actual certified amounts, provided that any increase from the prospective amount approved by the Commissioner to the actual amount is related to Capital Facilities as defined in N.J.A.C. 8:31B-3.42.

3.-5. (No change.)

AGENCY NOTE: N.J.A.C. 8:31B-3.73(a)li, as proposed, is not included at this time as part of the current adoption, but may be adopted in the future. In view of the comments received, the Department is reconsidering the proposed amendment to N.J.A.C. 8:31B-3.73(a)li.

8:31B-3.75 Schedule of rates reconciliation

(a) Except for adjustments among payers and required bad debt reconciliation which may be made appropriately on a lump sum or prospective basis, all other adjustments, such as under or over collection, audit, or other reconciliation procedures here required shall be made prospectively through an appropriate adjustment in the following rate year. The reconciliation adjustment shall be calculated so as to compensate for the required amount over a specified period approved by the Hospital Rate Setting Commission.

(b) To the extent that an institution's actual Net Revenues Related to Patient Care differ from the Commission approved Preliminary Cost Base/Certified Revenue Base, an adjustment to the current year PCB/CRB shall be calculated. A compliance adjustment to the Rate Order shall then be issued to include this adjustment and adjustments for actual uncompensated care, payer differentials, and net income from other sources, in order to align gross revenue and payers' payments with net revenue requirements for the new prospective year.

1. Commission approved revenue: On an annual basis, within 90 days of receipt of all reports set forth in N.J.A.C. 8:31B-3.42 through 3.45, the Schedule of Rates, as adjusted for update factors and adjustments issued by the Commission, shall be calculated for the hospital's discharges and patient visits for a reported period pursuant

to N.J.A.C. 8:31B-2.5 and 3. Reasonable direct patient care costs per case, including the DRG-specific indirect rate, shall be multiplied by the number of cases in each DRG, to determine reasonable patient care costs for patients assigned to a DRG. The aggregate charges for those same cases shall also be calculated. Actual outpatient volumes for Emergency Services (EMR), Clinics (CLN), Home Health Agency (HHA), Ambulatory Surgery, and Same Day Psychiatry shall be determined from the Uniform Cost Reporting Regulations. Outlier cases shall be reconciled to the appropriate rate and/or per diem as described in N.J.A.C. 8:31B-3.38.

2.-4. (No change.)

8:31B-4.66 Administrative items

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

(e) Interest Expense for Major Moveable Equipment is excluded from Costs Related to Patient Care and treated as Case C unless approved as part of a full rate review.

(f) Gains on pension reversions are included as Services Related to Patient Care and, as such, shall be treated as Case B and offset against Costs Related to Patient Care, except in the case of restricted gains used to offset future pension costs in excess of the pension economic proxy.

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Community-Based Care Dedicated for Use by Patients with AIDS/HIV Infection

Adopted Amendments: N.J.A.C. 8:33H-3.3 and 8:33L-2.4

Proposed: January 7, 1991 at 23 N.J.R. 124(a).

Adopted: February 21, 1991 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Filed: February 25, 1991 as R.1991 d.159, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 26:2H-8.

Effective Date: March 18, 1991.

Expiration Date: May 16, 1995, N.J.A.C. 8:33H. November 16, 1992, N.J.A.C. 8:33L.

Summary of Public Comments and Agency Responses:

The Department of Health received comments from the Division of Youth and Family Services, New Jersey Department of Human Services.

COMMENT: The Division of Youth and Family Services inquired whether "there is a mechanism in place to ensure that the certificate of need applications will be processed and reviewed as they are submitted?"

RESPONSE: With elimination of the batching requirement, applications for nonacute care services dedicated for the treatment of patients with AIDS/HIV infection may be filed on the first day of any month except May and September. For the latter months, no applications of any kind are accepted, in accordance with N.J.A.C. 8:33-1.5. All certificate of need applications are processed and reviewed as they are submitted, in accordance with the applicable certificate of need rules and requirements.

Full text of the adoption follows.

8:33H-3.3 Expansion and new construction

(a) Standards are as follows:

1.-7. (No change.)

8. Dedicated beds for patients with AIDS or HIV infection: Certificate of need applications for long-term care beds, including "sub-acute" beds, to be dedicated for use by patients with AIDS or HIV infection shall be exempted from the batching cycle requirements for long-term care, as they are stated in N.J.A.C. 8:33-1.5. Applications for dedicated AIDS beds may be submitted during any month when applications are accepted. In accordance with N.J.A.C. 8:33-1.5(c), this shall be any month except May and September.

i. If a certificate of need application proposing dedicated beds for exclusive occupancy by AIDS and HIV-infected patients is approved, the beds shall not be counted as part of the inventory of general long-term care beds which are available to the public at large.

ii. Certificate of need applications for dedicated AIDS beds shall be subject to all applicable conditions stated in this chapter and the following:

(1) Admission to the approved beds shall be available exclusively to persons with AIDS or HIV infection. The applicant is prohibited from marketing services or occupying the approved beds with patients who are not HIV-infected, unless the Commissioner determines that the dedicated beds are chronically underutilized and gives approval for the placement of non-HIV infected patients in the beds pending submission, review, and approval of a certificate of need, as referenced in (a)8ii(2) below; and

(2) Should the applicant choose to market the approved beds to patients who do not have AIDS or HIV infection, or to admit patients who do not have AIDS or HIV infection, the applicant shall submit a certificate of need application and receive approval to do so, satisfying all pertinent requirements in this chapter prior to marketing to or serving patients who do not have AIDS or HIV infection.

(b) (No change.)

8:33L-2.4 Certificate of Need requirements

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

(h) To promote the availability of care for special sub-populations (for example, pediatric patients or patients who are HIV-infected) that may have difficulty accessing needed home health services, the Commissioner of Health shall give consideration to approving a new or expanding agency, even if the proposed service area does not demonstrate an access problem in accordance with the criteria identified in (a)4 above.

1.-2. (No change.)

3. Certificate of need applications proposing home health agencies dedicated to the care of patients with AIDS or HIV infection shall be exempted from the batching cycle requirements for home health, as they are stated in N.J.A.C. 8:33-1.5. Applications for dedicated AIDS home health services may be submitted during any month when applications are accepted. In accordance with N.J.A.C. 8:33-1.5(c), this shall be any month except May and September.

(b)

DIVISION OF HEALTH FACILITIES EVALUATION Long Term Care Licensing Standards

Adopted Amendments: N.J.A.C. 8:39-19.5, 20.1, 29.1, 29.3 and 30.1

Proposed: December 3, 1990 at 22 N.J.R. 3612(a).

Adopted: February 21, 1991, by Frances J. Dunston, M.D.,

M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: February 25, 1991 as R.1991 d.160, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: March 18, 1991.

Operative Date: June 18, 1991.

Expiration Date: June 20, 1993.

Summary of Public Comments and Agency Responses:

The proposed amendments were published on December 3, 1990. During the comment period, which ended on January 2, 1991, three letters of comment were received. One letter was received from the New Jersey Division of Medical Assistance and Health Services and two were received from pharmacy provider/consultants: the Stiles Pharmacy, Inc. and the Cherry Hill Pharmacy.

COMMENT: A letter was received from the New Jersey Division of Medical Assistance and Health Services agreeing that both the mandatory Mantoux skin testing of long term care employees and the change to

pharmacy structural organization which separates the consultant and provider pharmacist roles are appropriate and in the public interest.

RESPONSE: The Department acknowledges the comments and concurs that these amendments will serve to improve patient health and safety.

COMMENT: The comments from the two pharmacy provider/consultants indicated that they were opposed to proposed N.J.A.C. 8:39-29.1(c), requiring the separation of the provider and the consultant functions. They requested that instead of the mandatory separation, the Department should adopt a requirement that only a Certified Consultant Pharmacist be used. One letter stated that provider pharmacists are paid according to the type of drug distribution system they use and because of the capitation by patients with no fees, the less prescriptions dispensed the more profit a provider makes. They concluded that there was no need for the proposed rule as a result of this reimbursement mechanism.

RESPONSE: The Department believes that the separation of the provider and the consultant will prevent any potential conflict of interest in the delivery of consultant pharmacy services. The separation will assure the regular objective review of each resident's medication and therapy regime. The intent of the rule is to deal with this inherent potential conflict of interest rather than the credentials of practicing consultants. The Department has not found a significant problem with the current qualifications of consultant pharmacists to warrant the use of a Certified Consultant Pharmacist. The Department notes that the utilization of a Certified Consultant Pharmacist is already contained in the advisory standards at N.J.A.C. 8:39-30.2. In summary, the Department is primarily concerned with each resident receiving the medication(s) they require to maintain optimum health. The role of the consultant pharmacist is to verify at least every 30 days that proper medication utilization is taking place and to identify for correction those instances when it is not. While the consultant pharmacist may not have a financial benefit in reducing the number of medications prescribed, they do have a professional license which could be in jeopardy for not performing these duties according to current standards of pharmaceutical practice.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

8:39-19.5 Mandatory staff qualifications: health history and examinations

(a) The facility shall require all new employees to complete a health history and to receive an examination performed by a physician within two weeks prior to the first day of employment or upon employment. The facility shall establish criteria for determining the completeness of physical examinations for employees.

(b) Each new employee, including members of the medical staff employed by the facility, upon employment shall receive a Mantoux tuberculin skin test with five tuberculin units of purified protein derivative. The only exceptions shall be employees with documented negative Mantoux skin test results (zero to nine millimeters of induration) within the last year, employees with a documented positive Mantoux skin test result (10 or more millimeters of induration), employees who have received appropriate medical treatment for tuberculosis, or those employees for whom the test is medically contraindicated. Results of the Mantoux tuberculin skin tests administered to new employees shall be acted upon as follows:

1. If the Mantoux tuberculin skin test result is between five and nine millimeters or more of induration, the test shall be repeated one to three weeks later. If the test result is below five millimeters of induration, no follow-up test is required.

2. If the Mantoux test is significant (10 millimeters or more of induration), a chest x-ray shall be performed and, if necessary, followed by chemoprophylaxis or therapy.

(c) The facility shall have written policies and procedures establishing timeframes for subsequent Mantoux tuberculin skin tests for all employees after the initial test.

