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(Includes adopted rules filed through January 25, 1991)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: DECEMBER 17, 1990
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT JANUARY 22, 1991

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **March 21, 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.

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NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 24(1991)
Extension of Effect of Specified Prior Executive Orders regarding Overcrowding in Correctional Facilities

Issued: January 18, 1991.
Effective: January 18, 1991.
Expiration: January 20, 1992.

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

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

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

WHEREAS, Executive Order No. 226 of January 12, 1990 will expire on January 20, 1991; and

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

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby declare a continuing state of emergency and ORDER and DIRECT as follows:

1. Executive Order No. 106 (Byrne) of June 19, 1981; No. 108 (Byrne) of September 11, 1981; No. 1 (Kean) of January 20, 1982; No. 8 (Kean) of May 20, 1982; No. 27 (Kean) of January 10, 1983; No. 43 (Kean) of July 15, 1983; No. 60 (Kean) of January 20, 1984; No. 78 (Kean) of July 20, 1984; No. 89 (Kean) of January 18, 1985; No. 127 (Kean) of January 17, 1986; No. 155 (Kean) of January 12, 1987; No. 184 (Kean) of January 4, 1988; No. 202 (Kean) of January 26, 1989; and No. 226 (Kean) of January 12, 1990, shall remain in effect until January 20, 1992 notwithstanding any sections in them stating otherwise.
2. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 25(1991)
State Employees on Military Active Duty during Middle East Crisis

Issued: January 18, 1991.
Effective: January 18, 1991.
Expiration: Indefinite.

WHEREAS, on January 16, 1991, the President of the United States launched a military attack against Iraq; and

WHEREAS, the President had previously authorized the Secretary of Defense to call up select members of the Reserve and National Guard to active duty, and authorized the Secretary of Transportation to call up members of the Coast Guard Reserve, during the Middle East crisis; and

WHEREAS, Reserve and National Guard members who are activated during this crisis serve a vital national interest for which they deserve the full support of the citizens of this State; and

WHEREAS, the State of New Jersey recognizes that a strong, ready Reserve and National Guard are essential to the defense of this country and vital to this State in a time of emergency such as exists now; and

WHEREAS, the State of New Jersey recognizes the personal and economic sacrifices of its employees serving in the Reserve and the National Guard who are called to active duty during the Middle East crisis, and recognizes the sacrifices of their families;

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby Order and Direct:

1. New Jersey State employees who are called to active duty during the Middle East crisis shall be entitled upon termination of active duty to return to State employment with full seniority and benefits consistent with State and federal military reemployment and seniority rights.
2. During active duty for the duration of their activation in the Middle East crisis, these State employees shall be entitled to receive a salary equal to the differential between the employee's State salary and the employee's military pay.
3. These State employees shall be entitled to State employee health benefits, life insurance and pension coverage during active duty service for which they receive differential salary as prescribed in this Order as if they were on paid leave of absence.
4. The Commissioner of Personnel shall implement this Executive Order and each department, office, division or agency of the State is authorized and directed, to the extent not inconsistent with law, to cooperate with the Commissioner of Personnel and to make available to him such information, personnel and assistance as necessary to accomplish the purpose of this Order.
5. This Order shall take effect immediately.

(c)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 26(1991)
Tribute to Christopher J. Jackman

Issued: January 29, 1991.
Effective: January 29, 1991.
Expiration: Indefinite.

WHEREAS, Christopher J. Jackman first graced the State capital some 30 years ago as a staff member for the New Jersey Senate and Assembly; and

WHEREAS, he rose from his staff position to be elected to the General Assembly in 1967, an office to which he was re-elected seven times; and

WHEREAS, during his service in the General Assembly, his colleagues exhibited their respect and faith in his leadership by electing him their Majority Leader and Speaker; and

WHEREAS, after distinguished service in the Assembly, Christopher J. Jackman was elected to serve in the New Jersey Senate in 1982 and re-elected to a second term in 1987; and

WHEREAS, as a State legislator, Christopher J. Jackman was a tenacious proponent of the causes he espoused and a consistently strong voice for senior citizens and all the people he represented; and

WHEREAS, his good humor and inimitable style, which so often diffused difficult situations, brought diverse groups together and immeasurably improved the legislative process; and

WHEREAS, he brought the same vigor and commitment which he demonstrated as a legislator to his work in union affairs and in his community activities; and

WHEREAS, in spite of his significant stature among his colleagues and admirers, both in the Legislature and throughout the State, he was the embodiment of humility and sincerity, and a friend to all who had the privilege to know him; and

WHEREAS, his dedication to public and community service have never detracted from his devotion to his family and friends; and

WHEREAS, it is fitting and appropriate for the State of New Jersey to mark the passing of Christopher J. Jackman, an irreplaceable leader and public servant;

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

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half mast at all State departments, offices, agencies and instrumentalities during appropriate hours beginning on Wednesday, January 30, 1991, through and including Friday, February 1, 1991 in recognition and mourning of the passing of a distinguished legislator and leader, Christopher J. Jackman.
2. This Order shall take effect immediately.

RULE PROPOSALS

EDUCATION

(a)

STATE BOARD OF EDUCATION

Speech Language Specialist Endorsement

Proposed Amendment: N.J.A.C. 6:11-11.9

Authorized By: John Ellis, Commissioner, Department of Education; Secretary, State Board of Education.
Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-7, 18A:6-34, 18A:6-38 and 18A:26-10.
Proposal Number: PRN 1991-92.

Submit written comments by March 21, 1991 to:
Irene Nigro, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Rules governing the certification of speech-language specialists were readopted in September 1990 pursuant to the Executive Order No. 66 (1978). In public testimony, several individuals urged the adoption of an amendment authorizing the issuance of the speech-language specialist endorsement to those persons who: a) hold the formerly-issued speech correctionist endorsement; and b) possess a master's degree in speech pathology. The proposed amendment would provide the requested authorization.

Prior to the creation of the speech-language specialist endorsement in 1986, the State Board of Education maintained a speech correctionist endorsement. The speech-correctionist endorsement is no longer issued. However, many persons employed in the public schools still possess speech correctionist endorsements that were issued previously, and those issued endorsements remain valid. Yet, some certified speech correctionists have argued that they should be eligible for the newer speech-language specialist endorsement.

The newer endorsement requires a master's degree in speech pathology, a passing score on a licensing test, and a 300-hour internship. The speech correctionist endorsement required only 18 undergraduate credits. Nevertheless many previously certified speech correctionists have voluntarily obtained master's degrees in speech pathology. These master's level practitioners argue that their degrees, combined with the educational experience and training they have acquired under the speech correctionist endorsement, are a sufficient basis upon which to qualify for the speech-language specialist endorsement. They testified that they ought not be held to specific study-topic requirements or to the test and internship requirements.

Indeed, several master's-level correctionists have presented their cases individually to the State Board of Examiners, and the vast majority have been granted the newer endorsement on the basis of alternative education and experience.

The proposed amendment would authorize the issuance of the speech-language specialist endorsement to persons who: a) hold a valid New Jersey speech correctionist endorsement; b) possess a master's degree in speech pathology; and c) file a completed application along with payment of required fees.

Social Impact

The proposed amendment would allow school practitioners who possess appropriate qualifications to obtain certification without having to duplicate their training and experiences. It would eliminate the need for the State Board of Examiners to consider virtually identical petitions on a case-by-case basis.

Economic Impact

Each candidate who wishes to obtain the speech-language specialist endorsement will have to pay a fee of $40.00 for review and processing of credentials.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but impact solely upon individuals seeking a speech-language specialist endorsement under the terms of the amendment.

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

6:11-11.9 Speech-language specialist

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

(c) The requirements for the speech-language specialist endorsement are as follows:

1. (No change.)

2. Graduate or undergraduate coursework in the areas listed below which is taken within or in addition to the Master's program. Job candidates who possess **a** Master's degree[s] in [speech language pathology] **Speech-Language Pathology** and meet all other requirements for certification except the following three study areas may be employed provisionally for a period of two years until these requirements are met.

i.-ii. (No change.)

iii. Applications of speech-language pathology to the school setting[s], including such topics as Speech Program Development, Clinical Problems in the Public Schools and Administration of Speech and Hearing Programs in the Public Schools;

3.-4. (No change.)

(d) Individuals who hold a valid New Jersey speech correctionist endorsement and a Master's degree in Speech-Language Pathology shall be issued the speech-language specialist endorsement upon submission of a completed application and payment of fees pursuant to N.J.A.C. 6:11-3.

(b)

STATE BOARD OF EDUCATION

School Employee Physical Examinations

Proposed Amendments: N.J.A.C. 6:29-7.3 and 7.4

Authorized By: John Ellis, Commissioner, Department of Education; Secretary, State Board of Education.
Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:16-2, 18A:16-3, 18A:16-4, 18A:35-5 and 18A:40-16.
Proposal Number: PRN 1991-93.

Submit written comments by March 21, 1991 to:
Irene Nigro, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The State Board of Education adopted amendments to N.J.A.C. 6:29, Health, Safety and Physical Education, on February 7, 1990. Based on the public comment process, a number of revisions to the code were adopted at that time. A new subchapter 7 was added to address minimum standards for school employee physical examinations, as required in N.J.S.A. 18A:16-2. However, other comments identified areas in the rules that required further study, that is, listing of medications, fitness to perform, access to records and due process rights. Changes were not made in these areas during the final adoption process; rather, it was determined that any changes resulting from these comments would be made once the Department had an opportunity to fully study the issues presented.

The Department has consulted that State Department of Health and has completed its review. Accordingly, the Department is now proposing additional amendments to N.J.A.C. 6:29-7 for adoption as follows:

N.J.A.C. 6:29-7.3 has been expanded to clarify district board of education procedures required to implement the rules, including the basing of

policies on the advice and recommendations of the district medical inspector; providing for notification to school employees regarding the requirements for physical examinations; and the establishing procedures to assure confidentiality during the collection, transmission and storage of employee medical records.

N.J.A.C. 6:29-7.4(b)1 and (c) require school staff to indicate current medications as part of the required physical examination. The requirement for staff to submit a list of current medications is being eliminated. However, a new subsection, N.J.A.C. 6:29-7.4(d), is being added to allow the individual school employee to provide health status information, including medications, which may be important to medical staff in the event of an emergency requiring treatment. N.J.A.C. 6:29-7.4(b)1iv and 3 have been amended to include immunization status. N.J.A.C. 6:29-7.4(d), (e), and (g) have been recodified.

N.J.A.C. 6:29-7.4(a), and (d) now codified as (e), have been amended to bring these rules into compliance with the "Americans with Disabilities Act of 1990" (P.L. 101-336, signed into law on July 26, 1990). This act concerns discrimination in employment and limits the scope of medical examinations and inquiries of disabled employees.

N.J.A.C. 6:29-7.4(e), recodified as (g), is being amended to remove the school nurse from having access to employee physical examination records, and will now require districts to include computerized employee medical records among those which must be secured.

N.J.A.C. 6:29-7.4(f) is being amended to add due process rights for individuals who have reason to challenge the requirement to undergo a psychiatric or physical examination.

Social Impact

The social impact of the proposed amendments will be positive. Direction to school districts implementing the rules will be clarified. Potential discrimination against the disabled is prevented through the proposed amendments. The inclusion of due process provisions and increased confidentiality will assure less resistance from school employees complying with the new rules.

Economic Impact

The minimum requirements for the annual school employee physical examination will have no economic impact on district boards of education beyond those established when these provisions were first adopted (February of 1990). The approximate cost for physical examinations ranges between $40.00 and $125.00, depending on the provider. For current employees the costs would be those associated with the updating of district employee medical records and their maintenance in a secure location. The provision allowing the medical evaluation of new employees to be done by the school medical inspector will serve to contain such costs within a low range. The provisions having to do with the securing of records, including computerized records, may result in slightly increased costs to the schools.

Regulatory Flexibility Statement

A Regulatory Flexibility analysis is not required because this proposal does not impose reporting, recordkeeping or other compliance requirement on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The adoption of these amendments will only slightly change the type of medical information being submitted by the employee to the school; define who will have access to the information; and what information must be secured.

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

6:29-7.3 Policies and procedures for employee physical examinations

District boards of education shall adopt written policies and procedures for the physical examination of employees, and may adopt written policies and procedures for candidates for employment. **Such policies shall be based on the advice and recommendation of the district medical inspector, provide for notification to school employees regarding the requirements for physical examinations, and establish procedures to assure confidentiality during the collection, transmission and storage of employee medical records pursuant to N.J.A.C. 6:29-7.4.**

6:29-7.4 Requirements of physical examinations

(a) Any candidate for employment may be required to undergo a physical examination that may include, but not be limited to, health history, health screenings and medical evaluation. **The preemployment physical examination shall not be used to determine a candidate's disabilities. Such examination shall be used only to determine whether the applicant is able to perform with reasonable accommodation job-related functions pursuant to P.L. 101-336, Americans with Disabilities Act of 1990.**

(b) Newly employed staff shall be required to undergo a physical examination which shall include, but not be limited to:

1. A health history completed by the indivdual or their physician which shall include:

i.-iii. (No change.)

iv. [Current medications] **Immunization status.**

2. (No change.)

3. A medical evaluation **which shall include, but not be limited to, an assessment of immunization status.**

(c) Each school employee shall undergo an annual physical examination, which shall include, but not be limited to:

1. An updated employee health history of[:

i. Current] **current** health problems[; and

ii. Current medications].

2. Any updated information provided in accordance with (c)1[i and ii] above shall require an assurance statement signed by the employee. If an employee refuses to provide updated information with a signed assurance statement, the employee shall undergo a physical examination which includes (b) 1 and 3 above.

(d) Individual employees may include in the health history, health status information, including medications, which may be of value to medical personnel in the event of an emergency requiring treatment. In such instances, an employee may also choose to share with the building principal information regarding current health status to assure ready access in a medical emergency.

[(d)] **(e)** Any [physical] examinations **or assurances** required **or permitted by N.J.S.A. 18A:16-2 or** [under] this subchapter shall be limited to those assessments **or information** necessary to determine the individual's **physical and mental** fitness to [function] **perform with reasonable accommodation** in the position which he or she seeks or currently holds, and to detect any health risks to students and other employees.

[(e) All employee medical records for the district shall be stored and maintained separately from other personnel files. Only the employee, the chief school administrator, school medical inspector and/or certified school nurse, shall have access to the medical information in that individual's file.]

(f) [Individual] **Additional individual** psychiatric or physical examinations of any employee may be required by the district board of education whenever, in the judgment of the board, an employee shows evidence of deviation from normal physical or mental health. **When a board requires an employee to undergo such an individual examination:**

1. The board must provide the employee with a written statement of reasons for the required additional examination. The board, if requested, shall provide the employee with a hearing.

2. The determination of such a hearing shall be appealable to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24.

(g) All employee medical records for the district, including computerized records, shall be secured, and shall be stored and maintained separately, from other personnel files. Only the employee, the chief school administrator and the school medical inspector, shall have access to the medical information in that individual's file.

[(g)]**(h)** Cost for examinations made by a physician or institution designated by the district board of education shall be borne by the district board of education. If, however, the examination is performed by a physician or institution designated by the employee, with approval of the district board of education, the cost shall be borne by the employee.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Freshwater Wetlands Protection Act Rules
Implementation of Section 401 of the Federal Clean Water Act (Water Quality Certification)
Proposed New Rules: N.J.A.C. 7:7A-4
Proposed Amendments: N.J.A.C. 7:7A-1 through 17

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

Authority: N.J.S.A. 13:9B-1 et seq. (P.L. 1987, c.156), N.J.S.A. 58:10A-1 et seq., and 33 U.S.C. 1251 et seq.

DEP Docket Number: 002-91-01.

Proposal Number: PRN 1991-90.

Public hearings concerning these proposed new rules and amendments will be held on:

Thursday, March 7, 1991 at 10:00 A.M.
Department of Environmental Protection
7th Floor Conference Room
401 East State Street
Trenton, New Jersey

Tuesday, March 12, 1991 at 10:00 A.M.
Cumberland County Board of Freeholders Conference Room
790 East Commerce St.
Bridgeton, New Jersey

Tuesday, March 19, 1991 at 10:00 A.M.
Somerset County Parks Commission Environmental Education Center
190 Lord Sterling Rd.
Basking Ridge, New Jersey

Submit written comments by April 20, 1991 to:

Sam Wolfe, Esq.
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On May 16, 1988, the New Jersey Department of Environmental Protection (Department) adopted rules, effective June 6, 1988, and operative July 1, 1988, to implement the wetland and water protection provisions of the Freshwater Wetlands Protection Act (Act), N.J.S.A. 13:9B-1 et seq. On July 3, 1989, the Department adopted rules to implement the transition area provisions of the Act (N.J.S.A. 13:9B-18). The rules pursuant to N.J.S.A. 13:9B-23, General Permits, were amended on July 17, 1989 and on September 4, 1990.

This proposal amends the May 16, 1988, July 3, 1989 and July 17, 1989 adopted rules as well as establishes administrative standards for review of Water Quality Certificates pursuant to the Federal Clean Water Act (33 U.S.C. 1251 et seq).

N.J.S.A. 13:9B-27 requires the Department to take all appropriate action to secure the assumption of the permit jurisdiction exercised by the United States Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 et seq.). The United States Environmental Protection Agency requires a state seeking assumption to have a program in place that is at least as stringent as the program implemented by the United States Army Corps of Engineers pursuant to the Federal Act. In order to achieve this objective, changes have been proposed to the definition section (N.J.A.C. 7:7A-1.4), the standard conditions for Statewide general permits (N.J.A.C. 7:7A-9.5), and review of applications (N.J.A.C. 7:7A-12).

N.J.S.A. 13:9B-23 states that the Department is authorized to adopt Statewide general permits which provide an expedited review process for common, routine activities which are determined by the Department to have minimal individual and cumulative adverse impacts on the environment, and only minor impacts on freshwater wetlands. This proposal provides nine new Statewide general permits. The proposed Statewide general permits address the maintenance dredging of lakes, repair of dams, the construcion of recreational and fishing docks or piers, the placement of materials for bank stabilization, the construction or installtion of new utility lines, regional stormwater detention basins, regulated activities resulting from the construction or reconstruction of affordable housing, the placement of bulkheads adjacent to human-made lagoons and the repair or alteration of malfunctioning individual subsurface sewage disposal systems. In addition, in order for the State to continue to make the finding of minimal cumulative impacts resulting from the issuance of each Statewide general permit, mitigation has been proposed as a condition to some of the Statewide general permits authorizing more than 0.25 acres of wetlands or waters disturbance.

The remaining rule revisions have resulted from extensive information supplied to the Department by the various wetlands advisory groups, project managers within the Department, permit applicants, individuals and groups commenting on applications, and other members of the public since the implementation of the Act in 1988. The addition and modification of various definitions, combining of the sections on the standards for granting Individual freshwater wetlands and open water fill permits (N.J.A.C. 7:7A-3 and N.J.A.C. 7:7A-4), and the complete reorganization of the section on letters of interpretation (N.J.A.C. 7:7A-8) are specifically designed to clarify and streamline existing regulations and regulatory procedures to implement the Act. Also, the term "prohibited activities" has been changed to "regulated activities," and the term "waiver" has been changed to "permit" throughout the rules, to simplify the language. In addition, changes to the exemption section (N.J.A.C. 7:7A-2.7) reflect court decisions that have occurred since the rule adoptions of May 16, 1988 and July 3, 1989, as well as a formal opinion by the Attorney General.

Finally, at N.J.A.C. 7:7A-4 the Department is proposing specific review standards for Water Quality Certification pursuant to the Federal Clean Water Act (33 U.S.C. 1251 et seq.), which is consistent with the U.S.E.P.A. document entitled, "Water Quality Standards for Wetlands, National Guidance" (prepared by Office of Water Regulations and Standards, Office of Wetlands Protection; July 1990), to be used together with the State's surface water quality standards.

In addition, the Department has reassessed the costs associated with professional staff time required to review applications and to perform onsite inspections. As a result of the reassessment, the Department is proposing to increase some of the fees associated with the review and processing of applications.