(d) The facility shall assure that all current employees who have not received the Mantoux test upon employment, except those exempted by (b) above, shall receive a test within three months of ***[the effective date of this amended rule]* *June 18, 1991***. The facility shall act on the results of tests of current employees in the same manner as prescribed in (b) above.

8:39-20.1 Advisory policies and procedures for infection control
Recodify (b)-(e) as (a)-(d) (No change in text.)

8:39-29.1 Mandatory pharmacy structural organization
(a)-(b) (No change.)

(c) If the facility does not maintain an in-house pharmacy, the facility shall appoint a consultant pharmacist who is not also the director of pharmaceutical services or pharmacist provider and does not have an affiliation with either the director of pharmaceutical services or the pharmacist provider.

(d) (No change in text.)

8:39-29.3 Mandatory pharmacy reporting policies and procedures

(a) The consultant pharmacist shall enter monthly notes or comments in the medical record of every patient receiving medication, on a pharmacist consultation sheet, or another portion of the medical record, in accordance with N.J.A.C. 13:39.

8:39-30.1 Advisory pharmacy structural organization

If the facility has 60 or fewer beds, it should hold multidisciplinary pharmacy and therapeutics committee meetings at least quarterly and include the medical director in these meetings.

(a)

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: February 22, 1991 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: February 25, 1991 as R.1991 d.161, with portions of the proposal not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: March 18, 1991.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments were received concerning the products adopted by this notice.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on May 8, 1990. Thomas T. Culklin, Pharm.D., M.P.H., served as hearing officer. No comments were received concerning the products adopted by this notice. The hearing officer made no specific recommendations concerning the products adopted herein. As a general recommendation, the hearing officer stated that biodata should be reviewed and used as the basis for product acceptance/rejection. On such basis, the Council adopted the products herein added to the List.

The following products and their manufacturers were adopted:

Fenoprofen tabs 600 mg	Mutual
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
Griseofulvin ultramicro. tabs 165, 330 mg	Sidmak
Lorazepam tabs 0.5, 1, 2 mg	Mutual
Methyldopa/HCTZ tabs 250/15, 250/25	Lederle
Nifedipine caps 20 mg	Cord
Potassium Cl ER tabs 8 mEq	Mylan, Upsher-Smith
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

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 22 N.J.R. 2162(b), 3149(a) and 3581(b).

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: August 20, 1990 at 22 N.J.R. 2501(a).

Adopted: February 22, 1991 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: February 25, 1991 as R.1991 d.162, with portions of the proposal not adopted but still pending.

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: March 18, 1991.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

No comments were received concerning the products adopted by this notice.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing on the proposed additions to the List of Interchangeable Drug Products was held on September 11, 1990. Thomas T. Culkin, Pharm.D., M.P.H., served as hearing officer. No comments were received concerning the products adopted by this notice. The hearing officer made no specific recommendations concerning the products adopted herein. As a general recommendation, the hearing officer stated that biodata should be reviewed and used as the basis for product acceptance/rejection. On such basis, the Council adopted the products herein added to the List.

The following products and their manufacturers were adopted:

Doxepin HCl caps 10, 25, 50 mg	Purepac
Indomethacin 25, 50 mg caps	W-C

Lorazepam 0.5, 1, 2 mg tabs	W-C
Propranolol tabs 10, 20, 40, 60, 80 mg	W-C

The following products were not adopted but are still pending:

Albuterol Sulf tabs 2, 4 mg	Purepac
Albuterol Sulf 2, 4 mg tabs	W-C
Amiloride/HCTZ tabs 5/50	Cord
Carbamazepine 100 mg chewable tabs	W-C
Chlorpropamide tabs 100, 250 mg	Lederle
Digoxin tabs 0.125, 0.25 mg	Zenith Labs
Digoxin tabs 0.125, 0.5 mg	Pioneer
Doxycycline caps 50, 100 mg	Interpharm
Doxycycline tabs 100 mg	Interpharm
Erythromycin ER tabs 250, 333 mg	Abbott Labs
Erythromycin ethylsuccinate tabs 400 mg	Abbott Labs
Fenoprofen caps 200, 300 mg	W-C
Fenoprofen tabs 600 mg	W-C
Leucovorin 2 mg tab	W-C
Loperamide 2 mg caps	Lemmon, W-C
Methyldopa tabs 125, 250, 500 mg	Roxane
Methyldopa/HCTZ tabs 250/15, 250/25	W-C
Propranolol HCTZ 40/25, 80/25 tabs	W-C
Sulindac tabs 150, 200 mg	Purepac
Sulindac tabs 150, 200 mg	W-C
Tetracycline 250, 500 mg caps	W-C
Timolol Maleate tabs 5, 10, 20 mg	W-C
Tolmetin sodium caps 400 mg	Cord, W-C
Tolmetin tabs 200 mg	W-C
Verapamil HCl tab 40 mg	Cord, Purepac

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 22 N.J.R. 2582(a) and 23 N.J.R. 206(a).

EMERGENCY ADOPTION

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Gross Income Tax

Combat Zone; Extension of Time to File and Pay

Adopted Emergency New Rule and Concurrent

Proposed New Rule: N.J.A.C. 18:35-1.26

Emergency New Rule Adopted and Concurrent Proposed New Rule Authorized: January 31, 1991 by Benjamin J. Redmond, Acting Director, Division of Taxation.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): February 19, 1991.

Emergency New Rule Filed: February 27, 1991, as R.1991 d.166.

Authority: N.J.S.A. 54A:9-17(a) and 54:50-1.

Concurrent Proposal Number: PRN 1991-159.

Emergency New Rule Effective Date: February 27, 1991.

Emergency New Rule Expiration Date: April 28, 1991.

Submit comments by April 17, 1991 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
CN 269
Trenton, New Jersey 08646

The agency emergency adoption and concurrent proposal follows:

On January 31, 1991, Benjamin J. Redmond, Acting Director of the Division of Taxation in the Department of the Treasury, pursuant to authority of N.J.S.A. 54A:9-17(a) and 54:50-1, and upon certification by the Governor of the State of New Jersey that an imminent peril exists (see N.J.S.A. 52:14B-41(c)), adopted an emergency new rule, N.J.A.C. 18:35-1.26 concerning the Gross Income Tax, Combat zone; extension of time to file and pay. This emergency new rule is effective for 60 days upon filing with the Office of Administrative Law (OAL). The new rule will continue in effect if the concurrent proposed new rule is adopted and filed with OAL on or before the expiration date of the emergency rule.

Summary and State of Imminent Peril

The Division of Taxation is adopting on an emergency basis and concurrently proposing a new rule to extend the time for certain military personnel and civilians to file individual income tax returns and pay gross income tax. Hostilities in the Persian Gulf and the declaration of the area as a "combat zone" by executive order of the President of the United States has resulted in numerous inquiries by concerned friends and relatives as to the responsibilities of New Jersey residents currently serving in the combat zone with respect to the filing of gross income tax returns and the payment of taxes. This rule will extend the filing deadlines under the Gross Income Tax Act for such military personnel and will clarify

their obligations under the Act. The rule applies for 1990 returns due on or before April 15, 1991 and is also effective for all succeeding taxable years.

The immediate adoption of this rule is necessary to administratively authorize such tax relief and to provide taxpayers with certainty as to their obligation to file a return and pay gross income tax.

To respond to the imminent peril, an extension of time to file is being granted to ensure that the New Jersey National Guard members and reservists who are presently serving their country in the Persian Gulf and all other New Jersey residents who are on active duty or will be in the future will not be required to file a gross income tax return or pay income tax until six months after they return home.

Social Impact

This emergency and concurrently proposed new rule will affect approximately 3,000 New Jersey National Guard members and reservists who are presently in the "combat zone" as well as their spouses. In addition, the rule affects those New Jersey residents who are on active military duty in that area and all other New Jersey residents who may serve in the zone in the future.

Economic Impact

Although there will be some economic impact on the general treasury, the amount will be negligible in light of the relatively small percentage of New Jersey taxpayers who will be affected by this rule.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rule does not impose reporting, recordkeeping or other compliance requirements upon small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule extends the time for certain military personnel and civilians to file individual income tax returns and pay gross income tax. Therefore, a regulatory flexibility analysis is not required.

Full text of the emergency adopted and concurrently proposed new rule follows.

18:35-1.26 Combat zone; extension of time to file and pay

(a) Members of the Armed Forces of the United States and civilians providing support to the Armed Forces who are serving in a designated combat zone or were hospitalized outside the United States as a result of an injury received while serving in a combat zone are granted an extension of time for filing individual income tax returns and paying tax for the period of combat service or hospitalization, plus 180 days. This extension is also granted to such a taxpayer's spouse who files jointly. No penalty, interest or addition to tax will be assessed for late filing or late payment of the tax pursuant to this subsection (a).

(b) Taxpayers who file individual income tax returns and pay gross income tax late should attach a statement to the return which indicates their qualification for the tax relief granted pursuant to (a) above. The Director may request supporting information.

PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

COMMUNITY SERVICES BLOCK GRANT DISCRETIONARY PROGRAM

Notice of Availability of Funds

Title of Funding Source: United States Department of Health and Human Services (Omnibus Budget Reconciliation Act of 1981, Title 6, Subtitle B, Community Services Block Grant Program and Title 17, Chapter 2, Block Grant Funds)

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq., the Department of Community Affairs, Community Services Block Grant Discretionary Program, hereby announces the availability of the following State funds:

Name of Program: Community Services Block Grant Discretionary Program.

Purpose:

The Community Services Block Grant (CSBG) Discretionary Program in the Department of Community Affairs is accepting proposals to fund social and economic projects that will benefit low-income New Jersey citizens. Priority will be given to applications that address one or more of the following activities: housing, income maintenance, transportation, emergency and basic needs, employment, and training. The Department is seeking proposals which produce innovative solutions to problems related to the goals of CSBG and which show promise for long-term funding from other sources.

Organizations which may apply for funding under the program:

Eligible applicants would include any unit of local government, non-profit private organizations, or a community action agency operating under the direction of a governing or advisory board.