Social Impact

The proposed revisions will have a positive social impact by providing for quicker reviews of some activities through the use of new Statewide general permits, and through the clarification of several regulatory issues. In addition, the changes proposed to bring the State into consistency with Section 404 of the Clean Water Act will eliminate some of the discrepancies between the State and Federal programs and make it easier for an applicant to meet the requirements of both programs simultaneously.

Economic Impact

The proposed revisions will have a positive economic impact on persons performing activities which formerly necessitated an Individual permit review but which will not be covered by a Statewide General Permit, because authorizations for projects covered by general permits are generally granted more quickly and require lower fees than Individual permits. However, since some fees are being increased and because mitigation is now required for some Statewide general permits, those seeking to develop within regulated areas may face additional costs. The increased fees will place the program's costs on those who derive economic benefit from using wetland or transition areas, instead of placing the cost of the program on all New Jersey's taxpayers.

Environmental Impact

The majority of the changes proposed in this rule revision will have no significant environmental impacts because they reflect clarifications in language and changes to administrative procedures and are not of a substantive nature. In addition, as required by N.J.S.A. 13:9B-23, the Department has conducted an environmental analysis for all newly proposed and amended Statewide general permits and believes that each permit will have only minor impacts on freshwater wetlands both individually and cumulatively. The addition of the requirement for mitigation for impacts exceeding 0.25 acres will further assure that impacts to wetlands and open waters will be minimized.

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 of the approx-

mately 4,000 applicants per year affected by those proposed amendments and new rules, approximately 3,600 will be small businesses as defined therein, including small developers and contractors of single family residences. All those who are required under the current rules to submit applications will continue to be required to do so; moreover, in some cases, higher fees will be required for letters of interpretation, and fees will be required for review and processing of Individual Water Quality Certifications. However, some projects which would require Individual Freshwater Wetlands Permits under the current rules will be eligible to receive one of the Statewide General Permits allowed by these amendments and new rules, which will reduce the time and costs associated with acquiring Freshwater Wetlands Permits. No additional capital costs or professional services would be required.

In developing these amendments and new rules, the Department has balanced the need to protect the environment against the economic impact of this rulemaking and has determined that to limit the scope of these rules would endanger the environment, public health or public safety. Therefore no exemptions from coverage for small business is provided.

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

SUBCHAPTER 1. GENERAL INFORMATION

7:7A-1.1 Scope and authority

This chapter constitutes the rules governing the implementation of the Freshwater Wetlands Protection Act, P.L. 1987, c.156 **and the rules governing the issuance of Water Quality Certifications pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.** The provision of any State law, rule or regulation to the contrary notwithstanding, the alteration or disturbance in and around freshwater wetland areas in the State, and the discharge of dredged or fill material into State open waters are subject to this chapter and the Act.

7:7A-1.2 Construction

This chapter shall be liberally construed to allow the Department to implement fully its statutory functions pursuant to the Act **and to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.**

7:7A-1.3 Forms and information

Any forms, fees or other information required to be submitted by this chapter shall be obtained from and returned to the Division of Coastal Resources, New Jersey Department of Environmental Protection, CN 401, Trenton, New Jersey 08625. Courier and hand deliveries may be delivered to 5 Station Plaza, 501 East State Street, Trenton, New Jersey. **Other sources of information referred to in this chapter are available from the Office of Maps and Publications located at 428 State Street, Trenton, New Jersey 08625.**

7:7A-1.4 Definitions

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

"Acid producing deposits" means those geologic deposits containing iron sulfide minerals (pyrite or marcasite) which oxidize upon exposure to oxygen from the air or from surface waters to produce sulfuric acid.

"Act" means the Freshwater Wetlands Protection Act, P.L. 1987, c.156.

"Adjacent" means bordering, contiguous, or neighboring.

. . .

"Best Management Practices" (BMP's) means methods, measures, designs, performance standards, maintenance procedures, and other management practices which prevent or reduce adverse impacts upon or pollution of freshwater wetlands, State open waters, and adjacent aquatic habitats, which facilitate compliance with the Federal Section 404(b)(1) guidelines (40 C.F.R. Part 230), New Jersey Department of Environmental Protection Flood Hazard Area Regulations (N.J.A.C. 7:13), 1982 Standards for Soil Erosion and Sediment Control in New Jersey, Storm Water Management Regulations (N.J.A.C. 7:8), and effluent limitations or prohibitions under Section 307(a) of the Federal Act and New Jersey Department of Environmental Protection Surface Water Quality Standards (N.J.A.C. 7:9-4). Examples include practices found at 33 C.F.R. 330.6, 40 C.F.R. 233.35(a)6, [and] the Department's Technical Manual for Stream Encroachment, **and "A Manual of Freshwater Wetland Management Practices for Mosquito Control in New Jersey".**

"Clean Water Act" [(CWA or Federal Act)], **"Federal Act", or "CWA"** means the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 (33 U.S.C. §§1251 et seq.) and any amendments and supplements thereto, and the regulations adopted pursuant thereto.

"Climax habitat" means a mature, well developed natural ecological community. **See N.J.A.C. 7:7A-14.**

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Compelling public need" means that based on specific facts, the proposed regulated activity will serve an essential health or safety need of the municipality in which the proposed regulated activity is located, that the public health and safety benefit from the proposed use and that the proposed use is required to serve existing needs of the residents of the State, and that there is no other means available to meet the established public need. See N.J.A.C. 7:7A-[3.3(a)1] **3.4(a)1.**

"Contiguous" means adjacent properties, even if they are separated by human-made barriers or structures or legal boundaries.

"Council" means the Wetlands Mitigation Council established pursuant to Section 14 of the Act.

"Critical habitat for fauna or flora" means:

1. For fauna, areas which serve an essential role in maintaining commercially and recreationally important wildlife, particularly for wintering, breeding, spawning and migrating activities;

2. For flora, areas supporting rare or unique plant species or uncommon vegetational communities in New Jersey.

. . .

"Delegable waters" means all waters of the United States, as defined at N.J.A.C. 7:7A-1.4, within the legal boundaries of the State that will be regulated by the Department as part of the Federal 404 program with the exception of:

1. Those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement, as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark including adjacent wetlands. In those waters over which the Department does not assume jurisdiction under the 404 program, the Department will retain jurisdiction under State law, and both State and Federal requirements will apply.

2. Specific bodies of water over which the Department will not assume 404 program jurisdiction include, but are not limited to:

i. The entire length of the Delaware River within the State of New Jersey;

ii. Waters of the United States under the jurisdiction of the Hackensack Meadowlands Development Commission; and

iii. Greenwood Lake.

. . .

"Discharge of dredged material" means any addition [from any point source] of dredged material into State open waters or freshwater wetlands. The term includes the addition of dredged material into State open waters or freshwater wetlands and the runoff or overflow from a contained land or water dredge material disposal area. Discharges of pollutants into State open waters resulting from the subsequent onshore processing of dredged material are not included within this term and are subject to the New Jersey Pollutant Discharge Elimination System, N.J.S.A. 58:10A-1 et seq., program even though the extraction and deposit of such material may also require an open water fill permit or a 404 permit from the U.S. Army Corps of Engineers or [the State section 404 program] **a Water Quality Certification.**

"Discharge of fill material" means the addition [from any point source] of "fill material" into State open waters or freshwater wetlands. The term includes, **but is not limited to,** the following activities:

1. Placement of fill that is necessary for the construction of any structure;

2. The building of any structure or impoundment requiring rock, sand, dirt, or other materials for its construction;
3. Site-development fill for recreational, industrial, commercial, residential, and other uses;
4. Causeways or road fills;
5. Dams and dikes;
6. Artificial islands;
7. Property protection or reclamation devices, or both, such as riprap, groins, seawalls, breakwaters, and revetments;
8. Beach nourishment;
9. Levees;
10. Fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and
11. Artificial reefs.

"Disturbance of the water level or water table" a term used to define regulated activity in N.J.A.C. 7:7A-2.3(a)2, means the alteration of the existing elevation of groundwater or surface water, regardless of duration of such alteration, by:

1. Adding or impounding a sufficient quantity of stormwater or water from other sources to modify the existing vegetation, values or functions of the wetland; [or]
2. Draining, ditching or otherwise causing the depletion of the existing groundwater or surface water levels such that the activity would modify the existing vegetation, values or functions of the wetland[.]; **or**
3. The draw down of greater than 12 inches of the water table in a wetland.

"Ditch" means a linear topographic depression of human construction which conveys water to or from a site. **This does not include channelized or redirected natural water courses.**

. . .

"EPA priority wetlands" means wetlands which are designated as priority wetlands by EPA. **The "Priority Wetlands List for the State of New Jersey" is available from the Office of Maps and Publications listed at N.J.A.C. 7:7A-1.3.**

. . .

"Fill" means the deposition of material (for example, soil, sand, earth, rock, **concrete, pavement,** solid material of any kind, etc.) into an area which changes the resultant elevation in relation to surface water or groundwater level. "Fill" also means the material deposited.

["Fresh water(s)" means all tidal and nontidal waters having a salinity, due to natural sources, of less than or equal to 3.5 parts per thousand.]

"FW" means the general surface water classification applied to fresh waters in the Department's Surface Water Quality Standards, N.J.A.C. 7:9-4, **and subsequent amendments thereto.**

"FW1" means those fresh waters that originate in and are wholly within Federal or State parks, forests, fish and wildlife lands, and other special holdings, that are to be maintained in their natural state of quality (set aside for posterity, and not subjected to any wastewater discharges of human origin), as designated in the Department's Surface Water Quality Standards, N.J.A.C. 7:9-4, **and subseqent amendments thereto.**

"FW2" means the general surface water classification applied in the Department's Surface Water Quality Standards, N.J.A.C. 7:9-4, **and subsequent amendments thereto,** to those fresh waters that are not designated as FW1 or Pinelands Waters.

"Freshwater wetland" or wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; provided, however, that the Department, in designating a wetland, shall use the three-parameter approach (that is, hydrology, soils and vegetation) enumerated in the [April 1, 1987 interim-final draft "Wetland Identification and Delineation Manual" developed by the USEPA,] **"Federal Manual for Identifying and Delineating Jurisdictional Wetlands,"** and any subsequent amendments thereto, **incorporated herein by reference. These include tidally influenced wetlands which have not been included on a promulgated map pursuant to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.**

. . .

"Hydric soils" means a soil that in its undrained condition is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions that favor the growth and regeneration of hydrophytic vegetation. These soils may be on New Jersey's Official List of Hydric Soils developed by the United States Department of Agriculture Soil Conservation Service and the United States Fish and Wildlife Service National Wetlands Inventory, in "The Wetlands of New Jersey" 1985, published by the United States Fish and Wildlife Service or in the [USEPA Wetlands Identification and Delineation manual] **Federal Manual for Identifying and Delineating Jurisdictional Wetlands and amendments thereto.** Alluvial land, as mapped by soil surveys, **or other soils exhibiting hydric characteristics identified through field investigation** may also be considered a hydric soil for the purposes of wetland classification. Also, wet phase of somewhat poorly drained soils not on New Jersey's Official List of Hydric Soils may also, on occasion, be associated with a wetland and therefore for the purposes of this Act shall be considered a hydric soil.

. . .

"Isolated wetlands **or State open waters**" means a freshwater wetland **or State open water** which is not [associated with] **connected to** a surface water tributary system discharging into a lake, pond, river, stream or other surface water feature.

"Lake, pond, or reservoir" means any impoundment, whether naturally occurring or created in whole or in part by the building of structures for the retention of surface water.

"Letters of interpretation" are letters issued by the Department for the purpose of indicating the presence or absence of wetlands, **State open waters, or transition areas** (see N.J.A.C. 7:7A-[6]**8**)[, or]; for the purpose of verifying or delineating the boundaries of freshwater wetlands, **State open waters, transition areas;** or [both] **to obtain a wetland resource value classification.**

"Linear development" means land uses such as roads, [drives,] railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, the basic function of which is to connect two points. Linear development shall not mean residential, commercial, office, or industrial buildings, **improvements within a development such as utility lines or pipes, or internal circulation roads.**

"Major discharge" means:

1. Discharges of dredged or fill material into areas identified by the Department, in consultation with USEPA, the Corps and the USFWS, which could have the following impacts:
i. Significant adverse effects on freshwater wetlands or State open waters which are unique for a particular geographic region;
ii. Significantly reduce the ecological, commercial, or recreational valus of more than [10] **five** acres of a freshwater wetland or State open water; or
iii. Affect a Federally listed or proposed endangered or threatened species;
2. Wetland fills involving more than 10,000 cubic yards of material.

"Maximum extent practicable" means to the maximum extent after weighing, evaluating and interpreting alternatives to protect the ecological integrity of a wetland or State open water.

"Mitigation" means activities carried out pursuant to N.J.A.C. 7:7A-14 in order to compensate for freshwater wetlands **or State open waters** loss or disturbance caused by regulated activities.

"Offsite" means the area not onsite.

"Onsite" means the area located within the legal boundary of the property or properties on which the regulated activity or activities are proposed, are occurring, or have occurred, as set forth in the deed for that area, plus any contiguous land owned by the same [individual] **person** as set forth in the deed or deeds for that contiguous land, as these boundaries existed [at the commencement of the regulated activity or activities] **on July 1, 1988 or on the date of submission of the application if lots and blocks were merged subsequent to July 1, 1988.**

"Open water fill permit" means the type of New Jersey Pollution Discharge Elimination System permit issued pursuant to this chapter **and N.J.S.A. 58:10A-1 et seq.,** which governs the discharge of dredged or fill material into State open waters [that are not freshwater wetlands].

"Permit" means a permit to engage in a regulated activity in a freshwater wetland, State open water, or transition area issued pursuant to the Act and this chapter.

"Person" means an individual, corporation, partnership, association, **the Federal government,** the State, municipality, commission or political subdivision of the State or any interstate body.

"Pilings" means timber, metal, concrete or other similar structures driven, **dropped, poured,** [into the ground] **or placed** to support a vertical load.

. . .

"Property" means the area contained within the legal boundary as defined by municipal block and lot as set forth in the deed for that area.

"Public hearing" means an administrative non-adversarial type hearing before a representative or representatives of the Department providing the opportunity for public comment, but does not include cross-examination.

"Redevelopment" means the construction of structures or improvements on impervious surfaces legally existing in the transition area prior to July 1, 1989.

"Regulated activity" means any of the activities defined at N.J.A.C. 7:7A-2.3 and N.J.A.C. 7:7A-6.2(a).

. . .

"Special aquatic site" means any site described in subpart E of the 404(b)1 guidelines (40 C.F.R. 230 et seq., **or any amendments thereto**), with the exception of freshwater wetlands which, for the purposes of this chapter shall not be considered special aquatic sites.

"State Forester" means the chief forester employed by the Department.

"State open waters" means those waters [of the United States] **of the State that are not wetlands as defined in this section.** [in New Jersey for which the Army Corps of Engineers can suspend the issuance of section 404 permits upon approval of New Jersey's section 404 permit program by the Administrator (see section 404(h) of the Federal Act). These waters shall be specifically identified by the Secretary of the Army. State open waters shall not include:

1. Waters which are subject to the ebb and flow of the tide;

2. Waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement, as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark;

3. Wetlands adjacent to waters in paragraph 2 of this definition; or

4. Freshwater wetlands as defined by this chapter.]

["Substantial hardship" or "extraordinary hardship" means the subject property is not susceptible to a reasonable use as is, or developed as authorized by the provisions of the Act, and that this results from unique circumstances peculiar to the subject property which:

1. Do not apply to or affect other property in the immediate vicinity; and

2. Relate to or arise out of the subject property rather than the personal situation of the applicant, and are not the result of any action or inaction by the applicant or the owner or the owner's predecessors in title.]

"Swale" means a linear topographic depression, either naturally occurring or of human construction, which drains less than 50 acres[, and is not an intermittant stream]. **Swales do not have distinguishable bed and banks and are not intermittent streams. A swale can not be within a larger wetland complex, nor is it an undulation in the boundary of a wetland complex. A swale is a natural or human-made feature, which has formed or was constructed in uplands to convey surface water runoff from the surrounding upland areas. The definition of swales generally does not include wetland features over 50 feet in width at the widest point which are considered by the Department to be independent wetland features.**

"Threatened or endangered species" shall be those species identified pursuant to the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., [in the lists of Endangered and Threatened Wildlife and Plants found at 50 C.F.R. 17.11(h) or 17.12(h)] **or those identified pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531 et al.** and subsequent amendments thereto.

. . .

"Transition area [waiver] **permit**" means a [waiver] **permit** [from the prohibitions against engaging] **issued by the Department to engage** in any of the [prohibited] **regulated** activities enumerated at N.J.A.C. 7:7A-6.2(a) in a transition area issued by the Department pursuant to the Act and this chapter. A transition area [waiver] **permit** may be issued by the Department in the transition area adjacent to either a freshwater wetlands of exceptional or intermediate resource value and may take one of the following forms:

1. Transition area [waiver] **permit**, Reduction. This [waiver] **permit** may be approved on the basis of a finding of no substantial impact or if the [waiver] **permit** is necessary to avoid **an extraordinary or** substantial hardship **as defined at N.J.A.C. 7:7A-7.2(g) or 7.3(f), respectively**. The [waiver] **permit** would result in a reduction in the standard width of a transition area without requiring an expansion of the remaining transition area for compensation;

2. Transition area [waiver] **permit**, Special Activities. This [waiver] **permit** may **be issued to** approve the partial elimination of the standard transition area, without requiring an expansion of the remaining transition area for compensation for the special activities set forth below:

i. Stormwater management facilities as defined at N.J.A.C. 7:7A-7.4(b)1;

ii. Linear development as defined at N.J.A.C. 7:7A-1.4; [and]

iii. Activities permitted under the specific Statewide general permits listed at N.J.A.C. 7:7A-7.4(e). The Statewide general permits themselves are set forth at N.J.A.C. 7:7A-9.2(a); or

iv. Activities defined as redevelopment pursuant to N.J.A.C. 7:7A-7.4(f); or

3. Transition area [waiver] **permit**, Averaging Plan. This [waiver] **permit** may **be issued to** approve a plan to modify the overall shape of the standard transition area without reducing the total square footage of the standard transition area.

. . .

"Waters of the United States" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. All interstate waters **including interstate wetlands**;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), wetlands, mudflats, sandflats, sloughs, [prairie potholes,] wet meadows, [playa lakes,] or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

i. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

ii. From which fish[,] **or** shellfish [or migratory birds] are or could be taken and sold in interstate or foreign commerce; [or]

iii. Which are used or could be used for industrial purposes by industries in interstate commerce[.];

iv. Which are or would be used as habitat by birds protected by Migratory Bird Treaties;

v. Which are or would be used as habitat by other migratory birds which cross state lines;

vi. Which are or would be used as habitat for endangered and threatened species; or

vii. Which are used to irrigate crops sold in interstate commerce;

4. All impoundments of waters otherwise defined as waters of the United States under the definition;

5. Tributaries of waters identified in paragraphs 1 through 4 of this definition;

6. The territorial seas; and

7. Wetlands adjacent to waters identified in paragraphs 1 through 6 of this definition other than those that are themselves wetlands.

The following waters are generally not considered "waters of the United States". However, the right is reserved to determine on a case

by case basis, if particular watercourses or waterbodies are "waters of the United States":

1. Non-tidal drainage and irrigation ditches excavated on dry land;

2. Artificially irrigated areas which would revert to upland if the irrigation ceased;

3. Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;

4. Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons;

5. Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the above definition of "waters of the United States";

6. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds); and

7. Erosional channels less than two feet wide and six inches deep in upland areas resulting from poor soil management practices.

"Water Quality Certification (WQC)" is the determination that the Department shall make pursuant to Section 401 of the Federal Act and N.J.S.A. 58:10A-1 et seq. in the evaluation of a proposed activity which requires a Federal license or permit.

7:7A-1.6 Other statutes and regulations

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

(c) This section shall not, however, preclude municipal advice to the Department concerning letters of interpretation pursuant to N.J.A.C. 7:7A-[8.4] **8.5**.