Amount of money to be awarded:

This grant program has \$245,984 remaining to be awarded in Fiscal Year 1991.

Qualifications needed by an applicant to be considered for funding:

Applications will be evaluated and funds awarded to those applicants who submit plans which are consistent with the Community Services Block Grant requirements of OBRA and which:

1. Best serve the priority areas of housing, income maintenance, transportation, emergency and basic needs, employment and training;
2. Demonstrate innovation in addressing these areas;
3. Show an ability to be self-sustaining after the CSBG funding ceases;
4. Have a history of fiscal and program capability in the operation of such programs;
5. Are units of local government, non-profit private organizations, or community action agencies operating under the direction of a governing or advisory board; and
6. Are in good standing, as determined by the Secretary of State.

Procedure for eligible organizations to apply:

Any organization wishing to submit an application should write Mr. Richard J. Porth, Director, Division of Community Resources, Department of Community Affairs, 101 South Broad Street, CN 814, Trenton, New Jersey 08625-0814.

Person to whom questions and applications must be addressed:

Questions on the application procedure should be addressed to Mr. Richard W. Knight, Supervisor, Office of Community Services, Division of Community Resources, Department of Community Affairs or by calling (609) 292-6172.

Deadline by which applications must be submitted:

The deadline for CSBG submission under second round discretionary funding is March 31, 1991. Decisions regarding grant awards will be made on the last business day of the month following the application deadline. If the grant funds are not all awarded in round two, there will be a third application deadline of June 30, 1991.

Date by which applicant shall be notified of approval or disapproval:

April 30, 1991, for the second round; and July 31, 1991, for the third round.

ENVIRONMENTAL PROTECTION

(b)

NEW JERSEY CLEAN AIR COUNCIL

Notice of Public Hearing

Health Alerts—Air Quality Standards

Take notice that the New Jersey Clean Air Council, pursuant to the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., will hold a public hearing entitled "Health Alerts—Air Quality Standards." The public hearing will be held at the following time and place:

Monday, April 15, 1991 at 9:00 A.M.

Lewis Herrmann Labor Education Center Auditorium

Ryders Lane west of Route #1

Rutgers University, New Brunswick, New Jersey

The purpose of this public hearing is to seek information on issues related to air pollution emergencies in New Jersey. In particular, focus will be on criteria for calling air pollution emergencies, actions to be taken in the event of air pollution emergencies and public information concerning air pollution emergencies.

The objectives of the Clean Air Council 1991 Public Hearing are to ascertain whether the New Jersey ambient air quality standards and the emergency criteria are reasonably protective of public health and to determine whether existing information procedures are adequate and, if not, what changes can be made.

Persons wishing to make oral presentations are asked to reserve a 15 minute time period by telephoning or writing to the following addressee:

Mrs. Helen Benedetti

New Jersey Department of Environmental Protection

Division of Environmental Quality

CN0027

401 East State Street

Trenton, New Jersey 08625

609-292-6704

Presenters should bring 15 copies of their remarks to the hearing for use by the Council members, the hearing transcriber, and the press. The hearing record will be held open for 15 days following the date of the public hearing so that additional written testimony can be received.

Submit written comments by April 30, 1991 to the following addressee:

Mark Robson, Ph.D.

Acting Director

Division of Regulatory Services

Department of Agriculture

CN330

Trenton, New Jersey 08625

The Clean Air Council wants to explore the following questions at the hearing:

1. Are New Jersey's ambient air quality standards for the criteria air pollutants reasonably protective of public health for both level and duration?

2. Should New Jersey's emergency criteria be changed for each action level: an air quality alert? an air quality warning? an air quality emergency?

3. What actions should New Jersey take at the onset of a health alert to reduce public exposure?

4. What techniques would be most effective to inform New Jersey residents of air pollution levels, especially ozone levels? TV? Radio? Newspapers?

5. How can the New Jersey Department of Environmental Protection facilitate the public information efforts?

(c)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amend-

ment would update the Winslow Township Wastewater Management Plan (WMP). The amendment proposes to remove the 13,650 gallon per day, 17 acre Kings Highway Commerce Center site (Block 502, Lots 4A and 4B) from the Winslow Township (Sicklerville) sewage treatment plant (STP) sewer service area and add this site to the Camden County Municipal Utilities Authority's Delaware No. 1 STP sewer service area via the Gloucester Township Municipal Utilities Authority's collection system.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment, is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(a)

**DIVISION OF WATER RESOURCES
Amendment to the Tri-County Water Quality
Management Plan
Public Notice**

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would update the Winslow Township Wastewater Management Plan (WMP). The amendment would identify a new on site treatment works and discharge of 9,900 gallons per day (GPD) of treated wastewater into an on site pond in an area presently designated for individual subsurface sewage disposal systems. The amendment is for a proposed hot mix asphalt plant owned by Statewide Asphalt Associates and is located at Block 8703, Lots 1 and 2, site of the former Quill Asphalt plant.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment, is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr.

Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

**DIVISION OF WATER RESOURCES
Amendment to the Northeast Water Quality
Management Plan
Public Notice**

Take notice that on February 4, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management (WQM) Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Oakland Borough dated August 1990. That document proposes a new sewage treatment plant (STP) discharging to the Ramapo River, the West Oakland Industrial Park STP, to serve a projected wastewater flow of 1,701,100 gallons per day and identifies a sewer service area for this facility. The WMP also proposes a new STP discharging to the Ramapo River to serve the proposed Riverbend residential development in Oakland. The WMP identifies a portion of the Borough to be served by the Mountain View STP in Wayne, a portion to be served by on-site groundwater disposal systems, and a portion to be served by individual subsurface sewage disposal systems.

(c)

**DIVISION OF WATER RESOURCES
Amendment to the Monmouth County Water Quality
Management Plan
Public Notice**

Take notice that an amendment to the Monmouth County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for the Bayshore Regional Sewerage Authority (BRSA) wastewater management planning area. The BRSA WMP area is a portion of the WMP area for the Monmouth County Bayshore Outfall Authority (MCBOA) and the BRSA WMP is submitted on behalf of MCBOA; MCBOA retains WMP responsibility for this area. The municipalities addressed by the BRSA WMP are: Union Beach, Keansburg, Keyport, and Matawan Boroughs, Hazlet and Aberdeen Townships, and the northern portions of Holmdel and Marlboro Townships. Wastewater management planning responsibility for the remainder of Holmdel Township is retained by Holmdel Township and the Western Monmouth Utilities Authority (WMUA) retains WMP responsibility for the remainder of Marlboro Township.

The WMP makes provision for the conversion of the three Aberdeen Township sewage treatment plants to pumping stations with treatment at the BRSA regional plant, eliminating these discharges in Aberdeen Township. The sewer service area in Aberdeen is expanded to include the entire Township. The Comdata facility (NJPDDES NJ0001775) will be abandoned and the flow conveyed to the BRSA facility. The Holmdel WMP, adopted January 31, 1990, is amended to include in the service area that area bounded in part by the Garden State Parkway and Telegraph Hill Road which was not included in the service area; the flow projections for the year 2008 for the area sewered by BRSA in the Holmdel WMP are amended by extrapolation to the year 2010. The WMUA WMP, adopted March 14, 1989, is amended to realign the WMP and service area boundary between BRSA and WMUA to reflect the line as shown in "Schedule A" from the service agreement between BRSA and WMUA.

An expansion of the BRSA facility is proposed to allow for the treatment of a planned flow for the facility of 10.673 million gallons per day average annual flow, exclusive of infiltration and inflow.

This notice is being given to inform the public that a plan amendment has been developed for the Monmouth County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality

Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. 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.

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.

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of a One Time Only Deletion of the Certificate of Need Batching Cycle for Rehabilitation Hospitals and Comprehensive Rehabilitation Services by the New Jersey State Department of Health

Take notice that the Department of Health is deleting the May 15, 1991 certificate of need batching cycle for rehabilitation hospitals and comprehensive rehabilitation services. This action is being taken so that the Policy Manual for the Review of Rehabilitation Hospitals and Comprehensive Rehabilitation Services (N.J.A.C. 8:33M) can be amended with regard to the adult bed need formula contained in N.J.A.C. 8:33M-1.6(c)5.

As it is currently written, the Policy Manual indicates that rates of admission to rehabilitation hospitals and average lengths of stay will be included in the adult bed need formula. At the time that the rules for comprehensive rehabilitation were originally developed and adopted in June 1989, it was the Department's intention to utilize statewide rates of admission and average lengths of stay in the formula. However, the rule does not explicitly indicate that Statewide rates, as opposed to region-specific rates, should be used. The imprecise language in N.J.A.C. 8:33M-1.6(c)4 and 5 has resulted in some confusion, since the use of region-specific versus Statewide variables results in substantially different need projections for the northern, central, and southern parts of the State.

During recent months, Department staff in collaboration with the Policy and Plan Development Committee of the Statewide Health Coordinating Council have undertaken an analysis of several alternative methods for computing comprehensive rehabilitation bed need. The aim has been to develop a new formula which will allow for a more precise identification of those areas in the State that may be underserved for comprehensive rehabilitation and that would benefit from additional services. Thus, the Department is giving consideration to bed need methodologies which make use of patient origin data. Rehabilitation hospital patient origin data were recently collected and are now being evaluated. It is expected that a new, patient origin-based need methodology will be formulated and proposed by the Commissioner as an amendment to N.J.A.C. 8:33M-1.6(c)4 and 5 in the near future.

The batch deletion will be effective for April 1, 1991 certificate of need filing date; applications for new rehabilitation hospitals and comprehensive rehabilitation bed additions will not be accepted for processing at that time. It is anticipated that any necessary amendments to the Policy Manual will be effected by the Fall of 1991. Therefore, the Department of Health's acceptance of rehabilitation hospital applications will resume on October 1, 1991, which is the filing date for the subsequent comprehensive rehabilitation batching cycle.

Any inquiries about this batch deletion or the proposed amendment of N.J.A.C. 8:33M should be referred to:

John Gontarski, Chief
Health Systems Review, Room 604
New Jersey State Department of Health
CN 360
Trenton, N.J. 08625

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of a One Time Only Deletion of the May 15, 1991 Batching Cycle (April 1, 1991 submission date) for Certificate of Need Applications Involving MRI (Magnetic Resonance Imaging) Services

Take notice that the Department of Health, in conjunction with the Health Care Administration Board (HCAB), is deleting the next batching cycle that is scheduled in accordance with N.J.A.C. 8:33-1.5 to be submitted on or before April 1, 1991 (May 15, 1991 batching cycle).

This deletion of the next MRI batching cycle will permit the Department of Health to propose amendments to the State's current MRI rule at N.J.A.C. 8:33J to permit the continued orderly development of this imaging modality through the public planning and certificate of need processes. The Department anticipates that these amended MRI policies will be in effect prior to the next available MRI batching cycle (November 15, 1991).

This deletion of the next MRI batching cycle will become effective with the May 15, 1991 certificate of need review cycle (April 1, 1991 application submission deadline). Only certificates of need proposing MRI services will be affected by this action. The next batching cycle for MRI services will be the November 15, 1991 certificate of need review cycle (October 1, 1991 application submission date).

Any inquiries should be sent to:

John C. Scioli
Director
Health Policy, Planning, and Certificate of Need, Room 604
New Jersey Department of Health
CN 360
Trenton, N.J. 08625

HUMAN SERVICES

(c)

DIVISION OF ECONOMIC ASSISTANCE

Notice of Receipt of Petition for Rulemaking

Petitioner: Camille Furgivele, Government Finance Officers' Association of New Jersey.

Take notice that on January 28, 1991, the Department of Human Services received a petition for rulemaking concerning N.J.S.A. 40A:4-45.3(cc), Municipalities; exceptions to limitations.

The petitioner requests that the Department, pursuant to its general rulemaking power, promulgate new rules specifying that any new expense, program or function required of a county or municipal government be deemed a mandated expenditure which should be excluded from the annual budget cap base pursuant to N.J.S.A. 40A:4-45.3(cc) and certified to the local board as such.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

(d)

DIVISION OF ECONOMIC ASSISTANCE

Public Notice

General Assistance Rate in Residential Health Care Facilities

Take notice that, in accordance with N.J.A.C. 10:85-3.3(f)4i, the Department of Human Services announces that the rate to be paid for

General Assistance recipients in Residential Health Care Facilities has been increased from \$536.05 to \$557.05 monthly. This change is effective January 1, 1991 and is the same in both the amount and effective date as the change in the rate for the same service paid to recipients under the Federal program of Supplementary Security Income.

(a)

OFFICE OF EDUCATION

Notice of Availability of State Funds

Title of Funding Source: State Facilities Education Act, (Chapter 207, Laws of 1979)

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, Office of Education hereby announces the availability of the following State funds:

Name of program: Educational Related Services (Rehabilitation Engineering) for fiscal year 1992.

Purpose: To provide rehabilitation engineering services in the Office of Education's Communication Resource Center and in State-operated facilities throughout New Jersey. The Communication Resource Center provides inter-disciplinary evaluations for children who are non-speaking and who could benefit from augmentative/alternative communication technologies.

Amount of money in the program: Approximately \$35,000.

Organizations which may apply for funding under the program: Individuals, agencies, hospitals, clinics, and any other interested third-party providers.

Qualifications needed by an applicant to be considered for funding: A minimum of a Bachelor's degree in human factors, electrical, mechanical or biomedical engineering. Experience in the design, manufacture and modification of adaptive equipment which will help to maximize the level of functioning of children with disabilities.

Procedure for eligible organizations to apply: All interested applicants should write to the address listed below or call 609-588-3164 for a Request for Proposal (RFP) package.

Address to which application must be submitted:

Dr. Patricia Holliday, Director
 Department of Human Services
 Office of Education
 10 Quakerbridge Plaza, CN 700
 Trenton, NJ 08625

Deadline by which applications must be submitted: April 18, 1991.

Date by which applicant shall be notified of approval or disapproval: May 17, 1991.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Notice of Receipt of Petition for Rulemaking Rules of the Games

Surrender

N.J.A.C. 19:47-2.8

Petitioner: Adamar of New Jersey, Inc.

Authority: N.J.S.A. 5:12-69(c) and N.J.S.A. 52:14B-4(f).

Take notice that on January 31, 1991, petitioner filed a petition with the Casino Control Commission requesting an amendment to N.J.A.C. 19:47-2.8, concerning the surrender option in the game of blackjack.

Specifically, the petitioner requests an amendment to the present requirement that a casino licensee which elects to offer the surrender option in the game of blackjack must offer such option at all blackjack tables within the casino. The petitioner wishes to amend N.J.A.C. 19:47-2.8(c) to permit a casino licensee to offer the surrender option at certain designated tables within the casino.

The petitioner states that this amendment would enhance the vitality of casino operations by allowing a casino licensee to diversify its table games and accommodate the preferences of all blackjack players. The petitioner further states that this amendment will allow a casino licensee to offer more favorable odds to its patrons, while avoiding the negative impact on casino revenues which, it asserts, can result from offering the surrender option on a casino-wide basis.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of 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 February 4, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JANUARY 22, 1991

NEXT UPDATE: SUPPLEMENT FEBRUARY 19, 1991

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
22 N.J.R. 885 and 1010	March 19, 1990	22 N.J.R. 3073 and 3182	October 1, 1990
22 N.J.R. 1011 and 1182	April 2, 1990	22 N.J.R. 3183 and 3274	October 15, 1990
22 N.J.R. 1183 and 1290	April 16, 1990	22 N.J.R. 3275 and 3420	November 5, 1990
22 N.J.R. 1291 and 1408	May 7, 1990	22 N.J.R. 3421 and 3606	November 19, 1990
22 N.J.R. 1409 and 1648	May 21, 1990	22 N.J.R. 3607 and 3666	December 3, 1990
22 N.J.R. 1649 and 1806	June 4, 1990	22 N.J.R. 3667 and 3896	December 17, 1990
22 N.J.R. 1807 and 1964	June 18, 1990	23 N.J.R. 1 and 144	January 7, 1991
22 N.J.R. 1965 and 2062	July 2, 1990	23 N.J.R. 145 and 248	January 22, 1991
22 N.J.R. 2063 and 2202	July 16, 1990	23 N.J.R. 249 and 332	February 4, 1991
22 N.J.R. 2203 and 2386	August 6, 1990	23 N.J.R. 333 and 636	February 19, 1991
22 N.J.R. 2387 and 2622	August 20, 1990	23 N.J.R. 637 and 798	March 4, 1991
22 N.J.R. 2623 and 2860	September 4, 1990	23 N.J.R. 799 and 924	March 18, 1991
22 N.J.R. 2861 and 3072	September 17, 1990		

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1			
1:1-3.3, 9.6, 12.1, 14.4, 14.7, 14.14, 18.4, 19.2	Scheduling, processing, and conclusion of contested cases	22 N.J.R. 3278(b)	R.1991 d.44 23 N.J.R. 293(a)
1:1-3.3, 14.4, 14.14	Return of cases; failure to appear; sanctions	23 N.J.R. 639(a)	
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)	
1:1-9.6	Adjournments: administrative correction	_____	23 N.J.R. 687(a)
1:1-15.4	Privileges: administrative correction	_____	23 N.J.R. 847(a)
1:10-8.1	Transmission of Economic Assistance cases	23 N.J.R. 3(a)	
1:10-18.2	Economic Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)	R.1991 d.44 23 N.J.R. 293(a)
1:10B-18.2	Medical Assistance hearings: exception to initial decision	22 N.J.R. 3278(b)	R.1991 d.44 23 N.J.R. 293(a)
1:13-14.4	Motor Vehicle cases: failure to appear	22 N.J.R. 3278(b)	R.1991 d.44 23 N.J.R. 293(a)
1:13-14.4	Motor Vehicle cases: failure to appear	23 N.J.R. 639(a)	
1:13A-14.1	Lemon Law hearings: failure to appear	22 N.J.R. 3278(b)	R.1991 d.44 23 N.J.R. 293(a)
1:13A-14.1	Lemon Law hearings: failure to appear	23 N.J.R. 639(a)	
1:14	Board of Public Utility hearings	23 N.J.R. 640(a)	
1:30	Agency rulemaking	22 N.J.R. 3281(a)	R.1991 d.85 23 N.J.R. 399(a)
1:30-3.3A	Public hearings: administrative correction	_____	23 N.J.R. 847(b)

Most recent update to Title 1: TRANSMITTAL 1991-1 (supplement January 22, 1991)

AGRICULTURE—TITLE 2			
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)	
2:32-2.3, 2.11, 2.22, 2.27	Sire Stakes Programs	23 N.J.R. 252(a)	
2:53	Retail milk stores	22 N.J.R. 3609(a)	R.1991 d.51 23 N.J.R. 294(a)

Most recent update to Title 2: TRANSMITTAL 1991-1 (supplement January 22, 1991)

BANKING—TITLE 3			
3:1	General provisions of Department	22 N.J.R. 3425(a)	R.1991 d.48 23 N.J.R. 294(b)
3:1-2.25, 2.26, 17	Automated teller machines	23 N.J.R. 642(a)	
3:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)	
3:1-6.1, 6.2, 6.6, 7.4, 7.6	License fees, assessments, examination charges	23 N.J.R. 254(a)	
3:3-2	Nonpublic records	23 N.J.R. 253(a)	
3:6	General rules for banks	23 N.J.R. 147(a)	
3:6-13	Repeal (see 3:1-2.25, 2.26, 17)	23 N.J.R. 642(a)	
3:6-14.2	License fees, assessments, examination charges	23 N.J.R. 254(a)	
3:13-3.2	License fees, assessments, examination charges	23 N.J.R. 254(a)	
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)	
3:18-10.1	License fees, assessments, examination charges	23 N.J.R. 254(a)	
3:19-1	Home repair financing	23 N.J.R. 256(a)	
3:23-2.1	License fees, assessments, examination charges	23 N.J.R. 254(a)	
3:29-1.1-1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	22 N.J.R. 1968(a)	
3:38-1.1	License fees, assessments, examination charges	23 N.J.R. 254(a)	
3:38-1.2, 1.4, 1.9	Mortgage banker and broker net worth standards	23 N.J.R. 643(a)	