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

7:7A-1.7 Effective and operative dates

This chapter [shall be]**, with the exception of N.J.A.C. 7:7A-6 and 7, became** effective June 6, 1988, and [shall become] **became** operative on July 1, 1988. **N.J.A.C. 7:7A-6 and 7 became operative on July 1, 1989.**

SUBCHAPTER 2. APPLICABILITY

7:7A-2.1 Jurisdiction

(a) (No change.)

(b) Except when an activity is authorized by [the Department] **the board of health having jurisdiction or its authorized agent acting on its behalf** pursuant to [a Statewide general permit as set forth in this chapter] **N.J.A.C. 7:7A-9.2(a)25**, a person proposing to engage in a regulated activity shall apply to the Department for a **Statewide general permit authorization or a** freshwater wetlands permit, and a person proposing to discharge dredged or fill material into State open waters shall apply to the Department for an open water fill permit. **The discharge of dredged or fill material in a State open water or wetland may also need a stream encroachment permit pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., or a Water Quality Certification pursuant to N.J.A.C. 7:7A-4.**

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

(e) Where a proposed project requires more than one permit from the Division, applicants are strongly encouraged to [acquire a permit under the Act and this chapter first. If a project requires both a permit under this chapter (freshwater wetlands or open water fill permit), and a permit governed by what is commonly known as the 90-day construction law, N.J.S.A. 13:1D-29 et seq., any permit issued under the 90-day construction law will be conditioned upon the granting of a permit under the Act and this chapter.] **apply for all required permits at one time. In most cases this will allow the Department to issue joint permits.**

7:7A-2.2 Subchapters which apply to freshwater wetlands permits [or], open water fill permits**, and Water Quality Certificates**

(a) Any person proposing to engage in a regulated activity in a freshwater wetlands **or State open water** shall comply with the provisions of subchapters 1 (General information), 2 (Applicability), 3 (General standards for granting **individual** freshwater wetlands **and open water fill** permits), 5 (Emergency permits), 6 (Transition areas), 7 (Transition area waivers), 8 (Letters of Interpretation), 9 (General permits), 10 (Pre-application conferences), 11 (Application procedure), 12 (Review of applications), 13 (Permit contents), 14 (Mitigation), [and] 15 (Enforcement)**, and 16 (Fees)** of this chapter.

(b) [Any person proposing to discharge dredged or fill materials into State open waters shall comply with the provisions of subchapters 1 (General information), 2 (Applicability), 3 (General standards for granting open water fill permits), 5 (Emergency permits), 9 (General permits), 10 (Pre-application conferences), 11 (Application procedure), 12 (Review of applications), 13 (Permit contents), and 15 (Enforcement) of this chapter.] **Any person proposing to engage in an activity requiring a Water Quality Certificate shall comply with the provisions of subchapter 4 (General standards for granting water quality certificates).**

7:7A-2.3 Regulated activities

(a) The following activities in a freshwater wetland are regulated pursuant to the Act and are subject to the requirements of this chapter as set forth in N.J.A.C. 7:7A-2.2:

1. (No change.)

2. The drainage or disturbance of the water level or water table **including the diversion of surface waters or subsurface waters that would alter the hydrology of a wetland or which would result in the draw down of greater than twelve inches of the water table in a wetland;**

3.-5. (No change.)

6. The destruction of plant life which would alter the character of a freshwater wetland, including the cutting of trees except the approved harvesting of forest products pursuant to N.J.A.C. 7:7A-[2.5(a)2] **2.7(b)**.

(b) (No change.)

(c) For the purposes of this chapter, the following activities are not considered to result in the alteration of the character of a freshwater wetland:

1. Surveying or wetlands investigation activities, for the purpose of establishing or reestablishing a boundary line or points, which do not involve the use of motorized tools or vehicles to either clear vegetation or extract soil borings. The clearing of vegetation along the survey line or around the survey points shall not exceed three feet in width or diameter respectively and shall not be kept clear or maintained once the survey or delineation is completed;

2. The placement of temporary structures (those not requiring permanent foundations nor the deposition of fill material) not to exceed 32 square feet for the purposes of observing or harvesting fish or wildlife. These activities include the construction of observation or waterfowl blinds and the placement of traps; and

3. The placement of water level or monitoring devices that require the disturbance of 10 square feet or less of wetlands and/or open water.

7:7A-2.4 Designation of freshwater wetlands

The designation of freshwater wetlands shall be based upon the three-parameter approach (that is, hydrology, soils and vegetation) enumerated in the [April 1, 1987 interim-final draft "Wetland Identification and Delineation manual" developed by the USEPA] **"Federal Manual for Identifying and Delineating Jurisdictional Wetlands"**, and any subsequent amendments thereto.

(b) (No change.)

(c) To aid in determining the presence or absence of freshwater wetlands, the Department may refer to any of the following sources of information:

1. New Jersey Freshwater Wetlands maps (as they become available);

Recodify existing 1.-6. as **2.-7.** (No change in text.)

(d) Vegetative species classified as hydrophytes and indicative of freshwater wetlands shall [be] **include, but not be limited to,** those plants listed in "National List of Plant Species that Occur in Wetlands: 1988-New Jersey,"[,] compiled by the United States Fish and Wildlife Service in cooperation with the United States Army Corps of Engineers, USEPA, and the United States Soil Conservation Service, and any subsequent amendments thereto.

(e) The Department [will develop a] **is developing** functional, complete, and up-to-date composite freshwater wetlands maps and inventory [using the most recent available data, which shall include, but need not be limited to, aerial photographs and soils inventories] at a scale [suitable] **of 1:12000** for freshwater wetlands [regulatory] **informational** purposes. The Department will make appropriate sections of this map and inventory available on a periodic basis to the county clerk or register of deeds and mortgages in each county, as appropriate, and to the clerk of each municipality.

(f) When available, the up-to-date composite freshwater wetlands map and inventory shall be used to locate wetlands as definitively as is practicable, as an informational tool in advising the public of the approximate extent and location of wetlands, and in preparing some letters of interpretation. However, [when] exact delineation of wetlands boundaries is required, **and** measurements shall be made in accordance with the three-parameter approach.

7:7A-2.5 Classification of freshwater wetlands **or State open waters** by resource value

(a) (No change.)

(b) Freshwater wetlands of exceptional resource value shall be freshwater wetlands which exhibit any of the following characteristics.

1. Those which discharge into FW-1 waters [and] **or** FW-2 trout production (TP) waters or their tributaries; or

2. (No change.)

(c) Freshwater wetlands of ordinary value shall be freshwater wetlands which do not exhibit the characteristics enumerated in (b) above, and which are:

1. Isolated wetlands [that are not surface water tributary systems discharging into an inland lake or pond, or a river or stream, and] which are more than 50 percent surrounded by development and less than 5,000 square feet in size[:].

i. For the purposes of this subsection only, isolated wetlands shall also include tidally influenced wetlands located adjacent to human-made lagoons in areas of "infill development" where at least 75 percent of the upland lots within 200 feet of the property are developed with residential or commercial uses;

ii. For the purposes of this subsection, "development" shall mean:

(1) Lawns;

(2) Maintained landscaping;

(3) Impervious surfaces; and

(4) Railroad rights-of-way;

iii. For the purposes of this subsection, the area within 50 feet of the wetland boundary shall be investigated in order to determine whether the wetland meets the "more than 50 percent surrounded by development" criteria.

2. Drainage ditches;

3. Swales; or

4. Detention facilities.

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

7:7A-2.6 Designation of State open waters

[(a)] State open waters means those waters of the United States in New Jersey **that are not wetlands as defined at N.J.A.C. 7:7A-1.4.** [for which the United States Army Corps of Engineers can suspend the issuance of section 404 permits upon approval of New Jersey's section 404 permit program by the USEPA Administrator (see subsection 404(h) of the Federal Act and N.J.A.C. 7:7A-1.4).

(b) A specific identification of State open waters in New Jersey can be obtained from the Secretary of the Army.]

7:7A-2.7 Activities exempted from permit requirement

(a) The exemptions in (b) and (c) below shall not apply to any regulated activities in freshwater wetlands, State open water, or transition areas incidental to any activity which involves bringing an area of freshwater wetlands, State open waters or transition area into a use to which it was not previously subject, where the flow or circulation patterns of the freshwater wetlands or waters may be impaired, or the extent or values and functions of freshwater wetlands, State open waters or transition areas is reduced.

[(a)] **(b)** Subject to the limitations of this section, the following activities, [when part of an established, ongoing farming, ranching or silviculture operation,] on properties which have received or are eligible for a farmland assessment, are exempt from the requirement of a freshwater wetlands permit [or an], open water fill **or transition area** permit:

1. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food and fiber, or [upland] soil and water conservation practices;

i. For the purposes of this paragraph "minor drainage" means:

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

(5) Minor drainage in wetlands is limited to drainage within areas that are part of an established farming or silvicultural operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (for example, wetlands species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area. Any discharge of **dredged or fill** material into the wetlands or [on floodplains] **State open waters** incidental to the construction of any such structure or waterway requires a freshwater wetlands **or State open water** permit, and will not be considered minor drainage.

2. Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches, provided that such facilities are for farming, ranching or silviculture purposes **and do not constitute a change in use**. Any spoil from pond construction or maintenance must be placed outside the freshwater wetlands unless it is needed for the structural or environmental integrity of the pond;

3. Construction or maintenance of farm roads or forest roads constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of freshwater wetlands [and], State open waters **or transition areas** are not impaired and that any adverse effect on the aquatic environment will be minimized. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration. **Roads constructed for forestry and silviculture purposes shall be constructed using temporary mats whenever practicable. All roads employing the placement of fill shall be removed at the conclusion of the harvesting activity.**

[(b)] **(c)** (No change in text.)

[(c) The exemptions in (a) and (b) above shall not apply to any discharge of dredged or fill material into freshwater wetlands or State open water incidental to any activity which involves bringing an area of freshwater wetlands or State open water into a use to which it was not previously subject, where the flow or circulation patterns of the freshwater wetlands or waters may be impaired, or the reach of freshwater wetlands or waters is reduced.]

(d) Subject to the limitations of this section, the following are exempt from the requirements of [a freshwater wetlands permit or open water fill permit] **the Act** until the State assumes the Federal 404 program. These activities may need Federal 404 permits **and/or a WOC**:

1. Projects for which preliminary site plan or **property for which** subdivision applications have received formal preliminary approvals from local authorities pursuant to the "Municipal Land Use Law," N.J.S.A. 40:55D-1 et seq., prior to July 1, 1988 provided those approvals remain valid under the Municipal Land Use Law. This excludes approvals which were given prior to the **August 1, 1976** effective date of the Municipal Land Use Law. [Projects governed by this paragraph which are not initiated within five years of enactment of the Act shall no longer be exempt from the requirement of a freshwater wetlands permit or open water fill permit];

2. Projects for which preliminary site plan or **property for which** subdivision applications as defined in N.J.S.A. 40:55D-1 et seq. have been submitted to the local authorities prior to June 8, 1987 **and subsequently approved** [Persons with projects governed by this paragraph which are not initiated within fives years of July 1, 1987 shall

no longer be exempt from the requirement of a freshwater wetlands permit or open water fill permit]; or

3. Projects for which permit applications have been approved and **Individual** permits have been issued by the United States Army Corps of Engineers prior to July 1, 1988, for projects which would otherwise be subject to State regulation on or after July 1, 1988. Such project shall be governed only by the Federal Act, and shall not be subject to any additional or inconsistent substantive requirements of the Act; provided, however that upon the expiration of a permit issued pursuant to the Federal Act any application for a renewal thereof shall be made to the appropriate regulatory agency.

(e) The activities listed in (d)1[-3] **and 2** above shall no longer be exempt from the requirement of a freshwater wetlands permit or [404 permit] **open water fill permit** if significant changes are made to the approved site **or subdivision** plan. A significant change will be deemed to have been made if[, under the Municipal Land Use Law,] the change [would void the preliminary approval, and] would require submittal or approval of a new or amended application[.] **and:**

1. The change would result in a change in land use on the project site, for example, from single family houses to condominiums or a golf course; or

2. The change in the project as approved by the local authorities, would result in increased impacts to freshwater wetlands, State open waters, or transition areas.

(f) Projects [not subject to thejurisdiction of the United States Army Corps of Engineers and] for which preliminary site plan or subdivision applications have been approved prior to July 1, 1989 shall not require transition areas.

(g) Activities authorized under United States Army Corps of Engineers Nationwide Permits prior to July 1, 1988 shall not require a freshwater wetlands permit from the Department provided the property owner can demonstrate that a Nationwide Permit provided authorization for a particular site and use prior to July 1, 1988.

[1. To demonstrate that a Nationwide Permit was approved for a particular site and activity, a person must submit to the Department either a copy of the approval letter issued prior to July 1, 1988 by the Corps, or a copy of all the information submitted to the United States Army Corps of Engineers which requested approval under an effective Nationwide Permit, and proof that the information was received by the Corps prior to June 10, 1988.

2. These submittals must be made to the Department according to the procedures at N.J.A.C. 7:7A-2.9 at least 30 working days prior to commencement of work and must be accompanied by a general permit fee pursuant to N.J.A.C. 7:7A-16.]

(h) If any discharge of dredged or fill material resulting from the activities exempted by this section contains any toxic pollutant listed under section 307 of the CWA, such discharge shall be subject to any applicable toxic effluent standard or prohibition, and shall require a fresh**water** wetlands or open water fill **permit**.

(i) If the USEPA's regulations providing for the delegation to the State of the Federal wetlands program conducted pursuant to section 404 of the Federal Act require a permit for any of the activities exempted by this section, the Department shall require a permit for those activities so identified by the USEPA **upon assumption of the Federal program**. The exemptions in (d) [and (g)] **1 and 2** above shall be void as of the date of assumption by the Department of the Federal 404 program **unless all requisite permits or concurrences with Federal permits were received from the United States Army Corps of Engineers prior to July 1, 1988 and remain valid, in which case the exemption will still be valid.**

7:7A-2.8 Geographic areas exempted from freshwater wetlands permit requirement

(a) Regulated activities in the following geographic area shall not require a freshwater wetlands permit **or transition area permit**, but may require an open water fill permit and/or a Federal 404 permit[:] **pursuant to the Act. However, upon assumption of the Federal 404 program, the discharge of dredged or fill material into Waters of the United States in the following areas may require an Open Water Fill permit, Federal 404 permit or a Water Quality Certificate:**

[1. Areas regulated as a coastal wetland pursuant to N.J.S.A. 13:9A-1 et seq.;]

[2.]**1.** [Activities in areas] **Areas** under the jurisdiction of the Hackensack Meadowlands Development Commission pursuant to N.J.S.A. 13:17-1 et eq. [shall not require a freshwater wetlands permit. However, the discharge of dredged or fill material into State open waters shall require an open water fill permit]; and

[3.]**2.** [Activities in areas] **Areas** under the jurisdiction of the Pinelands Commission pursuant to N.J.S.A. 13:18A-1 et seq. [shall not require a freshwater wetlands permit. However, the discharge of dredged or fill material into State open waters shall require an open water fill permit.] In addition, the Pinelands Commission may provide for more stringent regualtion of activities in and around freshwater wetland areas within its jurisdiction.

(b) Activities in tidally influenced wetlands which have been included on a promulgated map pursuant to the Wetlands Act of 1970, N.J.A.C. 13:9A-1 et seq. shall not require a freshwater wetlands or open water fill permit.

7:7A-2.9 Exemption letters

(a) A person may obtain a letter from the Department certifying that an activity is exempt from the Act and this chapter. [Such a letter will be effective for five years from the date of issuance except for those exemptions which expire sooner as indicated at N.J.A.C. 7:7A-2.7.] The letter will be based on the information required by this section, and will be void if the information submitted is not complete and accurate, **if the approval upon which it was based becomes invalid for any reason,** or if the activity is not carried out as represented in the submittal(s) to the Department upon which the letter is based. **This exemption will remain valid for the duration of the approval upon which it was based or until the State's assumption of the Federal 404 program, whichever comes first.**

(b) To obtain an exemption letter, the following shall be submitted:

1. For a farming, silviculture or ranching exemption pursuant to N.J.A.C. 7:7A-2.7(a):

i. Certification of farmland assessment eligibility;

ii. A brief description of the activities, including the total area covered, the types of farming, silviculture, or ranching, best management practices **currently employed or** to be employed and the length of time the operation has been ongoing; and

iii. The fee specified in N.J.A.C. 7:7A-16.

2. For a forest products harvesting exemption pursuant to N.J.A.C. 7:7A-2.7[(b)](**c**):

i.-ii. (No change.)

3. For a preliminary local approval exemption pursuant to N.J.A.C. 7:7A-2.7(d):

i. A **folded** copy of the preliminary local approval of the site plan or subdivision, including a copy of the site plan or subdivision itself **and a copy of the resolution approving the site plan or subdivision**; and

ii. The fee specified in N.J.A.C. 7:7A-16.

4. For a site plan or subdivision application exemption pursuant to N.J.A.C. 7:7A-2.7(d)2:

i. A copy of all of the application materials submitted to the municipality, proof that the municipality received them, and proof from the municipality that the application [is under active] **was under continuous** consideration **from the time of submittal (prior to June 8, 1987) to final approval**; [and]

ii. A folded copy of the approved preliminary site plan or subdivision plan and a copy of the resolution approving the site plan or subdivision; and

[ii] **iii.** The fee specified in N.J.A.C. [7:7A-15] **7:7A-16.**

5. For a Corps approved individual permit exemption pursuant to N.J.A.C. 7:7A-2.7(d)3:

i. A copy of the valid Corps permit; [and]

ii. A folded copy of a site plan showing all activities authorized by the Individual permit; and

[ii.] **iii.** The fee specified in N.J.A.C. [7:7A-15] **7:7A-16.**

6. For an exemption letter under a Corps Nationwide [general] permit exemption pursuant to N.J.A.C. 7:7A-2.7[(g)](**f**)[, the applicant must submit the materials required by N.J.A.C. 7:7A-2.7(g)1.]:

i. A copy of the valid Corps Nationwide permit authorization issued prior to July 1, 1988, or a copy of all information submitted to the

Corps requesting authorization under an issued Nationwide permit, proof that the information was received by the Corps prior to June 10, 1988, and received subsequent authorization;

(1) The Department may inspect the site to confirm that all of the activities included in the exemption request are authorized by the applicable nationwide permits;

ii. A folded copy of a site plan showing all activities authorized by the Nationwide permit and a statement regarding how each activity meets the criteria of the approved Nationwide permit; and

iii. The fee specified in N.J.A.C. 7:7A-16.

[i. Within 30 working days of submittal of the material required by N.J.A.C. 7:7A-2.7(g) the Department shall notify the applicant either:

(1) That the application package is not complete and, therefore, that the exemption will not apply. In this case, the activity would only be permitted if it were approved under an indivdiual or general permit pursuant to this chapter; or

(2) That the application is complete and that the applicant may therefore proceed on the assumption that the Corps will approve the activity as represented in the application. This notification will allow a person to proceed with the activity. However, should their application ultimately be disapproved or ruled incomplete by the Corps, the exemption would be null and void, and any activities undertaken by its authority would be considered violations of the Act and this chapter, and would be subject to penalties for violation from the date that the activity commenced, as set out by the Act and this chapter.]

SUBCHAPTER 3. GENERAL STANDARDS FOR GRANTING INDIVIDUAL FRESHWATER WETLANDS [PERMITS] AND OPEN WATER FILL PERMITS

7:7A-3.1 Requirements for granting individual freshwater wetland and open water fill permits

(a) The Department shall issue a freshwater wetlands or open water fill permit only if it finds that there is no practicable alternative to the proposed activity.

1. An alternative shall be practicable if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

2. An alternative shall not be excluded from consideration under this provision merely because it includes or requires an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

7:7A-[3.1]**3.2** Requirements for water-dependent activities

(a) The Department shall issue a freshwater wetlands **or open water fill** permit only if [it] **the proposed project meets the criteria at N.J.A.C. 7:7A-3.1 above and it** finds that the regulated activity is water-dependent or requires access to freshwater wetlands **or State open waters** as a central element of its basic function, and has no practicable alternative which would:

1. Not involve a freshwater wetland **or State open water** [and which would meet the requirements of (b) below]; or

2. Involve a freshwater wetland **or State open water**, but would have a less adverse impact on the aquatic ecosystem [and would meet the requirements of (b) below.]; **and**

[(b) To be acceptable, an alternative shall not] **3. Not** have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences for those attendant on the original proposal.