Most recent update to Title 3: TRANSMITTAL 1991-1 (supplement January 22, 1991)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

PERSONNEL—TITLE 4A

Most recent update to Title 4A: TRANSMITTAL 1990-5 (supplement November 19, 1990)

COMMUNITY AFFAIRS—TITLE 5

5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
5:10-22.5	Ceiling heights in multiple dwellings	22 N.J.R. 3430(a)	R. 1991 d.59	23 N.J.R. 405(a)
5:19-3.1	Continuing care retirement communities: financial feasibility study for proposed facility	23 N.J.R. 3(b)		
5:23-2.14	Uniform Construction Code: gas utility meters	22 N.J.R. 3609(b)	R. 1991 d.60	23 N.J.R. 405(b)
5:23-2.23	Uniform Construction Code: certificate of occupancy requirements	23 N.J.R. 257(a)		
5:23-4.19-4.22, 4A.12, 5.21, 5.22, 8.6, 8.10, 8.18, 8.19	Uniform Construction Code fees	23 N.J.R. 257(b)		
5:23-7.13, 7.18	Barrier-Free Subcode: parking spaces; platform lifts	22 N.J.R. 2869(a)	R. 1991 d.36	23 N.J.R. 296(a)
5:23-7.18	Barrier-Free Subcode: platform lifts	23 N.J.R. 260(a)		
5:23-9.6	UCC interpretation: casino stools	22 N.J.R. 3610(a)	R. 1991 d.61	23 N.J.R. 406(a)
5:23-11	Uniform Construction Code: preproposal on indoor air quality subcode	22 N.J.R. 3209(a)		
5:24-1.5	Full plan of property conversion documents	22 N.J.R. 3669(a)	R. 1991 d.108	23 N.J.R. 687(b)
5:24-2.3, 2.5	Dwelling unit conversions: senior citizens and disabled protected tenancy	23 N.J.R. 645(a)		
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)	R. 1991 d.140	23 N.J.R. 847(c)
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)	R. 1991 d.123	23 N.J.R. 687(c)
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)	R. 1991 d.141	23 N.J.R. 848(a)
5:80-2.2	Housing and Mortgage Finance Agency: consultation with housing sponsors	22 N.J.R. 3669(b)		
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		
5:80-9.9	Housing and Mortgage Finance Agency: JUMPP project net increases	23 N.J.R. 646(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 3670(a)		
5:91	Council on Affordable Housing: procedural rules	22 N.J.R. 3610(b)	R. 1991 d.119	23 N.J.R. 688(a)
5:92	Council on Affordable Housing: substantive rules	22 N.J.R. 3671(a)	R. 1991 d.120	23 N.J.R. 688(b)
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		

Most recent update to Title 5: TRANSMITTAL 1991-1 (supplement January 22, 1991)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)

EDUCATION—TITLE 6

6:1-2.4	State Board of Education quorum	Exempt	R. 1991 d.58	23 N.J.R. 297(a)
6:11-4.5	County substitute certificate: administrative correction	_____	_____	23 N.J.R. 713(a)
6:11-11.9	Speech language specialist endorsement	23 N.J.R. 336(a)		
6:12	Governor's Teaching Scholars Program	22 N.J.R. 3672(a)		
6:24	Controversies and disputes	22 N.J.R. 2841(a)	R. 1991 d.57	23 N.J.R. 297(b)
6:29-7.3, 7.4	School employee physical examinations	23 N.J.R. 336(b)		

Most recent update to Title 6: TRANSMITTAL 1991-1 (supplement January 22, 1991)

ENVIRONMENTAL PROTECTION—TITLE 7

7:11-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:6-1.31, 1.37, 1.42, 6.2, 6.3, 6.4	Boating rules	23 N.J.R. 392(a)		
7:7-2.3(a)2	Waterfront development: rule invalidation	_____	_____	23 N.J.R. 406(b)
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:9	Water pollution control	22 N.J.R. 3297(a)	R. 1991 d.68	23 N.J.R. 406(c)
7:9	Water pollution control: extension of comment period	23 N.J.R. 29(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:9-4.6	Water quality based effluent limitations: administrative correction			23 N.J.R. 302(a)
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir Complex: schedule of rates	22 N.J.R. 3676(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: schedule of rates	22 N.J.R. 3678(a)		
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)		
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)		
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:14A-1.8	NJPDES fee schedule	22 N.J.R. 3679(a)		
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:18-1.1, 1.3, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.15, 5.2-5.5, 5.7, 5.8	Radon laboratory certification program	23 N.J.R. 29(b)		
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App.	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:24	Dam Restoration Grant Program	23 N.J.R. 650(a)		
7:25	Division of Fish, Game, and Wildlife	23 N.J.R. 37(a)	R.1991 d.132	23 N.J.R. 848(b)
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-12	Surf clam management	Emergency (expires 3-5-91)	R.1991 d.49	23 N.J.R. 223(a)
7:25-18.1	Winter flounder and red drum: size and possession limits	23 N.J.R. 43(a)		
7:25-18.5	Bait net and gill net regulation	22 N.J.R. 3685(a)		
7:25-18.5-18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:25-22.3	Fishing for Atlantic menhaden	22 N.J.R. 3611(a)		
7:26-4.3, 4.4, 4.6, 15.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)	R.1991 d.113	23 N.J.R. 719(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)	R.1991 d.110	23 N.J.R. 715(a)
7:26-8.2, 8.8, 8.12	Hazardous waste management: Toxicity characteristic	23 N.J.R. 151(a)		
7:26-8.13	Hazardous waste from non-specific sources: F019 exclusion	23 N.J.R. 153(a)		
7:26-8.14	Hazardous waste management: methyl bromide production wastes	23 N.J.R. 154(a)		
7:26-8.15, 8.16	Hazardous waste management: ferric dextran and strontium sulfide	23 N.J.R. 44(a)		
7:26-8.17, App. I	Delisting of hazardous waste at Beecham Laboratories	22 N.J.R. 3430(b)		
7:26-8.19	Listing of hazardous wastes	22 N.J.R. 3299(a)	R.1991 d.156	23 N.J.R. 852(a)
7:26-8.19	Listing of hazardous waste: extension of comment period	23 N.J.R. 45(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)	R.1991 d.109	23 N.J.R. 723(a)
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:27-23.5	Volatile organic substances: administrative correction and revised operative date regarding labeling of architectural coatings			23 N.J.R. 303(a)
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution by vehicular fuels	23 N.J.R. 45(b)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:28-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)		
7:28-16.2	Dental radiographic installations: qualified individual	22 N.J.R. 3303(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)	R.1991 d.151	23 N.J.R. 852(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		

Most recent update to Title 7: TRANSMITTAL 1991-1 (supplement January 22, 1991)

HEALTH—TITLE 8

8:9	Handling of human remains	22 N.J.R. 3458(a)	R.1991 d.130	23 N.J.R. 888(a)
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:24	Retail food establishments	23 N.J.R. 168(b)		
8:25	Youth Camp Safety Act standards	23 N.J.R. 651(a)		
8:26	Public recreational bathing	23 N.J.R. 376(a)		
8:31A-1, 2, 5, 7, 9, 10	Standard Hospital Accounting and Rate Evaluation (SHARE) Manual	22 N.J.R. 3460(a)		
8:31B	Hospital reimbursement	22 N.J.R. 3724(a)	R.1991 d.158	23 N.J.R. 898(a)
8:31B-3	Hospital rate setting	23 N.J.R. 227(a)	R.1991 d.157	23 N.J.R. 889(a)
8:31C-1.15, 1.18	Residential alcoholism treatment facilities: reimbursement methodology	22 N.J.R. 3468(a)	R.1991 d.88	23 N.J.R. 412(a)
8:33H-3.3	Long-term care beds for AIDS and HIV-infected patients	23 N.J.R. 124(a)	R.1991 d.159	23 N.J.R. 905(a)
8:33L-2.4	Home health services for AIDS and HIV-infected patients	23 N.J.R. 124(a)	R.1991 d.159	23 N.J.R. 905(a)
8:39-19.5, 20.1, 29.1, 29.3, 30.1	Long-term care facilities: Mantoux tuberculin testing of staff; pharmacy organization	22 N.J.R. 3612(a)	R.1991 d.160	23 N.J.R. 905(b)
8:43G-5.6	Hospital licensure: reportable events	22 N.J.R. 3469(a)		
8:43G-6	Hospital licensure: anesthesia	22 N.J.R. 3470(a)		
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:65	Controlled dangerous substances	22 N.J.R. 3190(a)		
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a), 3581(b))	22 N.J.R. 1214(b)	R.1991 d.161	23 N.J.R. 906(a)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 3582(a); 23 N.J.R. 206(a))	22 N.J.R. 2501(a)	R.1991 d.162	23 N.J.R. 907(a)
8:71	Interchangeable drug products	22 N.J.R. 3191(a)	R.1991 d.30	23 N.J.R. 206(b)
8:71	Interchangeable drug products	23 N.J.R. 178(a)		

Most recent update to Title 8: TRANSMITTAL 1991-1 (supplement January 22, 1991)

HIGHER EDUCATION—TITLE 9

9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)		
9:2-13.9, 13.11	Auxiliary organizations: personnel; purchasing	22 N.J.R. 1656(a)	R.1991 d.72	23 N.J.R. 413(a)
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		
9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-3.12	Noncredit courses at county community colleges	22 N.J.R. 2254(b)		
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)		
9:5	Tuition policies for public institutions	22 N.J.R. 3437(a)		
9:7-4.4	Garden State Scholarships: award amounts	23 N.J.R. 4(a)		
9:11-3	C. Clyde Ferguson Law Scholarship	22 N.J.R. 3439(a)		

Most recent update to Title 9: TRANSMITTAL 1990-7 (supplement November 19, 1990)

HUMAN SERVICES—TITLE 10

10:13-2.2	Legal Assistance for Medicare Patients: eligible services	22 N.J.R. 2216(a)	R.1991 d.86	23 N.J.R. 420(a)
10:37-6.79	Community mental health programs: disclosure of client records	22 N.J.R. 2216(b)	R.1991 d.50	23 N.J.R. 303(b)
10:38	Interim Assistance Procedures Manual	23 N.J.R. 261(b)		
10:43-7.1	Determination of need for a guardian	22 N.J.R. 2671(a)		
10:49-6.6	Recoveries involving county welfare agencies/boards of social services	22 N.J.R. 2672(a)	R.1991 d.135	23 N.J.R. 856(a)
10:50	Transportation Services Manual	23 N.J.R. 5(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:54	Physician's Services Manual	22 N.J.R. 3711(a)	R.1991 d.136	23 N.J.R. 858(a)
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57	Podiatry Services Manual	22 N.J.R. 3439(b)	R.1991 d.129	23 N.J.R. 858(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:58	Nurse-Midwifery Services Manual	22 N.J.R. 3613(a)	R.1991 d.153	23 N.J.R. 858(c)
10:59	Medical Supplier Manual	22 N.J.R. 3712(a)	R.1991 d.137	23 N.J.R. 858(d)
10:60	Home Care Services Manual	22 N.J.R. 3116(a)	R.1991 d.65	23 N.J.R. 420(b)
10:61	Independent Laboratory Services Manual	22 N.J.R. 3713(a)	R.1991 d.138	23 N.J.R. 858(e)
10:64	Hearing Aid Services Manual	22 N.J.R. 3614(a)	R.1991 d.154	23 N.J.R. 859(a)
10:65	Medical Day Care Services Manual	22 N.J.R. 3327(b)	R.1991 d.87	23 N.J.R. 448(a)
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:67	Psychologist's Services Manual	22 N.J.R. 3615(a)	R.1991 d.142	23 N.J.R. 859(b)
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only: new eligibility computation amounts	Emergency (expires 3-1-91)	R.1991 d.37	23 N.J.R. 233(a)
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:83-1.11	Supplemental security income payment levels	Emergency (expires 3-1-91)	R.1991 d.38	23 N.J.R. 234(a)
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)		
10:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)		
10:85-4.6	Emergency assistance: public hearing and extension of comment period	22 N.J.R. 2674(a)		
10:87-2.3, 2.6, 2.23, 2.30, 2.31, 3.6, 4.8, 5.5, 5.6, 5.9, 5.10, 7.14, 9.5, 9.7, 10.3, 10.9, 10.10, 10.21, 10.24, 11.23, App. A	Food Stamp Program: miscellaneous requirements	23 N.J.R. 179(a)		
10:109-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)	R.1991 d.111	23 N.J.R. 688(c)
10:123-3	Social Services Program: personal needs allowance for residents of health care facilities and boarding houses	23 N.J.R. 382(a)		
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendant Services Program: extension of comment period	22 N.J.R. 2082(a)		
10:128	Children's group homes	22 N.J.R. 2916(a)	R.1991 d.66	23 N.J.R. 476(a)

Most recent update to Title 10: TRANSMITTAL 1991-1 (supplement January 22, 1991)

CORRECTIONS—TITLE 10A

10A:2-3	Expenditure of inmate welfare funds	23 N.J.R. 155(a)		
10A:3-1.1-1.4, 2	Inmate "keep separate status"	23 N.J.R. 383(a)		
10A:4	Inmate discipline	23 N.J.R. 658(a)		
10A:16-7.4	Distribution of money and personal belongings of deceased inmates	23 N.J.R. 156(a)		
10A:18-1.4, 6.7	Attorney-client visits	23 N.J.R. 14(a)	R.1991 d.155	23 N.J.R. 859(c)
10A:18-2.6	Inspection and identification of incoming correspondence: withdrawal of proposal	22 N.J.R. 3714(a)		
10A:21-5	Reporting unusual incidents or events within facilities	22 N.J.R. 3304(a)	R.1991 d.53	23 N.J.R. 304(a)
10A:21-8	Reporting violations of criminal statutes	22 N.J.R. 3440(a)	R.1991 d.43	23 N.J.R. 306(a)
10A:31-3.5, 22.2	Adult county facilities	22 N.J.R. 3714(c)	R.1991 d.143	23 N.J.R. 860(a)
10A:31-13.9, 13.10, 13.18	Adult county facilities: pregnant inmates; dental care	23 N.J.R. 15(a)		
10A:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 3714(b)	R.1991 d.118	23 N.J.R. 690(a)
10A:35	Alternatives to Juvenile Incarceration Grant Program	23 N.J.R. 156(b)		

Most recent update to Title 10A: TRANSMITTAL 1990-11 (supplement December 17, 1990)

INSURANCE—TITLE 11

11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
11:1	Administration: miscellaneous rules	22 N.J.R. 3686(a)	R.1991 d.101	23 N.J.R. 690(b)
11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
11:2-29	Orderly withdrawal of insurance business	23 N.J.R. 15(b)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)	R.1991 d.139	23 N.J.R. 860(b)
11:2-35	Relief from insurer obligations under FAIR Act	23 N.J.R. 660(a)		
11:3	Automobile insurance	22 N.J.R. 1678(a)	R.1991 d.45	23 N.J.R. 306(b)
11:3-8.2-8.7, App. A and B	Nonrenewal of automobile policies	22 N.J.R. 3766(b)	R.1991 d.89	23 N.J.R. 507(a)
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:3-14.8, 37	Benefit determination between automobile personal injury protection and health insurance plans	22 N.J.R. 3777(a)	R.1991 d.90	23 N.J.R. 597(a)
11:3-16	Automobile insurance rate filings	22 N.J.R. 3790(a)	R.1991 d.91	23 N.J.R. 514(a)
11:3-19	Private passenger automobile insurance: standard/non-standard rating plans	22 N.J.R. 3804(a)	R.1991 d.92	23 N.J.R. 532(a)
11:3-24.4	Automobile insurance coverage: policy constants	22 N.J.R. 3441(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:3-25.4	Automobile insurance coverage: residual market equalization charges	22 N.J.R. 3442(a)		
11:3-29	Automobile insurance: medical fee schedules for PIP coverage	22 N.J.R. 3809(a)	R.1991 d.96	23 N.J.R. 536(a)
11:3-29.6	Personal Auto Injury Fee Schedules: Physicians' Services and Dental Services	_____	_____	23 N.J.R. 861(a)
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:3-34	Voluntary market automobile insurance coverage: eligible persons qualifications and eligibility points schedule	22 N.J.R. 3847(a)	R.1991 d.93	23 N.J.R. 572(a)
11:3-35	Private passenger automobile insurance: underwriting rules	22 N.J.R. 3856(a)	R.1991 d.94	23 N.J.R. 577(a)
11:3-36	Automobile physical damage coverage: inspection procedures prior to issuance	22 N.J.R. 3861(a)	R.1991 d.95	23 N.J.R. 579(a)
11:3-38	Automobile towing and storage fee schedule	22 N.J.R. 3874(a)	R.1991 d.97	23 N.J.R. 592(a)
11:3-39	Automobile physical damage coverage: rate reductions for anti-theft devices and safety features	23 N.J.R. 384(a)		
11:4-16.4, 16.5, 28.2, 28.5	Benefit determination between automobile personal injury protection and health insurance	22 N.J.R. 3777(a)	R.1991 d.90	23 N.J.R. 597(a)
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)	R.1991 d.121	23 N.J.R. 690(c)
11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)	R.1991 d.122	23 N.J.R. 698(a)
11:5-1.36	Real Estate Guaranty Fund: special assessment	22 N.J.R. 3688(a)	R.1991 d.114	23 N.J.R. 701(a)
11:13-7	Commercial lines policy forms	23 N.J.R. 159(a)		
11:16	Fraud prevention: claim form statement of liability: reporting of automobile theft or salvage	22 N.J.R. 3688(b)	R.1991 d.102	23 N.J.R. 702(a)
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:17-3.4	Producer licensing: continuing education	23 N.J.R. 287(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:17A-1.3	Insurance producers and limited insurance representatives: licensure and registration	22 N.J.R. 3444(a)	R.1991 d.52	23 N.J.R. 310(a)

Most recent update to Title 11: TRANSMITTAL 1991-1 (supplement January 22, 1991)

LABOR—TITLE 12

12:17	Unemployment benefit payments	22 N.J.R. 3445(a)	R.1991 d.46	23 N.J.R. 310(b)
12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(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)		
12:46-12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
12:105	Arbitration through State Board of Mediation	22 N.J.R. 3616(a)	R.1991 d.54	23 N.J.R. 310(c)
12:196-1.10	Dispensing of retail gasoline: signs	22 N.J.R. 3306(a)	R.1991 d.47	23 N.J.R. 310(d)

Most recent update to Title 12: TRANSMITTAL 1991-1 (supplement January 22, 1991)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:10-2.9	Minority and female businesses: subcontracting targets	23 N.J.R. 395(b)		
12A:80-2	Urban Development Corporation: public and nonpublic information	23 N.J.R. 20(a)		

Most recent update to Title 12A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