7:7A-[3.2]**3.3** Requirements for non-water dependent activities

(a) The Department shall issue a freshwater wetlands **or open water fill** permit for a non-water dependent activity only if it finds that the regulated activity has no practicable alternative which would:

1. Not involve a freshwater wetland **or State open water** [and which would meet the requirements of (b) below]; or

2. Involve a freshwater wetland **or State open water** but would have a less adverse impact on the aquatic ecosystem [and would meet the requirements of (b) below.]; **and**

[(b) To be acceptable, an alternative shall not] **3. Not** have other significant adverse environmental consequences, that is, would not merely substitute other significant environmental consequences for those attendant on the original proposal.

[(c)](**b**) **For special aquatic sites as defined in N.J.A.C. 7:7A-1.4 and all freshwater wetlands,** [It] **it** shall be a rebuttable presumption that there is a practicable alternative to any nonwater-dependent regulated activity, which alternative does not involve a freshwater wetland **or State open water**, and that such an alternative to any regulated activity would have less of an impact on the aquatic ecosystem.

[1. An alternative shall be practicable if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

2. An alternative shall not be excluded from consideration under this provision merely because it includes or requires an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.]

[(d)](**c**) In order to rebut the presumption established in [(c)] (**b**) above, an applicant for a freshwater wetlands permit must demonstrate all of the following:

1.-4. (No change.)

7:7A-[3.3]**3.4** Non-water dependent activities in freshwater wetlands of exceptional resource value **or in trout production waters**

(a) In order to rebut the presumption established for non-water dependent activities (see N.J.A.C. 7:7A-[3.2(c)] **3.3(b)**) when the activity will take place in wetlands of exceptional resource value **or in trout production waters**, an applicant, in addition to complying with the provisions of N.J.A.C. 7:7A-[3.2]**3.3**, shall also demonstrate either:

1. That there is a compelling public need for the proposed activity greater than the need to protect the freshwater wetland **or trout production water**, and that the need cannot be met by essentially similar projects in the region which are under construction or expansion, or which have received the necessary governmental permits and approvals; or

2. That denial of the permit would impose an extraordinary hardship on the applicant brought about by circumstances peculiar to the subject property.

7:7A-[3.4]**3.5** Standard requirements for all regulated activities **in freshwater wetlands and State open waters**

(a) In addition to the other requirements set forth in this subchapter, the Department shall issue a permit for a regulated activity only if the activity:

1. (No change.)

2. Will not jeopardize present or documented habitat or the continued existence of a local population of a threatened or endangered species listed pursuant to "The Endangered and Nongame Species Conservation Act," N.J.S.A. 23:2A-1 et seq., [or which are listed on the Federal endangered species list] **or those identified pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531 et al.**, as defined at N.J.A.C. 7:7A-1.4;

3.-7. (No change.)

8. [Is the public interest as determined pursuant to N.J.A.C. 7:7A-3.5 and;] **After assumption of the Federal 404 program, the project will not adversely affect properties which are listed or are eligible for listing on the National Register of Historic Places. If the permittee, before or during the course of authorized work, encounters a historic property that has not been listed or determined eligible for listing on the National Register, but which may be eligible for listing in the National Register, the permittee shall immediately notify the Department and proceed as directed by the Department;**

9. [Is otherwise lawful.] **Will not violate any provision of the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., or implementing rules at N.J.A.C. 7:13;**

10. Is otherwise lawful; and

11. Is in the public interest, as determined by the Department in consideration of the following:

[7:7A-3.5 Determination of whether activity is in the public interest

(a) In determining whether a proposed activity in any freshwater wetland is in the public interest, the Department shall consider the following:]

[1.] **i.** The public interest in preservation of natural resources and the interest of the property owners in reasonable economic development;

[2.] **ii.** The relative extent of the public and private need for the proposed regulated activity;

[3.]**iii.** Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods, to accomplish the purpose of the proposed regulated activity;

[4.]**iv.** The extent and permanence of the beneficial or detrimental effects which the proposed regulated activity may have on the public and private uses for which the property is suited;

[5.]**v.** The quality and resource value classification pursuant to N.J.A.C. 7:7A-2.5 of the wetland which may be affected and the amount of freshwater wetlands to be disturbed;

[6.]**vi.** The economic value, both public and private, of the proposed regulated activity to the general area; and

[7.]**vii.** The ecological value of the freshwater wetlands and probable **individual and cumulative** impacts on public health and fish and wildlife.

[SUBCHAPTER 4. GENERAL STANDARDS FOR GRANTING AN OPEN WATER FILL PERMITS

7:7A-4.1 General standards

The standards for granting or denying an open water fill permit shall be the same as those followed by the Army Corps of Engineers under section 404 of the Federal Act. These standards can be found at 40 C.F.R. 230 et seq. commonly known as the "404 (b)(1) Guidelines".]

SUBCHAPTER 4. GENERAL STANDARDS FOR GRANTING WATER QUALITY CERTIFICATES

7:7A-4.1 Jurisdiction

(a) This subchapter shall apply to all activities, including, but not limited to, construction or operation of any facility or building, which:

1. May result in any discharge of any kind into "waters of the United States" as defined at N.J.A.C. 7:7A-1.4; and

2. Require a Federal license or permit. Example of Federal permits or licenses include, but are not limited to, permits issued pursuant to Section 404 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C.A. 1251 et seq. (1987), permits issued pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899, 33 U.S.C. 403, or licenses issued by the Federal Energy Regulatory Commission under the Federal Power Act, 16 U.S.C.A. 1791 et seq.

(b) Unless obtained as an appendix to another State authorization pursuant to (c), (d) or (e) below, an Individual WQC shall be obtained for all activities described at (a) above, according to the procedures at N.J.A.C. 7:7A-4.3.

(c) If an activity described at (a) above requires a New Jersey Pollution Discharge Elimination System (NJPDES) permit pursuant to N.J.A.C. 7:14A and does not involve the discharge of dredge or fill material into waters of the United States, that is, does not require a Federal 404 permit, the review for the issuance of a WQC may be made concurrently with the review for the issuance of the NJPDES permit. If the decision is made to issue a permit, the WQC may be appended to the permit.

(d) If an activity described at (a) above requires a permit pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., the review for the issuance of a WQC may be made concurrently with the review for the issuance of the applicable permit. If the decision is made to issue a permit, the WQC may be appended to the permit.

(e) If an activity described at (a) above requires a permit pursuant to the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., or the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., the review for the issuance of a WQC may be made concurrently with the review for the issuance of either the CAFRA or Wetlands Act of 1970 permit. If the decision is made to issue a permit, the WQC may be appended to the permit.

7:7A-4.2 Standards for granting a Water Quality Certificate

(a) The Department shall issue a WQC for a project only if it can make the finding that all discharges will comply with the applicable provisions of Section 301, 302, 303, 306 and 307 of the Federal Act. In order for the Department to make this finding, the Department shall issue a WQC for a project only if the activity meets all applicable water quality standards pursuant to the Surface Water Quality Standards (N.J.A.C. 7:9-4) and any subsequent amendments thereto. For projects involving the deposition of fill into waters of the United States, the Department shall use the appropriate rules listed below to assess compliance with the antidegradation policies pursuant to N.J.A.C. 7:9-4.5(d):

1. For projects requiring either a CAFRA or Wetlands Act of 1970 permit, the standards outlined in the Coastal Resource and Development Policies pursuant to N.J.A.C. 7:7E-2 through 8;

2. For projects requiring a freshwater wetlands permit, the standards for granting Individual Freshwater Wetlands and State open water fill permits at N.J.A.C. 7:7A-3, or the general provisions for granting Statewide General Permits and authorization pursuant to N.J.A.C. 7:7A-9;

3. For projects not requiring any of the above-described permits and requiring an Individual WQC, the general provisions for granting Statewide General Permits and authorization pursuant to N.J.A.C. 7:7A-9 or the standards at (b), (c), (d), (e) and (f) below; or

4. For projects requiring more than one of the permits listed above, the most stringent standards of all of the applicable permits.

(b) The Department shall issue an Individual WQC only if it finds that there is no practicable alternative to the proposed project. It shall be a rebuttable presumption that a practicable alternative to the proposed project exists.

1. An alternative shall be practicable if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

2. An alternative shall not be excluded from consideration under this provision merely because it includes or requires an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed project.

(c) The Department shall issue an Individual WQC for a proposed project only if the project has no practicable alternative which would:

1. Not involve a water of the United States; or

2. Involve a different water of the United States but would have a less adverse impact on the aquatic ecosystem.

(d) In order to rebut the presumption established in (b) above, an applicant for an Individual WQC must demonstrate all of the following:

1. That the basic project purpose cannot reasonably be accomplished utilizing one or more other sites in the general region that would avoid, or reduce, the adverse impact on an aquatic ecosystem;

2. That the basic project purpose cannot reasonably be accomplished if there is a reduction in the size, scope, configuration, or density of the project as proposed;

3. That the basic project purpose cannot reasonably be accomplished by any alternative designs that would avoid, or result in less adverse impact on an aquatic ecosystem; and

4. That in cases where the applicant has rejected alternatives to the project as proposed due to constraints such as inadequate zoning, infrastructure, or parcel size, the applicant has made reasonable attempts to remove or accommodate such constraints.

(e) When the proposed project will impact waters of the United States which discharge into FW-1 waters or FW-2 trout production waters or their tributaries; or which are present habitats for threatened or endangered species, or those which are documented habitats for threatened or endangered species, and which remain suitable for breeding, resting, or feeding by these species during the normal period these species would use the habitat, an applicant, in addition to complying with the provisions of (d) above, shall also demonstrate either:

1. That there is a compelling public need for the proposed project greater than the need to protect the waters of the United States and that the need cannot be met by essentially similar projects in the region

which are under construction or expansion, or which have received the necessary governmental permits and approvals; or

2. That denial of the permit would impose an extraordinary hardship on the applicant brought about by circumstances peculiar to the subject property.

(f) In addition to the other requirements set forth in this subchapter, the Department shall issue an Individual WQC for a proposed project only if the project:

1. Will result in minimum feasible alteration or impairment of the aquatic ecosystem including existing contour, vegetation, fish and wildlife resources, and aquatic circulation of the freshwater wetland and hydrologic patterns of the watershed;

2. Will not jeopardize present or documented habitat or the continued existence of a local population of a threatened or endangered species listed pursuant to The Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., or those identified pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531 et al., as defined at N.J.A.C. 7:7A-1.4;

3. Will not result in the likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of the United States Department of the Interior or the Secretary of the United States Department of Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, 16 U.S.C. 1531 et seq.;

4. Will not cause or contribute to a violation of any applicable State water quality standard;

5. Will not cause or contribute to a violation of any applicable toxic effluent standard or prohibition imposed pursuant to New Jersey's Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.;

6. Will not violate any requirement imposed by the United States government to protect any marine sanctuary designated pursuant to the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. 1401 et seq.;

7. Will not cause or contribute to a significant degradation, as defined at 40 C.F.R. 230.10(c), of ground or surface waters; and

8. Is otherwise lawful.

7:7A-4.3 Application Procedures

(a) For projects requiring permits pursuant to the Coastal Area Facility Review Act (CAFRA), and the Wetland Act of 1970, the applicant for a WQC shall follow the application procedures found at N.J.A.C. 7:7, Coastal Permit Program Rules and at (d) below.

(b) For projects requiring a freshwater wetlands or open water fill permit, the applicant for a WQC shall follow the application procedures found at N.J.A.C. 7:7A-11, or at N.J.A.C. 7:7A-9 and at (d) below.

(c) For projects not requiring any of the above described permits and requiring an Individual WQC, the applicant for a WQC shall follow the application procedures found at N.J.A.C. 7:7A-11, or at N.J.A.C. 7:7A-9 and at (d) below and provide the applicable fee specified at N.J.A.C. 7:7A-16.

(d) In addition to the application requirements listed at (a) and (b) above, the following information shall be required at the discretion of the Department:

1. For projects involving the deposition of dredge or fill material, information regarding the quality and source of fill;

2. For projects involving dredging activities, information regarding:

i. The existing, proposed, and adjacent silt and sediment depths;

ii. The method of disposal of solid or liquid waste "generated";

iii. The method of dredging (that is, clam shell, drag line, etc.);

iv. The method of sedimentation (or turbidity) control;

v. The method of and location for dewatering spoils prior to disposal;

vi. The location of the spoils disposal site;

vii. Documentation regarding the environmental sensitivity of the dredge and dredge disposal site including, but not limited to:

(1) The location and description of all wetlands, special aquatic sites as defined at N.J.A.C. 7:7A-1.4, public use areas, wildlife refuges, and public water supply intakes that may require special protection or preservation; and

(2) A list of plants, fish, shellfish and/or wildlife in the proposed dredge or dredge disposal site which may be dependent on water quality and quantity;

viii. Chemical analyses on both water column and sediment samples may be required due to the nature and location of the project; and

3. For projects involving other discharges, pursuant to N.J.A.C. 7:7A-4.1(a)2, the Department may, when necessary due to the nature of the project, request additional scientific information or data necessary to determine compliance with the criteria at N.J.A.C. 7:7A-4.2.

7:7A-4.4 Review of Applications

(a) Upon receipt of an application for projects requiring a WQC and either a CAFRA permit or Wetland Act of 1970 permit, the Department shall follow the review procedures at N.J.A.C. 7:7 Coastal Permit Program Rules.

(b) For projects requiring a WQC and a Freshwater Wetlands or Open Water Fill permit, the Department shall follow the review procedures at N.J.A.C. 7:7A-12 and 13 or at N.J.A.C. 7:7A-9.

(c) For projects not requiring any of the above described permits and requiring an Individual WQC, the applicant for a WQC shall follow the review procedures at N.J.A.C. 7:7A-12 and 13 or at N.J.A.C. 7:7A-9.

(d) When an applicant requires multiple permits for a specific project, including a WQC, the Department shall issue a decision on the WQC application concurrently with the other applicable permits whenever possible. If a decision is made to issue a permit, the WQC may be appended to the permit. However, when this is not possible, or when the WQC is submitted independent of any other Department permits, the Department shall issue a decision on a WQC application within a maximum of 180 days of the submittal of a technically and administratively complete application.

7:7A-4.5 Mitigation

(a) The Department shall require as a condition of all Water Quality Certificates issued independently of other Division of Coastal Resources permits that all appropriate measures have been carried out to mitigate adverse environmental impacts as specified at N.J.A.C. 7:7A-14.

7:7A-4.6 Civil Administrative penalties and requests for adjudicatory hearings

(a) Penalty procedures and fines for Water Quality Certificate violations shall be the same as those for NJPDES permits, set forth at N.J.A.C. 7:14-8.

(b) For procedures to request adjudicatory hearings, see N.J.A.C. 7:7A-17.9.

SUBCHAPTER 5. EMERGENCY PERMITS

7:7A-5.1 Emergency permits

(a) The Department may issue a temporary emergency freshwater wetlands [or], open water fill permit, **or transition area permit** for a regulated activity only if:

1. An unacceptable threat to life, [or] severe loss of property, **or severe environmental degradation** will occur if an emergency permit is not granted; and

2. (No change.)

(b) The emergency permit shall incorporate, to the greatest extent practicable and feasible but not inconsistent with the emergency situation, the standards and criteria required for non-emergency regulated activities and shall:

1. Be limited in duration to the time required to complete the authorized emergency activity, not to exceed 90 days; and

2. Require [the restoration] **mitigation pursuant to N.J.A.C. 7:7A-14** of the freshwater wetland [or], State open waters, **or transition area** within this 90 day period, except that if more than 90 days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration only.

(c) The emergency permit may be issued orally or in writing, except that if it is issued orally, an [written emergency permit] **authorization letter** shall be issued within five days thereof.

(d) Notice of the issuance of the emergency permit shall be published and public comments received, in accordance with the provisions of 40 C.F.R. 124.10 and 124.11, and of the Federal Act and applicable State law, provided that this notification shall be sent **and mailed** no later than 10 days after issuance of the emergency permit.

(e) (No change.)

7:7A-5.2 Obtaining an emergency permit

(a) (No change.)

(b) After the State assumes the Federal 404 program, upon receiving the request for an emergency permit for a major discharge, the Director will notify the Regional Administrator prior to the issuance of an emergency permit and will send a copy of the written permit upon issuance.

[(b)](c) If verbal approval is given by the Director the emergency work may be started. [The verbal approval shall be verified by the Department in writing within three working days.] Department staff shall be kept informed by telephone (at least once per week) regarding the situation at the site. The Department will offer guidance and instructions in performing the work.

[(c)](d) If verbal approval is not given, the Department may issue a written emergency [permit] **approval** at any time within 15 days of the initial request.

[(d)](e) Within 15 days of the granting of an emergency [permit] **approval** which has been obtained and complied with in accordance with the Department's instructions, a complete freshwater wetlands [or], open water fill permit, **or transition area permit** application with appropriate fees and "as built" drawings shall be submitted to the Department for review. [A] **After public notice and opportunity for comment pursuant to N.J.A.C. 7:7A-12.4 and 12.1(a), and 11.1(a), a freshwater wetlands, or open water fill** permit, **or a transition area permit** shall [then] be issued by the Department [authorizing] **for** the activities covered by the emergency [permit] **approval**. This permit may contain conditions necessary to compensate for any adverse impacts to the freshwater wetlands, [or] State open waters, **or transition areas** resulting from the emergency permit or the activity. **If required by the Act, mitigation shall be provided pursuant to N.J.A.C. 7:7A-14.**

SUBCHAPTER 6. TRANSITION AREAS

7:7A-6.1 General provisions

(a) (No change.)

(b) Acts or acts of omission in a transition area that adversely affect a transition area's ability to serve as any of the areas described below at (b)1 to 7 shall be deemed inconsistent with the provisions of (a) above and with N.J.S.A. 13:9B-16a:

1.-5. (No change.)

6. A corridor area which facilitates the movement of wildlife to and from freshwater wetlands **and** from and to uplands, streams and other waterways; and

7. (No change.)

(c) (No change.)

(d) The standard width of a transition area adjacent to a freshwater wetland of exceptional resource value shall be 150 feet. This standard width shall only be modified through the issuance of a transition area [waiver] **permit** by the Department pursuant to the Act and this chapter. The types of transition area [waivers] **permits** are listed at N.J.A.C. 7:7A-7.1(c).

(e) The standard width of a transition area adjacent to a freshwater wetland of intermediate resource value shall be 50 feet. This standard width shall only be modified through the issuance of a transition area [waiver] **permit** by the Department pursuant to the Act and this chapter.

(f) A person shall not engage in activities [prohibited] **regulated** in a transition area as set forth at N.J.A.C. 7:7A-6.2 except pursuant to a transition area [waiver] **permit** issued by the Department pursuant to this chapter.

(g) A transition area shall be measured outward from a freshwater wetland boundary line on a horizontal scale perpendicular to the freshwater wetlands boundary line as shown in N.J.A.C. 7:7A-6, Appendix A, which is incorporated by reference in this chapter. The outside boundary line of a transition area shall parallel, that is, be equidistant from, the freshwater wetlands boundary line, unless a transition area [waiver] **permit** is approved under N.J.A.C. 7:7A-7.4 or N.J.A.C. 7:7A-7.5. The width of the transition area shall be measured as the minimum distance between the freshwater wetlands boundary and the outside transition area boundary.

(h) (No change.)

7:7A-6.2 [Prohibited] **Regulated** activities in transition area

(a) Except as provided in (b) and (c) below, a person shall no conduct the following [prohibited] **regulated** activities in transitior areas:

1.-5. (No change.)

(b) The following activities [may be conducted (that is,] are no [prohibited] **regulated**[)] in transition areas, provided that the activities are performed in a manner that minimizes adverse effects tc the transition area and adjacent freshwater wetlands:

1. (No change.)