LAW AND PUBLIC SAFETY—TITLE 13

13:1-7.2	Police Training Commission: drug screening of police trainees	22 N.J.R. 2256(b)	R.1991 d.63	23 N.J.R. 607(a)
13:4	Division on Civil Rights: practice and procedure	22 N.J.R. 3689(a)	R.1991 d.67	23 N.J.R. 608(a)
13:14	Family Leave Act rules: public hearing	22 N.J.R. 2395(a)		
13:14-1	Family Leave Act rules	22 N.J.R. 2129(a)		
13:18-4.2-4.6, 4.9, 4.14-4.19	Motor Fuels Use Tax	22 N.J.R. 3104(b)	R.1991 d.103	23 N.J.R. 702(b)
13:19-1.1, 1.2, 1.3, 1.5, 1.8, 1.13, 12.2-12.9	Motor Vehicles: administrative hearings regarding proposed license suspension or surcharge collection actions	22 N.J.R. 3446(a)		
13:20-10.1	Automatic vehicle identification systems: traffic management	23 N.J.R. 21(a)		
13:20-31.1	Motor vehicle inspection: private center licensing	23 N.J.R. 387(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:23-1.1, 2.1-2.10, 2.12-2.28, 2.30-2.38, 3.1-3.10, 3.12, 4.1-4.4	Licensure of driving schools	23 N.J.R. 662(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)		
13:27-5.8	Architectural Registration Examination fees	23 N.J.R. 671(a)		
13:27-6.2-6.5	Certified landscape architects: site planning services	23 N.J.R. 21(b)		
13:29-1.13	Accountancy: sponsors of continuing professional education	22 N.J.R. 3314(b)	R.1991 d.55	23 N.J.R. 310(e)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-2.6	Registered dental assistant: laboratory fabrication of athletic mouthguards	23 N.J.R. 287(b)		
13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)		
13:31-1.11	Board of Examiners of Electrical Contractors: fee schedule	23 N.J.R. 22(a)	R.1991 d.163	23 N.J.R. 879(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)		
13:32-1.3	Master plumbers licensing examination	23 N.J.R. 288(a)		
13:35-3.6	Bioanalytical laboratories: acceptance by director of requests for test of human material	23 N.J.R. 23(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees	23 N.J.R. 161(a)		
13:35-6.13	Board of Medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
13:35-6.15	Delegation of tasks to physician assistants	22 N.J.R. 2135(b)	R.1991 d.56	23 N.J.R. 311(a)
13:37-12.1	Certification of homemaker-home health aide: application fee	23 N.J.R. 24(a)		
13:37-12.1	Board of Nursing fees	23 N.J.R. 672(a)		
13:38-3.11	Practice of optometry: application for licensure	23 N.J.R. 166(a)		
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
13:39A-1.4	Board of Physical Therapy: fees and charges	23 N.J.R. 388(a)		
13:39A-5.1	Licensure as physical therapist: foreign trained applicants	22 N.J.R. 2259(a)		
13:40-6.1	Engineering and land surveying services: certificate of authorization for general business corporations	22 N.J.R. 3315(a)		
13:40-7.2-7.5	Certified landscape architects: site planning services	23 N.J.R. 21(b)		
13:41-4.2-4.5	Certified landscape architects; site planning services	23 N.J.R. 21(b)		
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:44C-5.3	Audiology and speech-language pathology: clinical internship licensure	23 N.J.R. 167(a)		
13:44E-2.1	Advertising of chiropractic services	23 N.J.R. 389(a)		
13:44E-2.2	Chiropractic patient records	23 N.J.R. 391(a)		
13:48	Charities Registration and Investigation Section	22 N.J.R. 3108(b)	R.1991 d.64	23 N.J.R. 608(b)
13:70-1.30	Thoroughbred racing: annual contribution to horsemen's pension program	22 N.J.R. 1232(a)		
13:70-1.30	Thoroughbred racing: "horseman" defined	22 N.J.R. 1232(b)		
13:70-1.31	Thoroughbred racing: election of horsemen's organization	22 N.J.R. 3450(a)		
13:70-14.17	Thoroughbred racing: suspension of licensee pending disposition of racing-related indictment	23 N.J.R. 673(a)		
13:70-14A.9	Thoroughbred racing: time on respiratory list	23 N.J.R. 674(a)		
13:70-14A.11	Thoroughbred racing: licensee violations of drug use prohibition	22 N.J.R. 3451(a)	R.1991 d.75	23 N.J.R. 611(a)
13:70-19.43	Thoroughbred racing: presence of veterinarian throughout racing program	23 N.J.R. 674(b)		
13:71-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(b)		
13:71-9.2	Harness racing: association of veterinarians	23 N.J.R. 675(a)		
13:71-9.4	Harness racing: presence of veterinarian throughout racing program	23 N.J.R. 675(b)		
13:71-18.2	Harness racing: licensee violations of drug use prohibition	22 N.J.R. 3452(a)	R.1991 d.74	23 N.J.R. 611(b)
13:71-23.8	Harness racing: time on respiratory list	23 N.J.R. 675(c)		
13:71-26.9	Harness racing: suspension of licensee pending disposition of racing-related indictment	23 N.J.R. 676(a)		
13:75-1.6	Victims of domestic violence: eligibility of claims	22 N.J.R. 3690(a)	R.1991 d.117	23 N.J.R. 703(a)
13:75-1.6, 1.7	Victims of drunk driving: payment of compensation	22 N.J.R. 3691(a)	R.1991 d.116	23 N.J.R. 704(a)
13:75-1.27	Violent crimes compensation: counseling fees	23 N.J.R. 167(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:75-1.28	Violent crimes compensation: secondary victim eligibility	23 N.J.R. 168(a)		
13:81-2.1, 2.2, 2.4, 3.2	Statewide 9-1-1 emergency telecommunications system	22 N.J.R. 3453(a)	R.1991 d.124	23 N.J.R. 704(b)

Most recent update to Title 13: TRANSMITTAL 1991-1 (supplement January 22, 1991)

PUBLIC UTILITIES—TITLE 14

14:0	Energy conservation: preproposal and public hearing	22 N.J.R. 1692(a)		
14:1	Rules of practice of Board of Public Utilities: waiver of expiration provision of Executive Order No. 66 (1978)	23 N.J.R. 24(b)		
14:3	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)		
14:3-5.1	Closure or relocation of utility office	22 N.J.R. 2404(a)		
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)		
14:9	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	22 N.J.R. 2887(a)		
14:10-6	Alternate operator service: preproposed amendments	23 N.J.R. 676(b)		
14:10-7	Resale of telecommunications services: preproposed new rules	23 N.J.R. 679(a)		
14:10-8	Customer provided pay telephone service: preproposed new rules	23 N.J.R. 680(a)		
14:12	Demand Side Management Resource Plan: public hearing	22 N.J.R. 3616(b)		
14:12	Demand Side Management Resource Plan	22 N.J.R. 3699(a)		
14:17-6.22	Cable television: petitions for approval to curtail service	22 N.J.R. 2889(a)		
14:18-3.2	Cable television: requests for service	22 N.J.R. 2890(a)	R.1991 d.78	23 N.J.R. 612(a)
14:18-3.5	Cable television: outage credit	22 N.J.R. 2890(b)		
14:18-3.5	Cable television outage credit: withdrawal of proposed amendment	23 N.J.R. 24(c)		
14:18-3.13	Cable television: prompt restoration standards	23 N.J.R. 682(a)		
14:18-3.16	Cable television: notice of rate change	22 N.J.R. 2892(a)	R.1991 d.79	23 N.J.R. 613(a)
14:18-3.23	Cable television: reimbursement	22 N.J.R. 2892(b)	R.1991 d.80	23 N.J.R. 614(a)
14:18-3.24	Cable television: late fees and charges	22 N.J.R. 2893(a)	R.1991 d.81	23 N.J.R. 615(a)
14:18-5.1	Cable television: location	22 N.J.R. 2894(a)	R.1991 d.82	23 N.J.R. 616(a)
14:18-7.5	Cable television: use of PEG channels	22 N.J.R. 2894(b)	R.1991 d.83	23 N.J.R. 618(a)
14:18-7.6, 7.7	Cable television: telephone system information and performance	22 N.J.R. 2895(a)		
14:18-12.3	Cable television: pole plant rearrangement verification	22 N.J.R. 2897(a)	R.1991 d.84	23 N.J.R. 619(a)
14:29	Energy emergency	22 N.J.R. 3692(a)	R.1991 d.112	23 N.J.R. 706(a)
14:30	Energy conservation	22 N.J.R. 3315(b)	R.1991 d.69	23 N.J.R. 413(b)

Most recent update to Title 14: TRANSMITTAL 1991-1 (supplement January 22, 1991)

ENERGY—TITLE 14A

14A:2	Energy emergency (recodified to 14:29)	22 N.J.R. 3692(a)	R.1991 d.112	23 N.J.R. 706(a)
14A:3	Energy conservation (recodified to 14:30)	22 N.J.R. 3315(b)	R.1991 d.69	23 N.J.R. 413(b)
14A:20	Repeal (see 14:12)	22 N.J.R. 3699(a)		
14A:21	Home Energy Savings Program (HESP)	22 N.J.R. 2956(a)		

Most recent update to Title 14A: TRANSMITTAL 1991-1 (supplement January 22, 1991)

STATE—TITLE 15

15:10	Election rules	23 N.J.R. 288(b)		
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Most recent update to Title 15: TRANSMITTAL 1990-1 (supplement November 19, 1990)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