2. Minor and temporary disturbances of the transition area resulting from, and necessary for, normal construction activities on lanc adjacent to the transition area;

i. For the purposes of this paragraph, "minor and temporary disturbances of the transition area resulting from, and necessary for normal construction activities on land adjacent to the transitior area," means activities which do not result in adverse environmenta effects on the transition area or on the adjacent freshwater wetlands and which activities do not continue for a period of more than six months. Normal construction activities which would be minor and temporary disturbances include, but are not necessarily limited to, the placement of scaffolds or ladders, the removal of human-made debris by non-mechanized means which does not destroy woody vegetation, [and] the placement of temporary construction supports**, and the placement of utility lines over or under a previously authorized, currently serviceable existing paved roadway**.

3. (No change.)

(c) Projects or activities which are exempt from the requirement of a freshwater wetlands permit pursuant to N.J.A.C. 7:7A-2.7[(a),] (b), (c) **and** (d)[, (f) and (g)] shall also be exempt from transition area requirements. These transition area exemptions are subject to the same limitations as the corresponding freshwater wetlands permit exemptions. These limitations can be found at N.J.A.C. 7:7A-2.7.

(d) To confirm that an activity or project is exempt, an exemption letter may be requested from the Department through the procedures established for freshwater wetlands permit exemptions in N.J.A.C. 7:7A-2.9, including submittal of the fee specified at N.J.A.C. 7:7A-16.[7.]

7:7A-6.3 Determination of transition areas due to the presence of freshwater wetlands on adjacent property

(a) Any person engaging in [prohibited] **regulated** activities in a transition area without Department approval shall be in violation of the Act and this chapter. A transition area may be located on a property even though the freshwater wetlands adjacent to that transition area are located on a different property (see N.J.A.C. 7:7A-6.1(h)).

(b) To determine whether a transition area is required on a parcel, where freshwater wetlands may exist on other nearby parcels, a person may follow the procedures at (c) below or follow those procedures at (b)1 through [7]**6** below as applicable.

1.-3. (No change.)

4. If the freshwater wetlands on the subject parcel or within 150 feet of the subject parcel property boundary are freshwater wetlands of exceptional resource value, a transition area exists on the subject parcel. In order to determine the size and shape of the transition area, obtain a delineation of the freshwater wetlands on neighboring land within 150 feet of the subject parcel boundary and determine the shape and size of the standard transition area on the subject parcel according to N.J.A.C. 7:7A-6.1(d).

i. To avoid the necessity of delineating exceptional resource value freshwater wetlands on other properties, a person may ensure compliance with transition area requirements arising from freshwater wetlands on other properties by refraining from [prohibited] **regulated** activities on the subject parcel within 150 feet of [its] **the wetland** boundary.

[5. If the freshwater wetlands on land within 150 feet of the subject parcel boundary are freshwater wetlands of intermediate resource value, determine whether any of the freshwater wetlands are within 50 feet of the subject parcel boundary.]

[6.]**5.** If there are freshwater wetlands of intermediate resource value on land within 50 feet of the subject parcel boundary, a tran-

sition area exists on the subject parcel. In order to determine the size and shape on the transition area, obtain a delineation of the freshwater wetlands on neighboring land within 50 feet of the subject parcel boundary and determine the shape and size of the standard transition area on the subject parcel according to N.J.A.C. 7:7A-6.1(e).

i. To avoid the necessity of delineating intermediate resource value freshwater wetlands on other properties, a person may ensure compliance with transition area requirements arising from freshwater wetlands on other properties by refraining from [prohibited] **regulated** activities on the subject parcel within 50 feet of [its] the wetland boundary.

[7.]**6.** It may be necessary to obtain written permission from neighboring property owners to investigate their land to within 150 feet of the subject parcel boundary. If a transition area [waiver] **permit** or letter of interpretation is needed, [written permission shall also include permission for the Department to enter the land to verify the information submitted to the Department in the application, and shall follow the form in N.J.A.C. 7:7A-7 Appendix B, which is incorporated by reference in this chapter.] **the applicant shall provide written notice to adjacent landowners that the Department may conduct an onsite field inspection as part of the application process. This notification shall be included as part of the notification process pursuant to N.J.A.C. 7:7A-7.6(a)7v, Application contents for transition area permits; N.J.A.C. 7:7A-8.3(a)10iv, Application for a letter of interpretation; N.J.A.C. 7:7A-9.5(b), Application for Statewide general permit authorization; or N.J.A.C. 7:7A-11.1(b)9, Application contents.**

(c) Instead of following the procedures at (b)1 to [7]**6** above, a person may ensure compliance with transition area requirements arising from freshwater wetlands on other properties by refraining from [prohibited] **regulated** activities on the subject parcel within 150 feet of the subject parcel property line.

[7:7A-6 Appendix B

Note: All information designated in parentheses in the agreement below shall be completed as specified therein prior to execution of the agreement.

Right of Entry Agreement For Wetlands and Transition Area Delineations

FROM: (adjacent property owner(s) name and address of residency), hereinafter referred to as GRANTOR,

TO: (property owner(s) name (i.e., the applicant) and address of residency), hereinafter referred to as the GRANTEE.

The GRANTOR does hereby grant to the GRANTEE, its agents, and the State of New Jersey, Department of Environmental Protection, the right to enter onto the property owned by the GRANTOR designated as (municipal block and lot, municipality, county and state of grantor's property) for the purpose of conducting a site inspection or survey to determine the presence, absence or boundaries of freshwater wetlands and transition areas. This information is required by the New Jersey Department of Environmental Protection, Bureau of Freshwater Wetlands, in order to comply with the requirements set forth in the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

The GRANTOR acknowledges that it has received good and sufficient consideration in return for granting the right to enter the above referenced premises for the purpose set forth above and, as such, the GRANTEE shall make available to the GRANTOR a copy of the information collected on the above referenced premises.

The GRANTEE agrees that any activities conducted pursuant to this agreement will be carried out in a manner to not unreasonably interfere with the GRANTOR'S use and occupation of the premises; and

Subsequent to any enty, GRANTEE agrees that it will restore any portion of the premises disturbed by such entry to its condition immediately prior to entry.

The State of New Jersey, for itself, its successors and assigns, agrees to indemnify and hold harmless the GRANTOR, its heirs, successors and assigns, from any and all liability, claims, damages and actions which may result from the negligent use of the site by the State of New Jersey subject to the following exceptions: (a) the State of New Jersey shall have no obligation to indemnify or hold harmless the GRANTOR, its heirs, successors or assigns, or any of them, for any claims or damages for which the State of New Jersey would have no liability under the New Jersey Tort Claims Act (N.J.S.A. 59:1 et seq.); (b) the liability, if any, of the State of New Jersey shall be subject to the availability of State of New Jersey funds; (c) the Agreement of the State of New Jersey to indemnify and hold harmless, as set forth in this paragraph, shall not apply to any claims, actions or damages which may arise out of, be occasioned by or result from any condition existing on, or which did exist on, the site at the time of the execution of this agreement, or at any time prior to the execution of this agreement.

This agreement shall take effect on the date executed by the

GRANTOR: _____

WITNESS: _____ BY: _____

GRANTEE

DATE _____

WITNESS: _____ BY: _____

GRANTOR

DATE _____ .]

SUBCHAPTER 7. TRANSITION AREA [WAIVERS] **PERMIT**

7:7A-7.1 General provisions

(a) A transition area [waiver] **permit** shall not be granted by the Department pursuant to the Act and this chapter unless it includes conditions as necessary to ensure that a particular project or activity results in minimal environmental impact and unless the purposes and functions of transition areas as set forth in N.J.A.C. 7:7A-6.1(a) and (b) are satisfied.

(b) Any person proposing to engage in a [prohibited] **regulated** activity within 150 feet of an exceptional resource value wetland, or within 50 feet of an intermediate resource value wetland shall apply to the Department for a transition area [waiver] **permit**.

(c) The Department may authorize the following through a transition area [waiver] **permit**:

1. (No change.)

2. A modification in the shape, but not the square footage, of the standard transition area through a transition area averaging plan pursuant to N.J.A.C. 7:7A-7.5. This [waiver] **permit** is available for transition areas adjacent to both exceptional and intermediate resource value freshwater wetlands;

3. A partial elimination of the standard transition area width along a portion of the freshwater wetland to allow special activities as established in N.J.A.C. 7:7A-7.4. This [waiver] **permit** is available for transition areas adjacent to both exceptional and intermediate resource value freshwater wetlands; or

4. Any combination of (c)1, 2, and 3 above.

(d) Reduction or modification of a transition area shall be based solely on the transition area adjacent to a particular freshwater wetland. For property with more than one freshwater wetland, the standard transition area width and the criteria for reducing or modifying the standard width shall be applied separately to each freshwater wetland. In no case may expansion of a transition area adjacent to one freshwater wetland compensate for reduction of a transition area adjacent to a separate freshwater wetland. However, one transition area [waiver] **permit** application may be used to request transition area [waivers] **permits** for more than one transition area located on a single property.

(e) In determining whether to issue or deny a transition area [waiver] **permit**, the Department shall consider information submitted by the applicant[,]; local, county, state, and federal government agencies; and interested citizens, and may consider any other available information.

(f) The Department's authorization of activities under a Statewide general permit, individual freshwater wetlands permit or mitigation

plan shall automatically include a transition area [waiver] **permit. In addition, the approval of a mitigation plan in a transition area as a result of either a permit approval or resolution of an enforcement action under the Act and Federal Act will automatically include a transition area permit.** No fee or application will be required for [this] **these** [waiver] **permits** [if it is requested concurrently with the freshwater wetlands permit]. The transition area [waiver] **permit** will allow encroachment only in that portion of the transition area bordering on that portion of the freshwater wetland in which the authorized activity is to take place which the Department determines is necessary to accomplish the authorized activity. Any additional [prohibited] **regulated** activities in the transition area not directly required for the authorized activity[,] shall require a separate transition area [waiver] **permit** from the Department pursuant to the Act and this chapter. [If the permitted activity involves the placement of fill in the wetland, the post-fill freshwater wetlands boundary will be considered to be the freshwater wetlands boundary for the purposes of this subsection.]

(g) Every approved transition area permit, except for those issued pursuant to (f) above and N.J.A.C. 7:7A-7.4, Special Activity Permits, shall be conditioned on the prior recording in the office of the clerk of the county in which the premises are situated of a Department-approved deed restriction of activities which may be undertaken in the transition area. The restriction shall run with the land and be binding upon the applicant and the applicant's successors in interest in the premises or in any part thereof and shall include the following:

1. The Department-approved restriction shall provide no regulated activities will occur in the modified transition area unless the Department finds that:

i. The regulated activity has no practicable alternative which would not involve a transition area; or

ii. There is compelling public need for the regulated activity greater than the need to protect the modified transition area, and that the activity has no practicable alternative which would:

(1) Involve a transition area but would have less adverse impact on the transition area and the adjacent wetland; and

(2) Not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences for those attendant on the original proposal.

7:7A-7.2 Exceptional resource value freshwater wetlands: standards for transition area width reduction

(a) This section addresses standards for overall width reduction of transition areas adjacent to exceptional resource value wetlands. A transition area adjacent to a freshwater wetland of exceptional resource value shall be 150 feet wide except pursuant to a transition area [waiver] **permit** approved by the Department. Except pursuant to a transition area [waiver] **permit** for access to an authorized activity, granted by the Department pursuant to N.J.A.C. 7:7A-7.1(f), a transition area adjacent to a freshwater wetland of exceptional resource value shall not be reduced to less than 75 feet wide[.] **unless the applicant demonstrates, to the satisfaction of the Department, that if the activity was instead proposed in the exceptional resource value wetland it would meet the standards for granting a freshwater wetlands permit.**

(b) The Department shall grant a transition area [waiver] **permit** to reduce a transition area adjacent to a freshwater wetland of exceptional resource value from the standard transition area width only if:

1. The proposed activity would have no substantial impact as determined pursuant to (c), (d) [and] **or** (e) below, on the adjacent freshwater wetland; or

2. The [waiver] **permit** is necessary to avoid an extraordinary hardship to the applicant, as described at [(f)] **(g)** below.

(c) For the purposes of N.J.A.C. 7:7A-7, a substantial impact shall be deemed to exist on a freshwater wetland of exceptional resource value if one or more of the following is true, unless the applicant demonstrates otherwise to the Department's satisfaction pursuant to [(g)] **(h)** below:

[1. The freshwater wetland is designated as an EPA priority wetland by USEPA;]

[2.]**1.** The freshwater wetland contains a present or "documented habitat for threatened or endangered species" as defined at N.J.A.C. 7:7A-1.4;

[3.]**2.** The freshwater wetland is located adjacent to FW1 waters or FW2 trout production waters;

[4.]**3.** The freshwater wetland is located adjacent to a component of either the Federal or State Wild and Scenic River System designated pursuant to 16 U.S.C. §1271 et seq. or N.J.S.A. 13:8-45 et seq.; or adjacent to a waterway officially designated by Congress or the State Legislature as a "study river" for possible inclusion in either system, while the river is in an official study status;

[5. Any soils in the transition area which are classified as acid soils as defined at N.J.A.C. 7:7A-5.10 will be disturbed by the proposed activity.] **4. The proposed project would cause the disturbance or exposure of acid producing deposits as defined at N.J.A.C. 7:13-5.10;**

[6.]**5.** The property is located adjacent to a local, county, State, or federal park, wildlife refuge, sanctuary, management area or area listed on the New Jersey Register of Natural Areas; or

[7.]**6.** The proposed activity or project includes one or more of the following:

i. Construction or expansion of a commercial or industrial facility within the following Standard Industrial Classification (SIC) major groups as designated in the Standard Industrial Classification Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States.

SIC	Industry Category
22	Textile Mill Products
23	Apparel
24	Lumber & Wood Products
25	Furniture & Fixtures
26	Paper & Allied Products
27	Printing, Publishing & Allied Industries
28	Chemicals & Allied Products
29	Petroleum Refining & Related Industries
30	Rubber & Miscellaneous Plastics Products
31	Leather & Leather Products
32	Stone, Clay, Glass & Concrete Products
33	Primary Metal Industries
34	Fabricated Metal Products
35	Machinery
36	Electrical & Electronic Machinery
37	Transportation Equipment
38	Measuring Analyzing & Controlling Instruments, Photographic, Medical & Optical Goods
39	Miscellaneous Manufacturing Industries
47	Transportation Services
48	Communications
49	Utilities (Electric, Gas, Sewer), excluding linear Equipment
51	Nondurable Goods Wholesaling
55	Automotive Dealers and Gasoline Service Stations
[76	Miscellaneous Repair Services;]

ii. Establishment of new or expansion of existing mineral extraction and/or processing operations. This includes mining or processing of construction sand, industrial sand, gravel, ilmenite, glauconite, limestone, or other minerals; or

iii. Construction **or expansion** of wastewater treatment or septic systems which are located [or discharge on-site.] **within 150 feet of an exceptional resource value wetland or within 100 feet of an intermediate resource value wetland;**

iv. Establishment of a new or expansion of an existing solid waste facility.

(d) The Department will consider the proposed project to have no substantial impact, and will issue a transition area [waiver] **permit** reducing the standard transition area width to 100 feet, if no activity [prohibited] **regulated** pursuant to N.J.A.C. 7:7A-6.2 is conducted within the reduced 100 foot transition area and if all of the following transition area characteristics and proposed project factors are true:

1. The property or proposed project or activity does not fall into any of the categories **indicating a substantial impact as listed** at N.J.A.C. 7:7A-7.2(c)1, 2, 4, **or** 6 [or 7].

2. (No change.)

3. The property has been part of an established ongoing farming, anching or silviculture operation" as defined at N.J.A.C. 7:7A-1.4 vithin the two years before the transition area [waiver] **permit** appli- :ation is submitted; **and**

4. The proposed project will include the planting of native trees ınd shrubs in the reduced 100 foot transition area pursuant to a plan ıpproved by the Department. The planting shall achieve no less than ın 85 percent area coverage in the entire 100 foot transition area and :nsure no less than 85 percent survival of the plants for no less than hree years[; and].

[5. The reduced 100 foot transition area is placed under permanent :onservation easement or restriction, recorded as part of the deed :o the property, which provides that the reduced transition area may ıot be improved, altered or in any way disturbed or cleared except ɔursuant to the Department-approved planting project.]

(e) The Department will consider the proposed project to have no substantial impact, and will issue a transition area permit reducing the standard transition area width to 75 feet, if all of the following transition area characteristics and proposed project factors are true:

1. The transition area to be reduced is adjacent to a tidally influenced wetland;

2. The applicant intends to construct a single family residence which will become their residence;

3. The area of proposed reduction is in an area of "infill residential development" meeting the following criteria:

i. On the same side of the road as the proposed project, at least 75 percent of the upland lots within 200 feet of the property line and adjacent to the wetlands are developed with residential or commercial uses;

ii. Lots are located directly adjacent to and have direct access to a paved public road (this criteria excludes flag lots); and

iii. Lots are serviced by a municipal wastewater treatment system;

4. The applicant shall demonstrate that the reduced transition area is equivalent or wider than that observed by the structures on the adjacent lots and that a wider transition area cannot be feasibly accommodated onsite through alternative design or a variance to local set back requirements;

5. All new bulkheads and retaining structures shall be located upland of the required transition area;

6. The reduced transition area shall be an undeveloped, vegetated area where native vegetation is preserved or indigenous coastal species are planted as appropriate; and

7. The reduction of the transition area will not result in adverse impacts to threatened or endangered species or their habitats.

[(e)](f) If the project, activities and/or property do not [meet any of the criteria] **result in a substantial impact as determined** in (c) [or (d)] above, the Department shall determine the transition area width based on the slope and dominant vegetational community type of the transition area and the development intensity of the proposed project, as described below at [(e)] (f) 1 to 3, as indices of impact on a freshwater wetland of exceptional resource value, using the matrix below.

Dominant Vegetational Community	Slope %	Development Intensity: Low (0-10%)	Moderate (> 10-40%)	High (> 40%)
Herbaceous	0-2	100	120	140
	>2	150	150	150
Scrub-Shrub	0-2	75	75	80
	>2-5	95	115	130
	>5	150	150	150
Forest	0-2	75	75	75
	>2-5	75	75	85
	>5-10	75	85	95
	>10-15	95	105	115
	>15-20	115	125	135
	>20	135	145	150

1.-3. (No change.)

[(f)](g) An extraordinary hardship to the applicant will be considered to exist when:

1. The subject property is not susceptible to a reasonable use as is **presently** developed **or** as authorized by the provisions of the Act and this chapter and this limitation results from unique and extreme circumstances peculiar to the subject property which:

i.-ii. (No change.)

2. For single family residential lots which are unbuildable due to the presence of transition areas, the Department may grant a transition area reduction permit to reduce the transition area to a minimum of 75 feet based on hardship if the following conditions are met:

i. The lot was subdivided prior to July 1, 1988 and was owned by the applicant since that time;

ii. The applicant has not received a permit for a reduction of a transition area based on this hardship criteria for the past five years;

iii. The applicant shall demonstrate that adjacent properties cannot be purchased for fair market value to create a buildable lot;

iv. The applicant shall demonstrate that the subject property was offered for sale at fair market value to adjacent landowners and that the offer was refused;

v. The subject parcel is not contiguous with an adjacent improved parcel which was owned by the applicant on July 1, 1988; and

vi. The applicant shall demonstrate that the subject property was offered for sale at fair market value to interested public or private conservation organizations and that the offer was refused.

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

7:7A-7.3 Intermediate resource value freshwater wetlands: standards for transition area width reduction

(a) This section addresses standards for overall width reduction of transition areas adjacent to intermediate resource value wetlands. A transition area adjacent to a freshwater wetland of intermediate resource value shall be 50 feet wide except pursuant to a transition area [waiver] **permit** approved by the Department. Except pursuant to a Department-approved transition area averaging plan issued pursuant to N.J.A.C. 7:7A-7.5, [or] a transition area [waiver] **permit** for access to an authorized activity granted by the Department pursuant to N.J.A.C. 7:7A-7.1(f), **or a special activity permit pursuant to N.J.A.C. 7:7A-7.4,** a transition area adjacent to a freshwater wetlands of intermediate resource value shall not be reduced to less than 25 feet wide.

(b) The Department shall grant a transition area [waiver] **permit** to reduce a transition area adjacent to a freshwater wetland of intermediate resource value from the standard transition area width only if:

1. The proposed activity would have no substantial impact, as determined pursuant to (c), (d) and (e) below, on the adjacent freshwater wetland; or

2. The [waiver] **permit** is necessary to avoid a substantial hardship to the applicant, as defined in [(e)] **(f)** below.

(c) For the purposes of this subchapter, a substantial impact shall be deemed to exist on a freshwater wetland of intermediate resource value if one or more of the following is true, unless the applicant demonstrates otherwise to the Department's satisfaction pursuant to N.J.A.C. 7:7A-7.2[(g)]**(h)**:

[1. The freshwater wetland is designated as an EPA priority wetland by the United States Environmental Protection Agency.]

Recodify 2.-5. as **1.-4.** (No change in text.)

[6.]**5.** The proposed activity or project includes one or more of the operations or activities at N.J.A.C. 7:7A-7.2(c)[7]**6**.

(d) The Department will consider the proposed project to have no substantial impact, and will issue a transition area permit reducing the standard transition area width to 25 feet, if all of the following transition area characteristics and proposed project factors are true:

1. The transition area to be reduced is adjacent to a tidally influenced wetland;

2. The applicant has not received a permit for a reduction of a transition area based on this hardship criteria for the past five years;

3. The area of proposed reduction is in an area of "infill residential development" meeting the following criteria:

i. On the same side of the road as the proposed project, at least 75 percent of the upland lots within 200 feet of the property line and adjacent to the wetlands are developed with residential or commercial uses;

ii. Lots are located directly adjacent to and have direct access to a paved public road (this criteria excludes flag lots); and

iii. Lots are serviced by a municipal wastewater treatment system;

4. The applicant shall demonstrate that the reduced transition area is equivalent or wider than that observed by the structures on the adjacent lots and that a wider transition area cannot be feasibly accommodated onsite through alternative design or a variance to local set back requirements;

5. All new bulkheads and retaining structures shall be located upland of the required transition area;

6. The reduced transition area shall be an undeveloped, vegetated area where native vegetation is preserved or indigenous coastal species are planted as appropriate; and

7. The reduction of the transition area will not result in adverse impacts to critical habitat as defined at (c)2 above.

[(d)](**e**) If the project, activities and/or property do not meet any of the criteria in (c) **or (d)** above, the Department shall determine the transition area width reduction from that of the standard transition area width based on the slope and dominant vegetational community type of the transition area and the development intensity of the proposed project, as described at N.J.A.C. 7:7A-[7.2(e)]**7.2(f)** 1 through 3, as indices of the impact on a freshwater wetland of intermediate resource value, using the criteria below:

1. A transition area [waiver] **permit** reducing the transition area width to 25 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described in N.J.A.C. 7:7A-[7.2(e)]**7.2(f)**1, of the standard transition area is a forested vegetational community;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-[7.2(e)]**7.2(f)**2, is less than or equal to one percent;

iii. The development intensity of the project, as determined N.J.A.C. 7:7A-[7.2(e)]**7.2(f)**3, is less than 20 percent.

2. A transition area [waiver] **permit** reducing the transition area width to 35 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described at N.J.A.C. 7:7A-[7.2(e)]**7.2(f)**1, of the standard transition area is a forested vegetational community;

ii. The slope of the standard transition area, as determine pursuant N.J.A.C. 7:7A-[7.2(e)]**7.2(f)**2, is less than or equal to thre percent; and

iii. The development intensity of the project, as determine pursuant N.J.A.C. 7:7A-[7.2(e)]**7.2(f)**3, is less than 40 percent.

3. A transition area [waiver] **permit** reducing the transition are width to 35 feet shall be granted if all of the following are true:

i. The dominant vegetational community type, as described a N.J.A.C. 7:7A-[7.2(e)]**7.2(f)**1, of the standard transition area is scrub shrub or herbaceous vegetational community;

ii. The slope of the standard transition area, as determine pursuant to N.J.A.C. 7:7A-[7.2(e)]**7.2(f)**2, is less than or equal to on percent; and

iii. The development intensity of the project, as determine pursuant to N.J.A.C. 7:7A-[7.2(e)]**7.2(f)**3, is less than 20 percent.

4. A substantial impact on the freshwater wetland shall be deeme to exist, and a transition area [waiver] **permit** shall not be grante pursuant to this section, if the conditions in (d)1, 2 or 3 above ar not met.

[(e)](**f**) A substantial hardship to the applicant shall be considered to exist when:

1. The subject property is not susceptible to a reasonable use [as is developed] as authorized by the provisions of the Act and this chapter and this limitation results from unique circumstances peculiar to the subject property which:

i.-ii. (No change.)

2. For single family residential lots which are unbuildable due to the presence of transition areas, the Department may grant a transition area reduction permit to reduce the transition area to a minimum of 25 feet based on hardship if the following conditions are met:

i. The lot was subdivided prior to July 1, 1988 and was owned by the applicant since that time;

ii. The applicant has not received a permit for a reduction of a transition area based on this hardship criteria for the past five years;

iii. The applicant shall demonstrate that adjacent properties cannot be purchased to create a buildable lot for fair market value;

iv. The applicant shall demonstrate that the subject property was offered for sale at fair market value to adjacent landowners and that the offer was refused;

v. The subject parcel is not contiguous with an adjacent improved parcel which was owned by the applicant on July 1, 1988; and

vi. The applicant shall demonstrate that the subject property was offered for sale at fair market value to interested public or private conservation organizations and that the offer was refused.

7:7A-7.4 Special activities: Standards for granting transition area [waivers] **permits**

(a) The Department will issue transition area [waivers] **permits** for certain special activities meeting the criteria in this section. [Waivers] **Permits** under this section are not subject to the criteria in N.J.A.C. 7:7A-7.2, 7.3 or 7.5. The Department will issue a transition area [waiver] **permit** to reduce or partially eliminate the standard transition area to allow for the special activities listed below at (a)1 through 3, provided the applicable conditions for each activity set forth below at (b), (c), (d), (e) and (f) are met; provided the project is designed to minimize impacts to the freshwater wetland and transition area; and provided the transition area continues to serve the purposes set out at N.J.A.C. 7:7A-6.1(a) and (b). Reductions or partial eliminations authorized under this section shall not require compensation pursuant to N.J.A.C. 7:7A-7.5. Except pursuant to a transition area [waiver] **permit** for access to an authorized activity issued by the Department pursuant to N.J.A.C. 7:7A-7.1(f), a transition area adjacent to freshwater wetlands of exceptional resource value shall not be reduced to less than 75 feet wide[.] **unless the applicant demonstrates, to the satisfaction of the Department, that if the activity was instead proposed in the exceptional resource value wetland it would meet the standards for granting a freshwater wetlands permit.** The special activities are:

1. Stormwater management facilities as defined at (b) below;

2. Linear development as defined at N.J.A.C. 7:7A-1.4; [and]

3. Activities performed in the transition area which are permitted under specific Statewide general permits listed in (e) below[.]; **and**

4. Activities performed in the transition area which can be defined as redevelopment as specified in (f) below.

(b) If the proposed activity is the construction of a stormwater management facility, the Department will approve a transition area [waiver] **permit** for the reduction or partial elimination of a transition area if there is no feasible alternative on-site location for the facility.

1.-3. (No change.)

(c) If the proposed activity is the construction of a linear development as defined at N.J.A.C. 7:7A-1.4, the Department will approve a further transition area [waiver] **permit** for the reduction or partial elimination of transition area if there is no feasible alternative location for the linear development.

1. An alternative location shall be considered feasible when the proposed linear development can be located outside of the transition area by:

i. Modifying the route of the linear development to avoid **or reduce impacts to** freshwater wetlands and transition areas; or

ii. Reducing the width of the linear development.

2.-3. (No change.)

(d) (No change.)

(e) No substantial impact will be deemed to exist on a freshwater wetland, and a transition area [waiver] **permit** will be granted for the reduction or partial elimination of transition area in order to conduct activities in the transition area which are covered by the Statewide general permits at N.J.A.C. 7:7A-9.2(a) 2, 3, 4, 8, 9, 10, 11, 12, [13,] 14, 15, 16, [and] 17, **18, 19, 20, 21, and 25.**

1. With the exceptions listed below at (e)1i through iii, [All] all limitations and conditions contained in the description of Statewide general permit activities at N.J.A.C. 7:7A-9.2(a) will also apply to those activities when authorized by a permit pursuant to this subsection. For example, [those Statewide general permit activities that are prohibited in EPA priority wetlands will also be prohibited in the transition areas adjacent to EPA priority wetlands. Also, for example,] where the Statewide general permit at N.J.A.C. 7:7A-9.2(a)10, minor road crossings, is limited to 0.25 acres of wetland or open water disturbance, the special activity [waiver] **permit** for this activity will be limited to 0.25 acres of transition area disturbance. **The following exceptions to this provision will apply:**

i. For a special activity transition area permit authorizing activities listed in Statewide general permit number 10, the 200 cubic yard fill limitation does not apply;

ii. For a special activity transition area permit authorizing construction of stormwater structures that include a swale designed for water quality as listed in Statewide general permit number 11, the limitation at N.J.A.C. 7:7A-9.2(a)11vii, concerning backfill, does not apply; and

iii. For a special activity transition area permit authorizing activities listed in Statewide general permit number 16, the 10 cubic yard fill limitation does not apply.

2. [In addition, the] **The** limits at N.J.A.C. 7:7A-9.4 on the use of multiple Statewide general permits in freshwater wetlands also apply to the use in transition areas of multiple special activity [waivers] **permits** issued under this subsection. For example, pursuant to N.J.A.C. 7:7A-9.4(d), an approval under the Statewide general permit at N.J.A.C. 7:7A-9.2(a)8 will be authorized only once for a single property. Likewise, only one special activity [waiver] **permit** for the activity covered by that Statewide general permit shall be approved in a transition area.

3. The authorization of the special activity permits for transition areas listed under this subsection does not eliminate the possibility that activities in freshwater wetlands or State open waters may be authorized under Statewide general permits. However, the combined acreage of wetlands and transition areas to be disturbed under Statewide general permit(s) and special activity permits pursuant to this subsection onsite shall not exceed a total of one acre. For example, a project may qualify for a special activity permit involving 0.25 acres for a minor road crossing through the transition area, a Statewide general permit for a second road crossing through the wetlands at a different location involving 0.25 acres, and a Statewide general permit authorizing 0.5 of fill in a non-surface water connected wetland for a total impact of 1.0 acre of transition area and wetland disturbance.

(f) A special activity permit may be granted for the reduction or partial elimination of a transition area in order to allow redevelopment, as defined at N.J.A.C. 7:7A-1.4, of a transition area, if the following conditions are met:

1. The applicant must demonstate to the satisfaction of the Department that the proposed activity will not result in substantial impact to the adjacent freshwater wetland;

2. The area of proposed activity must be covered by pavements or impervious surfaces legally existing in the transition area prior to July 1, 1989, or permitted under the Act. This does not include expansion of impervious surfaces or any additional disturbance of the transition area; and

3. Where practicable, a portion of the developed transition area adjacent to the wetland shall be revegetated and restricted pursuant to 7:7A-7.5(d).

[(f)(g) A person shall not commence a [prohibited] **regulated** activity in a transition area pursuant to (e) above prior to obtaining a transition area [waiver] **permit** from the Department pursuant to the Act and this chapter. The limitations of N.J.A.C. 7:7A-7.2(c) and 7.3(c) do not apply to transition area [waivers] **permits** granted under (e) above.

7:7A-7.5 Transition area [waivers] **permits**, averaging plans: Standards for modifying the shape of a transition area

(a) A transition area averaging plan, a type of transition area [waiver] **permit**, is a plan to modify the overall shape of the transition area without reducing the total square footage of the transition area. A transition area averaging plan may be approved for activities adjacent to either an intermediate or exceptional resource value freshwater wetlands. An example of a transition area averaging plan is shown in N.J.A.C. 7:7A-7 Appendix A, which is incorporated by reference in this subchapter.

(b) Subject to **the limitations contained in this subsection and to** the limitations of (c) and (d) below, an applicant may change the shape of a transition area consistent with a Department approved transition area averaging plan. Portions of the required transition area width may be reduced provided that the reduction in width is compensated, on a square footage basis, by the expansion of another portion of the same transition area on [the same] property **owned or legally controlled by the applicant**, and provided that the resulting transition area continues to serve the purposes of a transition area set forth in N.J.A.C. 7:7A-6.1(a) and (b).

1. [If any of the following conditions exist, the transition area averaging plan shall be deemed to result in a transition area which does not] **The Department shall not approve any transition area averaging plan for exceptional resource value wetlands if the following site conditions exist because the Department has determined that the resultant transition area will no longer** serve the purposes of a transition area set forth in N.J.A.C. 7:7A-6.1(a) and (b)[, and, therefore, the transition area averaging plan shall not be approved]:

i.-ii. (No change.)

iii. The transition area averaging plan proposes to:

[(1) Reduce the transition area to less than 10 feet wide for a continuous distance of 100 linear feet or more along the freshwater wetlands boundary;

(2) Place structures or impervious surfaces within 20 feet of the freshwater wetlands; or]

[(3)](1) Compensate for the reduction of the transition area by increasing the width of any portion of the transition area to more than 50 percent of the stardard transition area width[.];

(2) Reduce the transition area in order to place or construct a new septic system which discharges onsite; or

(3) Reduce the transition area to place or construct an outfall structure that is discharging or will discharge unfiltered or otherwise untreated stormwater into the adjacent wetlands.

2. For an exceptional resource-value-wetland, in the case where an averaging plan is applied for in conjunction with a transition area reduction, regardless of the reduction width approved, the averaging plan shall be calculated on a minimum 100 foot width; or

3. In no case shall the width of any part of a transition area adjacent to a freshwater wetland of exceptional resource value be reduced to less than 75 feet except pursuant to N.J.A.C. 7:7A-7.1(f) (transition area

permits for access to authorized activities), or N.J.A.C. 7:7A-7.2(a) (standards for width reduction) unless the applicant demonstrates, to the satisfaction of the Department, that if the activity was instead proposed in the exceptional resource value wetland it would meet the standards for granting a freshwater wetlands permit.

4. The Department shall not approve any transition area averaging plan for intermediate resource value wetlands if the following site conditions exist because the Department has determined that the resultant transition area will no longer serve the purposes of a transition area set forth in N.J.A.C. 7:7A-6.1(a) and (b):

i. The slope of the existing, pre-activity transition area where the reduction is proposed is greater than 25 percent;

ii. The transition area averaging plan proposes to:

(1) Reduce any portion of the transition area to less than 10 feet:

(2) Reduce the transition area to less than 25 feet in areas of critical habitat;

(3) Reduce the transition area to less than 10 feet wide for a continuous distance of 100 linear feet or more along the freshwater wetlands boundary;

(4) Compensate for the reduction of the transition area by increasing the width of any portion of the transition area to more than 50 percent of the standard transition area width;

(5) Reduce the transition area to place or construct a new septic system in the transition area which discharges onsite;

(6) Reduce the transition area to place or construct an outfall structure that is discharging unfiltered or otherwise untreated stormwater into the adjacent wetlands;

(7) Place structures, impervious surfaces or stormwater management facilities as defined at N.J.A.C. 7:7A-7.4 within 20 feet of the freshwater wetlands; or

(8) Reduce the transition area to less than 25 feet within the drainage basins of currently existing or proposed National Wildlife Refuges.

(c) (No change.)

[(d) In no case shall a transition area of exceptional resource value cover a total square footage that is less than the square footage which would result from a transition area with a uniform 100 foot width. In no case shall the width of any part of a transition area adjacent to a freshwater wetland of exceptional resource value be reduced to less than 75 feet except pursuant to N.J.A.C. 7:7A-7.1(f) (transition area waivers for access to authorized activities).]

7:7A-7.6 Application contents for transition area [waivers] **permits**

(a) The application for a transition area [waiver] **permit** shall include the applicable fee for the review and processing of a transition area [waiver] **permit** application specified at N.J.A.C. 7:7A-[16.6] **16** and five copies of the following information:

1. A completed [FW-1] application form, obtainable at the address at N.J.A.C. 7:7A-1.3, filled out as directed for a transition area [waiver] **permit** in the instructions accompanying the application form;

2. A written description of the location of the proposed activity and property including county, municipality, municipal lot(s), block(s) and street address;

3. A copy or photocopy of a portion of the **U.S. Geodetic Survey** (U.S.G.S.) 7.5 minute guadrangle map (available from the Department's Maps and Publications Office, CN 402, Trenton, N.J., 08625) [showing the location of] **with** the property **clearly outlined** [and its general vicinity, indicating and labeling the location of the proposed activity and the property boundaries]**, and a determination of the State Plane Coordinates for the center of the property.**;

4. A **folded** preliminary site plan or subdivision map of the property, or **folded** out-bound survey map of the property if no preliminary site plan or subdivision map exists, clearly identifying all proposed activities on the entire property, all existing structures on the property, and the freshwater wetland boundary **as verified through a letter of interpretation**;

i. Note: [the] **If the** freshwater wetlands boundary shown on the site plan or subdivision map **has not been verified by a letter of interpretation, the freshwater wetland boundary** shall be visibly flagged and/or staked in the field [according to the procedure at N.J.A.C. 7:7A-8.2(c)7].

5. A detailed written description of the proposed activity or ac tivities, describing the total area to be modified by the entire project and the total square footage of the transition area potentially af fected, either temporarily or permanently.

6. A certified mail return receipt card, signed by the receiver, from the U.S. Post Office, showing that a complete copy of the submitta to the Department requesting a transition area [waiver] **permit**, in cluding all materials required by this subsection, has been submitte to the clerk of each municipality in which the [prohibited] **regulate** activity is proposed to take place.

7. A certified mail return receipt card, signed by the receiver, from the U.S. Post Office, showing that a written notice has been for warded to the [municipal clerk] **municipal construction official**, th environmental commission, or any other public body with simila responsibilities, [and] **the** planning board of each municipality[, anc the planning board of each county] in which the activity is to occu **and all landowners within 200 feet of the subject property**. The writter notice shall include, at a minimum, the following information anc statement:

i.-iv. (No change.)

v. The following statement:

"This letter is to provide you with legal notification that the refer enced property owner is applying to the [Bureau of Freshwate Wetlands,] Division of Coastal Resources, Department of En vironmental Protection, for a transition area [waiver] **permit**. The rules governing transition areas are found at N.J.A.C. 7:7A **(Freshwater Wetlands Protection Act Rules)**.

A transition area [waiver] **permit**, if approved by the Department, will allow certain [otherwise prohibited] **regulated** activities, as defined in N.J.A.C. 7:7A-6.2, to occur in a transition area. A transition area is an area adjacent to a freshwater wetlands which minimizes adverse environmental impacts on the freshwater wetlands and serves as an integral component of the freshwater wetlands ecosystem. A transition area can extend up to 150 feet from the freshwater wetlands boundary depending on the resource value classification of the freshwater wetlands.

A copy of the application can be viewed at the **Municipal Clerk's Office or by appointment at the** address below during normal business hours. The Department welcomes comments on the transition area [waiver] **permit** application. Procedures for the Department's review of transition area [waiver] **permit** applications can be found at N.J.A.C. 7:7A-7.7. Please submit your written comments within 15 days of receiving this letter along with copy of this letter to:

Bureau of [Freshwater Wetlands] **Regulation**
Division of Coastal Resources
New Jersey Department of Environmental Protection
CN 401
Trenton, New Jersey 08625
att: (County in which the property is located) Section Chief

As part of the Department's review of this application, Department personnel may perform a site inspection on your property. This site inspection will involve only that area of your property within 150 feet of the applicant's property line. This site visit will involve a visual inspection and possibly minor soil borings using a 4" hand auger. The inspection will not result in any damage to vegetation or to improvements on your property.