TRANSPORTATION—TITLE 16

16:4-1	Construction subcontracting: disadvantaged and female-owned businesses	22 N.J.R. 2898(a)		
16:27	Traffic engineering and safety programs	23 N.J.R. 395(a)		
16:28-1.7, 1.49	Speed limit zones along Route 161 in Clifton and Route 35 in Brielle	23 N.J.R. 683(a)		
16:28-1.10, 1.67	Speed limit zones along U.S. 46 in Dover and U.S. 202 in Morristown and Morris Township	22 N.J.R. 3704(a)	R.1991 d.105	23 N.J.R. 713(b)
16:28-1.38	Speed limit zones along Route 57 in Warren County	23 N.J.R. 50(a)	R.1991 d.134	23 N.J.R. 879(b)
16:28-1.39	Speed limit zone along Route 71-35 ramps in Brielle	23 N.J.R. 683(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28-1.39, 1.40, 1.41	Speed limit zones along Route 71-35 ramps in Brielle, Route 138 in Wall Township, and U.S. 9 in Cape May	22 N.J.R. 3705(a)	R.1991 d.106	23 N.J.R. 713(c)
16:28-1.41, 1.96	Speed limit zones along U.S. 9 in Ocean County and Route 45 in Salem County	22 N.J.R. 3617(a)	R.1991 d.77	23 N.J.R. 416(a)
16:28-1.43	Speed limit zones along Route 143 in Camden County	23 N.J.R. 184(a)		
16:28-1.69	Speed limit zones along U.S. 130 in Mercer County	23 N.J.R. 184(b)		
16:28-1.83	Speed limit zone along Route 71 in Brielle and Manasquan	23 N.J.R. 684(a)		
16:28-1.120	Speed limit zones along Route 38 in Camden and Burlington Counties	23 N.J.R. 185(a)		
16:28A-1.7, 1.13, 1.19, 1.104	Parking and stopping restrictions along U.S. 9 and U.S. 40-322 in Atlantic County, U.S. 22 in Hunterdon County, and Route 28 in Union County	23 N.J.R. 51(a)	R.1991 d.125	23 N.J.R. 880(a)
16:28A-1.15, 1.25	No stopping or standing zones along Route 23 in Kinnelon Borough and Route 35 in Dover Township	23 N.J.R. 52(a)	R.1991 d.133	23 N.J.R. 881(a)
16:28A-1.19	Restricted stopping or standing along Route 28 in Union County	23 N.J.R. 186(a)		
16:28A-1.28, 1.100	No stopping or standing zones along U.S. 40 and Route 50 in Atlantic County	22 N.J.R. 3706(a)	R.1991 d.107	23 N.J.R. 714(a)
16:28A-1.39, 1.57	No stopping or standing zones along Route 72 in Ocean County and U.S. 206 in Burlington County	22 N.J.R. 3617(b)	R.1991 d.76	23 N.J.R. 416(b)
16:28A-1.57	No stopping or standing zones along U.S. 206 in Princeton	23 N.J.R. 53(a)		
16:28A-1.71	Restricted parking and stopping along Route 67 in Bergen County	23 N.J.R. 186(b)		
16:30-10.1	Midblock crosswalk on Route 28 in Somerville	23 N.J.R. 684(b)		
16:30-10.4	Midblock crosswalk on Route 33 in Hamilton Township	23 N.J.R. 53(b)	R.1991 d.126	23 N.J.R. 882(a)
16:30-10.13	Midblock crosswalk on Route 91 in New Brunswick	23 N.J.R. 54(a)	R.1991 d.127	23 N.J.R. 882(b)
16:30-10.14	Midblock crosswalk on Route 161 in Clifton	23 N.J.R. 685(a)		
16:31-1.26	Left turn prohibition on Route 27 in Franklin and South Brunswick townships	23 N.J.R. 55(a)	R.1991 d.128	23 N.J.R. 882(c)
16:31-1.29	Turning prohibitions along U.S. 9 in Ocean County	23 N.J.R. 187(a)		
16:41-2	Repeal (see 16:47)	22 N.J.R. 1061(b)		
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)		
16:49-1.3	Transportation of hazardous materials: cargo seals	23 N.J.R. 55(b)		
16:54	Licensing of aeronautical facilities	23 N.J.R. 289(a)		
16:72	NJ TRANSIT: procurement policies and procedures	23 N.J.R. 290(a)		

Most recent update to Title 16: TRANSMITTAL 1991-1 (supplement January 22, 1991)

TREASURY-GENERAL—TITLE 17

17:2-1.13	Public Employees' Retirement System: age determination for enrollment or retirement purposes	22 N.J.R. 3707(a)	R.1991 d.115	23 N.J.R. 712(a)
17:2-5.6	Public Employees' Retirement system: purchases of service credit	23 N.J.R. 685(b)		
17:2-6.6	Public Employees' Retirement System: service credit and back pay awards	22 N.J.R. 3321(a)	R.1991 d.98	23 N.J.R. 417(a)
17:3-1.13	Teachers' Pension and Annuity Fund: age, enrollment, retirement	23 N.J.R. 188(a)		
17:3-6.6	Teachers' Pension and Annuity Fund: service credit and back pay awards	22 N.J.R. 3321(b)	R.1991 d.100	23 N.J.R. 712(b)
17:4-1.3, 1.4, 1.7, 2.4, 3.4, 4.7, 5.4, 6.10, 6.12, 6.13, 6.14, 7.3	Police and Firemen's Retirement System: officers, elections, and rate assignments	23 N.J.R. 24(d)		
17:4-6.6	Police and Firemen's Retirement System: service credit and back pay awards	22 N.J.R. 3322(a)	R.1991 d.99	23 N.J.R. 417(b)
17:4-6.17	Police and Firemen's Retirement System: accidental disability and death benefits	22 N.J.R. 3707(b)		
17:5-5.6	State Police Retirement System: service credit for back pay awards	22 N.J.R. 3474(a)	R.1991 d.131	23 N.J.R. 882(d)
17:14-1.9	Minority and female businesses: subcontracting targets	23 N.J.R. 395(b)		
17:16	State Investment Council rules: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 26(a)		
17:16-51	State pension fund investments: guaranteed income contracts	22 N.J.R. 1044(a)		
17:34-1	Nonpublic records: Registered Bondholder Listing	23 N.J.R. 291(a)		
17:40-1.3, 3.6	Governor's Council on Alcoholism and Drug Abuse: annual funding formula	23 N.J.R. 26(b)	R.1991 d.150	23 N.J.R. 883(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:41	Capital City Redevelopment Corporation: project review	22 N.J.R. 3475(a)		
17:41	Capital City Redevelopment Corporation: extension of comment period for project review procedure	22 N.J.R. 3708(a)		

Most recent update to Title 17: TRANSMITTAL 1991-1 (supplement January 22, 1991)

TREASURY-TAXATION—TITLE 18

18:7-3.18	Corporation Business Tax: recycling equipment credit	22 N.J.R. 789(a)	Expired	
18:14-1.1, 2.1-2.4, 2.8, 2.10, 3.3, 3.7, 3.9, 3.10	Property tax deduction for qualified low income groups	22 N.J.R. 3200(b)	R.1991 d.104	23 N.J.R. 883(b)
18:18A	Petroleum Gross Receipts Tax	22 N.J.R. 3715(a)		
18:21-1	Automobile insurance premium surtax	22 N.J.R. 1351(a)	R.1991 d.71	23 N.J.R. 417(c)
18:22-1.3	Public utility corporations: "public street, highway, road or other public place"	22 N.J.R. 2249(a)	R.1991 d.70	23 N.J.R. 419(a)
18:24-16.6, 16.7, 16.9, 17.1-17.4	Vending machine sales	23 N.J.R. 396(a)		
18:25	Luxury Tax	22 N.J.R. 3323(a)	R.1991 d.62	23 N.J.R. 419(b)
18:26-2.14, 2.15, 3.4, 3.10, 7.10, 8.1, 8.2, 8.3, 8.6, 8.7, 8.8, 8.9, 8.11, 8.21, 9.1, 9.3, 9.4, 9.5, 9.6, 9.10, 10.1, 10.12, 11.4, 11.8, 11.15, 11.16	Transfer of Inheritance and Estate Tax: assessment and valuation	23 N.J.R. 188(b)		
18:26-11.20, 11.21, 11.22, 11.23, 11.27	Transfer Inheritance and Estate Tax: release of safe deposit box contents	23 N.J.R. 27(a)		
18:35-1.26	Combat zone; extension of time to file and pay income tax	Emergency (expires 4-28-91)	R.1991 d.166	23 N.J.R. 908(a)

Most recent update to Title 18: TRANSMITTAL 1991-1 (supplement January 22, 1991)

TITLE 19—OTHER AGENCIES

19:6-1, 3	Hackensack Meadowlands District Building Code	22 N.J.R. 2126(a)		
19:9-2.9, 2.10	License to cross Authority property and resolution of related disputes	22 N.J.R. 3324(a)		
19:25-1.7, 2.4	Political committee defined: copying fees	23 N.J.R. 292(a)		
19:25-1.7, 7.8	Personal interest disclosure statement: public hearing	22 N.J.R. 1242(b)		
19:25-1.7, 7.8	Personal interest disclosure statement: withdrawal of proposal	22 N.J.R. 3618(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 1990-9 (supplement November 19, 1990)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

19:40-2.1	Commission organization: administrative correction			23 N.J.R. 714(b)
19:41-7.14	Personal history disclosure forms	22 N.J.R. 1551(a)		
19:41-11.1	Filing of agreements	22 N.J.R. 3202(a)		
19:43-1.2	Determination of casino service industries	22 N.J.R. 3203(a)		
19:45-1.1, 1.14, 1.15, 1.24, 1.24A, 1.25, 1.25A, 1.26, 1.27, 1.29, 1.34, 1.43	Credit for slot play	22 N.J.R. 3205(a)		
19:45-1.1, 1.16, 1.33, 1.36-1.40, 1.40A, 1.41, 1.43	Slot machine terminology	22 N.J.R. 3325(a)		
19:45-1.1, 1.26, 1.26A	Redemption of checks	22 N.J.R. 1911(b)		
19:45-1.1, 1.25	Acceptance of checks from gaming patrons	23 N.J.R. 191(a)		
19:45-1.1, 1.34, 1.35, 1.46, 1.46A	Automated coupon redemption	22 N.J.R. 3708(b)	R.1991 d.152	23 N.J.R. 885(a)
19:45-1.9A	Transportation expense reimbursement: administrative correction			23 N.J.R. 315(a)
19:45-1.9A	Patron travel reimbursement	22 N.J.R. 3710(a)		
19:45-1.24A	Wire transfer of funds	22 N.J.R. 1700(a)		
19:45-1.25	Patron credit verification	22 N.J.R. 3711(a)		
19:45-1.25, 1.34	Cash advances at slot booths	23 N.J.R. 397(a)		
19:45-1.39	Progressive slot machines: resetting of meters	22 N.J.R. 2253(b)		
19:45-1.39	Progressive slot machine submissions	23 N.J.R. 28(a)		
19:45-1.39	Progressive slot machines: administrative correction			23 N.J.R. 714(b)
19:45-1.40A, 1.40B	Annuity jackpots	22 N.J.R. 3455(a)		
19:46-1.5	Redemption of slot tokens	22 N.J.R. 3327(a)		
19:46-1.6	Gaming equipment	22 N.J.R. 2914(a)		
19:46-1.26	Slot machine terminology	22 N.J.R. 3325(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:46-1.27	Density of slot machines: alternatives	23 N.J.R. 192(a)		
19:47-1.6	Five times odds at craps	22 N.J.R. 2254(a)	R.1991 d.73	23 N.J.R. 620(a)
19:47-2.3, 2.16	Blackjack: five cards totalling 21 rule	23 N.J.R. 28(b)		

Most recent update to Title 19K: TRANSMITTAL 1991-1 (supplement January 22, 1991)

NOTES



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