The Department will notify the environmental commission or any other public body with similar responsibilities, and the planning board of each municipality and each [county planning board] **municipal construction official** in which the activity is to occur of the Department's final decision concerning this transition area [waiver] **permit** application";

8. Written consent by the applicant to allow access to the subject property by representatives or agents of the Department for the purpose of conducting site inspections or surveys of the freshwater wetlands and transition areas thereon [and, if necessary, written consent by neighboring property owner(s), following the form provided in N.J.A.C. 7:7A-7 Appendix B, to allow access to the neighboring property by representatives or agents of the Department for the purpose of conducting site inspections of the freshwater

vetlands and transition areas on the property (see N.J.A.C. 7:7A-6.3(b)7)]; and

9. Any information establishing a claim of hardship as determined pursuant to N.J.A.C. 7:7A-7.2[(f)](g) or 7.3 [(e)] (f), if applicable.

(b) If the freshwater wetlands boundary on the property has not been confirmed or delineated by the Department through a letter of interpretation pursuant to N.J.A.C. 7:7A-8 and the property is greater than one acre, the applicant shall also provide as part of the transition area [waiver] **permit** application the information required in N.J.A.C. 7:7A-[8.2(c) 2, 5, 6, 7, 8, and 9] **8.3(a) and 8.3(b)2,** Application] **concerning application** for letters of interpretation.

(c) In addition to the information required in (a) and (b) above, the following information shall be submitted depending on the type of transition area [waiver(s)] **permit(s)** requested in the application:

1. To reduce the standard transition area which pursuant to N.J.A.C. 7:7A-7.2 and 7.3 (except pursuant to 7.2(d)):

i. A description of the dominant vegetational community in the standard transition area, as described at N.J.A.C. 7:7A-7.2[(e)](f)1;

ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2[(e)](f)2; and

iii. The development intensity of the proposed project, as determined pursuant to N.J.A.C. 7:7A-7.2[(e)](f)3.

2. (No change.)

3. To reduce the standard transition area width pursuant to N.J.A.C. 7:7A-7.2(e), a proposal containing:

i. The location of all existing adjacent structures, municipal wastewater treatment systems, paved roadways and other development adjacent to the wetlands;

ii. Documentation regarding the response to all applications for variances to local set back requirements; and

iii. Plans for proposed planting in reduced transition area if currently unvegetated.

[4. For a transition area averaging plan pursuant to N.J.A.C. 7:7A-7.5, a statement that includes:

i. The total square footage of the standard transition area;

ii. The total square footage of the transition area to be disturbed by the proposed project;

iii. The total square footage proposed for transition area reduction, and proposed for transition area expansion in compensation for the proposed reduction, pursuant to the transition area averaging plan; and

iv. A site plan showing and clearly labeling the standard transition area, the proposed area of reduction of the standard transition area, and the proposed areas adjacent to the standard transition area that will be added to the standard transition area as square footage compensation for the reduction. The transition area shown on the site plan shall be reproducible in the field.]

[3.]**4.** For a special activity transition area [waiver] **permit** for the construction of a stormwater management facility or a linear development pursuant to N.J.A.C. 7:7A-7.4:

i. (No change.)

5. For a special activity transition area permit for a general permit activity pursuant to N.J.A.C. 7:7A-7.4(e):

i. All of the information required for determining compliance with the criteria of the specific general permit activity pursuant to N.J.A.C. 7:7A-9.2(a).

6. For a special activity transition area permit for redevelopment of a transition area pursuant to N.J.A.C. 7:7A-7.4(f):

i. Plans showing the location and extent of existing impermeable surfaces in relation to transition area; and

ii. Plans showing the location and extent of proposed development and attendant features including, but not limited, to septic systems discharging onsite, and stormwater outfalls and a proposed mechanism to treat stormwater runoff prior to leaving the site.

7. For a transition area averaging plan pursuant to N.J.A.C. 7:7A-7.5, a statement that includes:

i. The total square footage of the standard transition area;

ii. The total square footage of the transition area to be disturbed by the proposed project;

iii. The total square footage proposed for transition area reduction, and proposed for transition area expansion in compensation for the proposed reduction, pursuant to the transition area averaging plan; and

iv. A site plan showing and clearly labeling the standard transition area, the proposed area of reduction of the standard transition area, and the proposed areas adjacent to the standard transition area that will be added to the standard transition area as square footage compensation for the reduction. The transition area shown on the site plan shall be reproducible in the field.

(d) Applicants shall perform recordkeeping activities for transition area [waiver] **permit** applications according to the requirements at N.J.A.C. 7:7A-11.2.

(e) All transition area [waiver] **permit** applications shall be signed according to the signatory requirements at N.J.A.C. 7:7A-11.3.

(f) All transition area application fees shall be paid according to the requirements set forth for payment of permit fees at N.J.A.C. 7:7A-16.

7:7A-7.7 Procedure for review of transition area [waiver] **permit** applications

(a) Within 30 days of the receipt of an application for a transition area [waiver] **permit**, the Department shall review the application for completeness and **may return all materials contained in a deficient application with a** [make any necessary] request[s] for additional information, or declare the application complete. If the application does not include the fee specified at N.J.A.C. 7:7A-16, no action shall be taken by the Department under this section, the submittal will not be considered an application, and completeness review will not begin.

(b) (No change.)

(c) Except as indicated in (d) and (h) below, the Department shall issue or deny a transition area [waiver] **permit** within 90 days of receiving a complete transition area [waiver] **permit** application or within 90 days after receipt of the requested additional information or clarification sufficient for the application to be considered complete.

(d) If the transition area [waiver] **permit** application is submitted together with an individual freshwater wetlands permit application concerning the same property, the Department shall approve or deny the transition area [waiver] **permit** within the time period set forth in N.J.A.C. 7:7A-12 for the approval or denial of the individual freshwater wetlands permit application.

(e) Applications may be cancelled by the Department or withdrawn, amended, or resubmitted by the applicant pursuant to N.J.A.C. 7:7A-[12.7] **7.10.**

(f) When a transition area [waiver] **permit** is issued pursuant to this subchapter, the Department shall send copies to all municipal and county agencies which received copies of the transition area [waiver] **permit** application.

(g) The Department will provide notice of application for a transition area [waiver] **permit**, the status of all applications, and the final decision concerning all applications in the DEP Bulletin, as set forth in N.J.A.C. 7:7A-12.4.

1. Copies of all transition area [waiver] **permit** applications will be available for public review by interested persons **at the municipal clerk's office and** in the offices of the Department in Trenton (see N.J.A.C. 7:7A-1.3 for address) **by appointment** during normal business hours.

(h) Within 20 days of publication of the notice of application in the DEP Bulletin, interested persons may request in writing that the Department hold a public hearing on a particular application. The Department will set a time, place and date for the public hearing [within 15 days of] **after** the close of the 20 day hearing request period, **and shall so notify the applicant.** [and] **The Department** will hold the public hearing within 60 days from the close of the 20 day period. **The hearing shall be in the county wherein the transition area is located whenever practicable. The applicant is responsible for the cost of the hearing.**

1. The Department may issue or deny a [waiver] **permit** without a public hearing unless there is a significant degree of public interest in the application [as manifested by written requests for a hearing

submitted within the 20 day hearing request period]. If the Department grants a hearing, the application shall not be considered complete until 15 days after the public hearing.

[2. If the Department grants a hearing, the Department shall set a date, time and location for the public hearing and shall so notify the applicant. The hearing shall be in the county wherein the transition area is located whenever practicable.]

[3.]**2.** The Department and the applicant shall follow the public hearing procedures for freshwater wetlands permits established N.J.A.C. 7:7A-[12.5(e) through 12.5(j)] **12.4(d) through (i).**

(i) The Department shall establish conditions in transition area [waivers] **permits** as required on a case-by-case basis, to assure compliance with all applicable provisions of this chapter and the Act.

7:7A-7.8 Hearings and appeal

(a) The applicant or other affected party, if aggrieved by the decision to authorize the activities specified in the transition area permit, may request a hearing on this decision pursuant to N.J.A.C. 7:7A-12.7.

7:7A-[7.8]**7.9** Duration, effect, modification and transfer of transition area [waivers] **permits**

(a) A transition area [waiver] **permit** issued by the Department shall be effective for a fixed term of five years.

(b) [A transition area waiver shall be considered valid after the five year term provided that construction of the authorized project, excluding site preparation, began on or before three years from the transition area waiver's date of issue and provided that construction is performed on a continuous basis after the expiration of the five year term.] **If construction is begun during the valid five year term of the premit and performed on a continuous basis, the applicant may apply for an extension of the effective date of the permit.**

(c) [The term of a transition area waiver shall not exceed five years except as described at (b) above. However, a transition area waiver may be renewed by submitting a new application in accordance with the procedures set forth in the subchapter.] **If construction does not begin in the transition area within the five year term of the permit, a new permit application will be required.**

(d) The issuance of a transition area [waiver] **permit** does not convey property rights of any sort, or any exclusive privilege.

[(e) A transition area waiver may be transferred by the permittee to a new owner or operator only if the transition area waiver has been modified or revoked and reissued as described at (f) below to identify the new permittee and incorporate any additional requirements the Department determines to be necessary under the Act and this chapter.

(f) A transition area waiver may be modified, revoked, or reissued in accordance with the procedures for permits at N.J.A.C. 7:7A-13.6 for the following causes:

1. For modification as established at N.J.A.C. 7:7A-13.7;

2. For modification or revocation and reissuance as established at N.J.A.C. 7:7A-13.8; or

3. For minor modifications as established at N.J.A.C. 7:7A-13.9.]

(e) In the event of rental, lease, sale or other conveyance of the site by the permittee, the permit shall be continued in force and shall apply to the new tenant, lessee, owner or assignee so long as there is no change in the site, proposed construction or proposed use of the facility, as described in the original application, and as long as a permit modification pursuant to N.J.A.C. 7:7A-13 has been approved.

7:7A-7.10 Cancellation, withdrawal, resubmission and amendment of applications

(a) Applications may be cancelled by the Department; or withdrawn, amended, or resubmitted by an applicant.

(b) If an application is not complete for final review within 60 days of a request for additional information, the Department shall send a letter canceling the application and stating that the application will be purged from Department files and that a new application will be required to reactivate the Department's review. If the applicant sends the Department a letter documenting good cause for not supplying the requested information within the 60 day period the Department will grant an automatic extension of 30 days.

1. All fees submitted with an application subsequently cancelled shall be non-refundable.

(c) An applicant may withdraw an application at any time in th application review process. All fees submitted with such applicatio are non-returnable when a significant portion of the review has bee completed. In some cases however (see (d) below) the fees may b credited toward future applications.

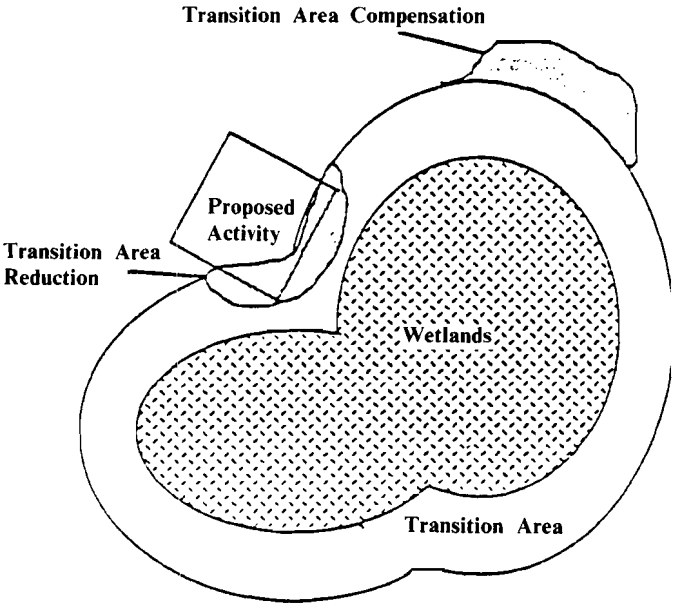
(d) If an application is cancelled, denied or withdrawn, the applica may resubmit an application for a revised project on the same site. Th resubmitted application will be treated as a new application, althoug references may be made to the previously submitted application. A ne fee will be required unless application is resubmitted within one ye of the date of denial or withdrawal, in which case the original perm fee may be credited to the new application.

(e) A permit application may be amended at the applican's discretio at any time as part of the permit review process. Copies of amendmen and amended information shall be distributed by the applicant to th same persons to whom copies of the initial application were distribute All amendments to pending applications shall constitute a new sub mission and may at the Department's discretion require reinitiation o the entire review process.

OAL NOTE: The following Appendix A to N.J.A.C. 7:7A-7 wa proposed and adopted by the Department of Environmental Protec tion (see 21 N.J.R. 596(a) and 1858(a)) but was inadvertantly omitte from the Code. By inclusion in this proposal, that error will b rectified.

7:7A-7 Appendix A

Example of a transition area averaging plan



The square footage in the compensation area is equal to that of the reduction area.

SUBCHAPTER 8. LETTERS OF INTERPRETATION

7:7A-8.1 Purpose

[A person proposing to engage in a regulated activity in a freshwater wetland may, prior to applying for a freshwater wetlands permit, request from the Department a letter of interpretation to establish whether the site of a proposed activity is located in a freshwater wetland.]

(a) A person proposing to engage in a regulated activity in a freshwater wetland and/or open water, or in a regulated activity which requires a transition area permit, or desiring the information for other purposes, may request from the Department a letter of interpretation (LOI) to establish either the presence or absence, of freshwater wetlands, State open waters or transition areas or the verification of the boundary of wetlands, open waters, and/or transition areas on a project site. The information provided by this letter then may be used

ı applying for a permit from the Department, for activities proposed ı a freshwater wetland, State open water, or transition area.

(b) In addition to the information, in (a) above if the subject property as wetlands within or adjacent to its boundaries, or transition areas ɔcated within its boundaries, a resource value classification will be rovided with the letter of interpretation.

(c) A letter of interpretation only provides information on the lo-ation or presence of wetlands, open waters, and/or transition areas nd does not grant an approval to the applicant to conduct any regulated ctivities.

:7A-8.2 [Application for letters of interpretation] **Types of letters of interpretation**

[(a) Individual property owners or their agents may request in ′riting a letter of interpretation to determine the presence or absence f wetlands or the verification or delineation of a wetland boundary ne.

(b) For a parcel of land or a property one acre or less in size, the ɔllowing information shall be submitted:

1. Name of owner(s) of property, municipality, county, lot and lock number(s);

2. On an out-bound survey of the property, identification of all oil types (from United States Department of Agriculture, Soil Conervation Service County Soil Survey);

3. A map of the region locating the property;

4. Photographs of the property;

5. Verification that a registered mail notice and a complete copy ɔf the application has been forwarded to the clerk of the municipality nd that a registered mail notice has been forwarded to the enironmental commission, if any, and planning board, if any, of the nunicipality in which the determination is to be made, and the ɔlanning board of the county in which the determination is to be nade.

6. A fee pursuant to N.J.A.C. 7:7A-16, and as indicated on the ɔrinted fee schedule which is available from the Department.

(c) A request for a letter of interpretation for properties other than hose discussed in (a) above must be in writing and contain the ollowing information:

1. Name of owner(s) of property, municipality, county, lot and ɔlock number(s), and project name, if any, and name of the waterhed;

2. On an out-bound survey of the property, the topography and oil types (from United States Department of Agriculture, Soil Conervation Service County Soil Survey). The locations of all soil pits ɔr borings, if applicable, shall be indicated on the survey and ıumbered. Soil logs should be presented with an indication of the lepth to the seasonal high water table Soil borings must be to a ninimum depth of 20 inches, on transacts perpendicular to the vetlands boundary, starting in the definite wetlands area and moving owards the uplands. In wetlands with atypical characteristics such ıs sandy soils, or in wetlands which have been disturbed by human ıctivities or as otherwise deemed appropriate, the Department may equire deeper borings as needed;

3. Verification that registered mail notice has been forwarded to he environmental commission (if any), and planning board of the nunicipality in which the proposed regulated activity will occur, the ɔlanning board of the county in which the proposed regulated activity will occur, landowners within 200 feet of the legal boundary line of he property or properties on which the proposed regulated activity will occur, which notice may be filed concurrently with notices required pursuant to N.J.S.A. 40:55D-1 et seq., describing the proposed regulated activity and advising these parties of their opportunity to submit comments thereon to the Department;

4. Verification that a complete copy of the request for a letter of nterpretation, including all materials required by this subsection, has been submitted to the clerk of the municipality in which the proposed regulated activity will take place;

5. Vegetative species, recorded at soil boring locations, and classified using United States Fish and Wildlife Service categories (P.L. Reed, 1986) as listed under "R/IND" and "NAT-IND" (Regional and National Indicators) columns;

6. The proposed wetlands boundary, clearly indicated and labeled on the out-bound survey. If a delineation of the wetlands has been memorialized by the Corps as part of a jurisdictional determination, that delineation may be submitted to the Department, and will be subject to verification as are other delineations submitted as part of a request for a letter of interpretation. An explanation must be provided on how this line was delineated;

7. The wetlands boundary line shall be visibly flagged and/or staked in the field with numbered flags and referenced by matching numbers on the out-bound survey. The flags and/or stakes are to be set in relation to known points and landmarks so that the boundary can be re-established;

8. Pictures on the wetland area;

9. Name(s) and qualifications of these person(s) who prepared the proposed wetland boundary;

10. Written consent by the applicant to allow access to the subject site by representatives or agents of the Department for the purpose of conducting a site inspection or survey of the wetlands thereon; and

11. A fee pursuant to N.J.A.C. 7:7A-16, as indicated on the printed fee schedule which is available from the Department.

(d) Within 20 days after receipt of a request for a letter of interpretation, the Department may require the submission of any additional information necessary to issue the letter of interpretation.

(e) If no additional information is requested, the Department shall issue a letter of interpretation within 30 days after receiving the request.

(f) If additional information is requested by the Department in order to issue a letter of interpretation, the Department shall issue a letter of interpretation within 45 days after receipt of the information sufficient to declare the application complete.

(g) If a person requesting the letter has not made a reasonable good faith effort to provide the Department with information sufficient to make a determination, the Department shall issue a letter of interpretation requiring the application for a freshwater wetlands permit.

(h) An agency of the State requesting a letter of interpretation shall provide all necessary information required to make a determination but shall not be required to pay a fee therefor.

(i) When a letter of interpretation is issued, the Department will send copies to all municipal and county bodies which received copies of the request for a letter of interpretation.]

(a) Various types of letters of interpretation are available from the Department, depending on the type of information requested by the applicant, the size of the right-of-way or size of the parcel (based on municipal tax block and lot), or the project (based on the proposed limits of disturbance) for which the letter will be issued. The types of letters of interpretation are as follows:

1. Presence or absence determination: The Department will issue an LOI determining whether any freshwater wetlands, State open waters or transition areas exist on a right-of-way or parcel (limits defined by municipal tax block and lot boundaries). This LOI will not determine the location of these features, but only whether they are present. This LOI will be issued for any size parcel over one acre in size.

2. Footprint of disturbance—Presence or absence determination: The Department will issue an LOI determining only the presence or absence of wetlands, State open waters or transition areas for projects which have proposed limits of disturbance totally contained within an area of one acre or less. The limits of disturbance of the proposed project shall be flagged in the field and indicated on an out bound survey. The Department may at its discretion require that the limits of disturbance be surveyed upon completion of the field inspection. The project limits shall include all possible disturbances, either temporary or permanent in nature, that are a result of the proposed regulated activities listed in N.J.A.C. 7:7A-2.3, Regulated activities, and N.J.A.C. 7:7A-6.2, Regulated activities in transition areas. Examples of activities that shall be indicated on the plans include, but are not limited to, the following: clearing of vegetation, grading or earth work, construction of any buildings, location of wells and septic systems, placement of any impervious surfacing for walkways, driveways, or parking lots, and any landscaping.

3. Regulatory line delineation: The Department will issue a letter of interpretation, delineating the limits of any wetlands, State open water or transition areas present on a parcel or right of way of one acre or less, whose limits are defined by municipal tax block(s) and lot(s) boundaries. The Department may require that the wetlands line be surveyed upon completion of the field inspection.

4. Regulatory line verification: The Department will issue a letter of interpretation verifying an applicant's delineation of the boundaries of a wetland, open water and/or transition area present on parcels or rights-of-way over one acre in size. The limits of the parcel or right of way must be defined by municipal tax block(s) and lot(s) boundaries.

7:7A-8.3 Application for letters of interpretation

(a) The application for a letter of interpretation shall include the applicable fee for the review and processing of a letter of interpretation application specified at N.J.A.C. 7:7A-16.2 and three copies of the following information:

1. The name and address of owner(s) of the property, municipality, county, block and lot number(s);

2. A folded out-bound survey of the property or a folded site plan, if available. The survey or site plan should include all natural or human-made features such as structures, fences, streams, ponds, treelines, etc. In addition, the corners of the property boundary shall be visibly flagged and/or staked in the field to facilitate the on-site inspection;

3. A copy of the current municipal tax map for the subject property;

4. A copy of the appropriate county road map or other local street map clearly indicating the location of the subject property;

5. A folded copy of the appropriate U.S. Geodetic Survey Quadrangle Map for the parcel site with the boundaries of the parcel (defined by tax block and lot) or project (limits of disturbance) clearly outlined, and a determination of the State Plane Coordinates for the center of the parcel;

6. A copy of the appropriate United States Department of Agriculture, Soil Conservation Service County Soil Survey, with the boundaries of the subject parcel (defined by tax block and lot) or project (limits of disturbance) clearly outlined. The sheet number of the Soil Survey shall be included;

7. Clear color photographs of the property (a minimum of four views is recommended) with a description and the location of each view;

8. Verification that a certified mail notice with return receipt requested (white receipt or green card is acceptable) and a complete copy of the request for a letter of interpretation including all materials required by this subsection, have been forwarded to the clerk of the municipality in which the parcel or project is located;

9. Verification that certified mail notice with return receipt requested (white receipt or green card is acceptable) has been forwarded to the environmental commission, or any public body with similar responsibilities, the planning board and the municipal construction official of each municipality, in which the parcel or project is located and landowners within 200 feet of the legal boundary line of the subject property or properties. The applicant must also provide a list of landowners within 200 feet. The written notices satisfying this paragraph and paragraph (a)9 above may be filed concurrently with notices required pursuant to N.J.S.A. 40:55D-1 et seq. (The Municipal Land Use Law), but should be mailed no sooner than two working days before the application package is delivered to the Department. This will allow ample time for the application to be processed to accommodate public review. The written notice shall include, at a minimum, the following information and statement:

i. The name(s) and address(es) of the property owner(s);

ii. The property location described by block(s) and lot(s), municipality, county, and street address;

iii. A description of the proposed project or the reason for applying for a letter of interpretation; and

iv. The following statement:

"This letter is to provide you with legal notification that the referenced property owner is applying to the New Jersey Department of Environmental Protection, Division of Coastal Resources for a letter of interpretation.

A letter of interpretation is a legal document that establishes either the presence or absence or limits of wetlands, open water or transition areas on a subject property as defined at N.J.S.A. 13:9B-1 et seq. The wid of the transition area adjacent to a wetland is determined by t resource value classification of the wetland. This information is al provided by a letter of interpretation. If any of these features are prese on a parcel the Department will regulate many aspects of developme on those areas as defined in N.J.A.C. 7:7A-1.4, Regulated activitie

The complete letter of interpretation application package can be r viewed at either the municipal clerk's office or by appointment at t Division of Coastal Resources office at the address listed below. T Department welcomes comments and any information that you m provide concerning the presence of wetlands, open water or transiti areas on the referenced parcel. Please submit your written commen within 15 days of receiving this letter, along with a copy of this lett to:

New Jersey Department of Environmental Protection
Division of Coastal Resources
Bureau of Regulation
CN 401
5 Station Plaza
Trenton, New Jersey 08625
att: (County in which the property is located) Section Chief

As part of the Department's review of this application, Departme personnel may perform a site inspection on your property. This si inspection will involve only land within 150 feet from the applicant property line. This site visit will involve a visual inspection and possib minor soil borings using a 4" hand auger. The inspection will not resu in any damage to vegetation or any improvements on your propert

The Department may notify the environmental commission, the pla ning board of the municipality and the municipal construction offici of the Department's determination in the letter of interpretation.".

10. Unconditional written consent by the owner of the subject pro erty to allow access to the site by representatives or agents of t Department for the purpose of conducting a site inspection or surve of the freshwater wetlands, State open waters or transition areas ther on; and

11. A fee pursuant to N.J.A.C. 7:7A-16, as indicated on the printe fee schedule which is available from the Department.

(b) In addition to the information required in (a) above, the followin information shall be submitted depending on the type of letter of inte pretation requested in the application:

1. For a letter of interpretation for a footprint of disturbance–presence or absence determination pursuant to N.J.A.C. 7:7A-8.2(a)

i. The limits of all disturbance of any proposed regulated activitie including grading, shall be clearly indicated and labeled on an out-boun survey with a scale of one inch equals no more than 50 feet. These limi must encompass no more than one acre in total. In addition, the proje limits shall be visibly flagged and/or staked in the field with numbere flags and referenced by matching numbers on the out-bound survey. Th flags and/or stakes shall be set in relation to known points and lan marks so that the limits can be reestablished. The Department ma at its discretion require that the limits of disturbance be surveyed upo completion of the field inspection.

2. For a letter of interpretation for a regulatory line verificatio pursuant to N.J.A.C. 7:7A-8.2(a)4:

i. The applicant shall provide a folded out-bound survey or folde site plan of the property. The scale of the survey shall be no smalle than one inch equals 100 feet. If the subject parcel is located in eith Middlesex or Mercer County or north of these counties, the survey mu include topography depicting contours at no greater than five fo intervals. For counties south of Middlesex and Mercer, the survey mu include topography depicting, at a minimum, one foot contours.

(1) The proposed wetlands and/or open waters boundary must b clearly indicated and labeled on the out-bound survey. The boundar must be accurate enough to allow Department personnel to locate th wetland boundary in the field but a surveyed line will only be require once it is verified by the Department for properties of five acres or mor

(2) The locations of all soil borings or pits, if applicable, shall b indicated on the survey and numbered. Soil logs should be presente with an indication of the depth to the seasonal high water table. So

orings must be to a minimum depth of 24 inches on transects perendicular to the wetlands boundary starting in the definite wetlands rea and moving towards the uplands. In wetlands with atypical characeristics, or in wetlands which have been disturbed by human activities r as otherwise deemed appropriate, the Department may require deepr borings as needed;

(3) Vegetative species, recorded at soil boring locations, and classied using United States Fish and Wildlife Service categories (P. Reed, 986) as listed under "R/IND" and "NAT-IND" (Regional and Naional Indicators) columns;

(4) The wetlands and/or open water boundary line shall be visibly lagged and/or staked in the field with numbered flags, placed no reater than 75 feet apart, and referenced by matching numbers on the ut-bound survey. The flags and/or stakes are to be set in relation to nown points and landmarks so that the boundary can be re-established;

(5) Name of the person who prepared the proposed wetland and/or pen water boundary.

:7A-[8.3]**8.4** Onsite inspections

(a) **For properties greater than one acre in size,** [The] **the** Departent [may] **shall** require an applicant for a letter of interpretation o [perform and] submit to the Department an onsite [survey of the /etlands] **wetlands delineation prepared by a qualified professional sing the three-parameter method** to determine or verify the [general] ocation of the freshwater wetland boundary. [This performance and ubmittal will be required whenever the parcel which is the subject f the letter of interpretation is greater than one acre in size.] The surveyed] line shall be subject to approval and verification by the Department.

(b) (No change.)

[(c) A person applying for a letter of interpretation may also ubmit a report of an onsite freshwater wetlands delineation prepared y a qualified professional using the three-parameter approach and eceive within the time specified in this subchapter a letter of interpretation verifying the actual freshwater wetlands area boundaries.]

[(d)](**c**) (No change in text.)

':7A-[8.4]**8.5** Local review

The Department, in determining the presence or absence of reshwater wetlands, **State open waters and transition areas** and the ocation of [wetlands] **their** boundaries **if they are present**, shall conider comments filed by municipal and county governments and nterested citizens. Comments filed by the clerk, environmental commission **or any public body with similar responsibilities** and planning oard of a municipality, or [county] **municipal construction official** vill be actively considered as part of all determinations[, provided :omments are] **Comments must be** filed with the Department within 5 days after [the Department's receipt of a request for a letter of nterpretation] **the municipal clerk's office receives a complete copy f all information submitted to the Department or until the Department ssues a letter of interpretation.**

7:7A-8.5 USEPA review

(a) The Department shall transmit to the USEPA a copy of all etters of interpretation upon issuance.

(b) Any letter of interpretation which determines that the site of proposed regulated activity is not in a freshwater wetlands shall e subject to review, modification, or revocation by the United States Environmental Protection Agency.]

7:7A-8.6 Effect of a letter of interpretation

(**a**) A person who receives a letter of interpretation pursuant to his subchapter shall be entitled to rely on the determination of the Department, **concerning the presence or absence, or the extent of reshwater wetlands and/or State open waters,** [except as provided in N.J.A.C. 7:7A-8.5 (USEPA Review),] for a period of five years unless he letter of interpretation is determined to have been based on naccurate information, in which case it shall be void.

(b) The determination of resource value classification, issued with a etter of interpretation, is subject to change for a one year period ollowing the issuance of the letter of interpretation regardless of any ctions taken in reliance upon the notice of classification. During this ne year period the Department may change the resource value classification if it finds that the information on which the resource value was based is no longer accurate or if new information is made available to the Department from any source, which the Department finds sufficient to justify a reclassification. At the end of the one year period the resource value classification may be relied upon for a period of four years, the effective duration of the letter of interpretation. The Department may waive the one year review period, and the resource value classification may be relied upon for the entire effective duration of the letter of interpretation if the Department concurs with conclusive evidence of resource value classification, in the form of a comprehensive habitat evaluation performed by a qualified biologist or botanist.

7:7A-8.7 Reissuance of a letter of interpretation

A letter of interpretation may be extended beyond the five year time period, but not to exceed five years from the original expiration date. Requests for extensions shall be made in writing to the Department before the letter has expired and shall include the file number, a copy of the originally approved plans and fee as specified at N.J.A.C. 7:7A-16.2. Applicants will be required to submit a new application if an extension is not applied for prior to the expiration date of the letter of interpretation. The term of the letter may be extended provided that the information upon which the original letter was based remains valid.

7:7A-[8.7]**8.8** Effect of non-issuance of a letter of interpretation within time allotted

(a) Any person who requests a letter of interpretation pursuant to the provisions of the Act and this chapter, and does not receive a response from the Department within the deadlines imposed in this subchapter, shall not be entitled to assume that the site of the proposed activity which was the subject of the request for a letter of interpretation is not in a freshwater wetland **or a transition area.**

(b) A person who requests a letter of interpretation and does not receive a response within the above deadlines may directly apply for a freshwater wetlands permit. In the event that a letter of interpretation is not issued within the deadlines imposed in this subchapter, the letter of interpretation fee will be applied to a permit application fee at the applicant's request.

7:7A-8.9 Cancellation and resubmission of applications

If an application is not complete for final review within 60 days of a request for additional information, the Department shall send a letter cancelling the application and a new application will be required to reactivate the Department's review. If the applicant sends the Department a letter documenting good cause for not supplying the requested information within the 60 day period, the Department will grant an automatic extension of 30 days.

SUBCHAPTER 9. GENERAL PERMITS

7:7A-9.1 General [provisions] **standards for issuing Statewide general permits**

[(a) All 26 United States Army Corp of Engineers Nationwide Permits which were approved under the Federal Act as of November 13, 1986 have been considered by the Department. Nationwide Permits numbers one, two, five, eight, nine, 10, 11, 19, 21, and 24 pertain only to navigable waters of the United States or, in the case of number 21, only to coal mines and therefore, are not appropriate or applicable for adoption in this chapter. Nationwide Permit numbers seven, 13, 17, 18, 23, 25 and 26 have not been adopted in this chapter except that parts of 26 have been adopted as required by the Act at N.J.A.C. 7:7A-9.2. Nationwide Permit numbers three, seven, 12, 16, 20 and 22 have been adopted at N.J.A.C. 7:7A-9.2, as modified.

(b) The Department will issue a general permit for similar activities as specified in (c)1 below within a defined geographic area as specified in (c)2 below, after conducting an environmental analysis and providing public notice and opportunity for a public hearing if it is determined that the regulated activities will cause only minimal adverse environmental impacts when performed separately and will have only minimal cumulative adverse impacts on the environment, will cause only minor impact on freshwater wetland and State open waters, will be in conformance with the purposes of the Act, and will not violate the Federal Act.]

(a) This section details the process for the issuance of new Statewide General permits and the readoption of previously issued Statewide General permits. The remaining sections in this subchapter detail the process for authorizing various activities under the issued Statewide general permits. Before issuing or reissuing a Statewide general permit, the Department will propose a draft Statewide general permit in the form of a rule proposal pursuant to the New Jersey Administrative Procedure Act. N.J.S.A. 52:14B-1 et seq. In addition to these public notice and comment procedures, the Department will send a copy of the draft general permit to USEPA, and will issue a public notice meeting the requirements of N.J.A.C. 7:7A-11.1(a).

(b) The Department may issue Statewide general permits only if all of the following conditions are met:

1. The activities meet the limitations specified in (c)1 below;

2. After conducting an environmental analysis that determines the regulated activities will cause only minimal adverse environmental impacts when performed separately and will have only minimal cumulative adverse impacts on the environment, will cause only minor impact on freshwater wetlands and State open waters;

3. After determining that the activity will be in conformance with the purposes of the Act, and will not violate the Federal Act; and

4. After providing public notice and opportunity for a public hearing.

(c) In addition to the conditions in N.J.A.C. 7:7A-13.1, N.J.A.C. 7:7A-9.3, and the applicable requirements of N.J.A.C. 7:7A-13.2, each general permit shall contain [conditions] **limitations** as follows:

1.-2. (No change.)

(d) (No change.)

[(e) The Department may require an application for an individual permit if the Department finds that additional permit conditions would not be sufficient, or that special circumstances make this action necessary to ensure compliance with the Act, this chapter, any permit or order issued pursuant thereto, or the Federal Act.]

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

[(g)](f) The Department shall review each general permit **a minimum of** every five years[, which]. **This** review shall include public notice and opportunity for public hearing. Upon this review the Department shall either modify, reissue or revoke all general permits.

[(h)](g) If a general permit is not modified or reissued within five years of publication in the New Jersey Register, it shall automatically expire.

7:7A-9.2 Statewide General Permit[s] **Authorization**

(a) The following activities in freshwater wetlands and State open waters [are hereby allowed] **may be authorized** under **the following** Statewide General Permits provided the activity is in compliance with specific conditions contained in the Statewide General Permit and with the **provisions in (b) below and the** standard conditions for all Statewide General Permits in N.J.A.C. 7:7A-9.3 and provided the activities are in compliance with the Act, this chapter, and the Federal Act:

1. The repair, rehabilitation, replacement, maintenance or reconstruction of any previously authorized, currently serviceable structure, fill, roadway, public utility, active irrigation or drainage ditch, or stormwater management facility lawfully existing prior to July 1, 1988 or permitted under the Act, provided such activities do not deviate from plans of the original activity and further provided that the previously authorized structure, fill, roadway, utility, ditch or facility has not been **and will not be** put to uses differing from those specified in any permit authorizing its original construction. Minor deviations due to changes in materials or construction techniques and which are necessary to make repairs, rehabilitation or replacements are allowed provided such changes do not result in disturbance of additional freshwater wetlands or State open waters upon completion of the activity;

2. Discharge of material for backfill or bedding for utility lines, provided there is no change in preconstruction elevation and bottom contours. Excess material must be removed to an upland disposal area. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. The activities allowed by this Statewide General Permit shall comply with th following conditions:

i. The activity encompasses no more than one acre of wetland:

ii. The **width of the area of disturbance within the** right-of-way fo the project is no more than 20 feet wide;

iii. The project is not located in a wetland of exceptional resourc value;

[iv. The activity is not located in a wetland designated as a Priorit Wetland by EPA;]

[v.]**iv.** Any excavation is backfilled with the original soil materi if feasible and otherwise with suitable material to within 18 inche of the surface. The [upper 18 inches] **excavation** must be backfille [with the original topsoil material] to the preexisting elevation;

[vi.]**v.** The area above the excavation is replanted in accordanc with applicable BMPs with native, indigenous **wetland** species; an

[vii.]**vi.** The activity is designed so as not to interfere with th natural hydraulic characteristics of the wetland and watershed;

3.-5. (No change.)

6. Regulated activities in **an isolated** freshwater wetland or [ir State open waters **as defined at N.J.A.C. 7:7A-1.4** [which are not surface water tributary system discharging into an inland lake, pond river or stream,] provided:

i. The activity would not result in the loss or substantial mod fication of more than one acre of freshwater wetland or State ope waters;

ii. The activity will not take place in a wetland of exceptiona resource value as defined in N.J.A.C. 7:7A-2.5(a)1 nor in State ope waters defined as a special aquatic site [in 40 C.F.R. §230.1];

iii. The activity will not take place in wetlands designated as pr ority wetlands by the USEPA[.]; **and**

iv. The disturbance of greater than 0.25 acres of wetlands or Stat open waters shall be mitigated as specified at N.J.A.C. 7:7A-14 Mitigation. The mitigation plan shall be submitted as a part of th General Permit authorization application and approved by the Depart ment before the proposed activity may be authorized.

7. [The removal, excavation, disturbance or dredging of soil, fillin with suitable non-toxic material, destruction of plant life and placin of obstructions is permitted] **Regulated activities** in ditches [or swales of human construction **or swales** provided [the ditches or swales

i. [Are] **They are** located in headwater areas;

ii. [Are] **They are** not [located in] exceptional resource valu wetlands;

iii. [Are] **They are** not designated a priority wetlands by th USEPA; [and]

iv. The activity would not result in the loss or substantial mod fication of more than one acre of wetlands or State ope waters[.];

v. The proposed activity will not result in a disruption of a surfac water connection and the isolation of adjacent wetlands or State ope waters;

vi. The activity would not result in a violation of the Flood Hazar Area Control Act, N.J.S.A. 58:16A-50 or implementing rules a N.J.A.C. 7:13-1; and

vii. The disturbance of greater than 0.25 acres of wetlands or Stat open waters classified as natural swales (not of human construction shall be mitigated as specified at N.J.A.C. 7:7A-14.1 (Mitigation). Th mitigation plan shall be submitted as a part of the General Permi authorization application and approved by the Department before th proposed activity may be authorized.

8. [Appurtenant] **The construction of additions or appurtenant** im provements [or additions] **to be constructed within 100 feet** [from] o residential dwellings lawfully existing prior to July 1, 1988, provide that the improvements or additions require less than a cumulativ surface area of 750 square feet of fill and [will not result in ne alterations to a freshwater wetlands outside of the fill area] **dis turbance**;

9. **The construction of** State or Federally funded roads which:

i. Were planned and developed in accordance with the "Nationa Environmental Policy Act of 1969", the Federal Act, and Executiv Order Number 53 (approved November 21, 1983); and

ii. Were the subject of an application made prior to July 1, 1988 the United States Army Corps of Engineers for an individual or neral permit under the Federal Act, provided that:
(1) Upon expiration of a permit, any application for a renewal or odification thereof shall be made to the Department; [and]
(2) The Department shall not require transition areas as a contion of the renewal or modification of the permit[.]; **and**
(3) All disturbed wetlands and State open waters shall be mitigated specified at N.J.A.C. 7:7A-14, Mitigation. The mitigation plan shall submitted as a part of the General Permit authorization application id approved by the Department before the proposed activity will be ithorized.
10. Minor road crossing fills and expansion of existing road cross- g fills including attendant features, both temporary and permanent, at are part of a single and complete project for crossing a freshwater etland or State open water, provided that:
i. The crossing is bridged, culverted or otherwise designed to pre- nt the restriction of, and to withstand, expected high flows;
ii. [Disturbance] **Except for widening existing roadways, the disrbance** of any freshwater wetlands does not extend more than 50 et on either side of the ordinary high water mark of State open aters. Where no State open waters are present, the total length of e disturbance or modification of freshwater wetlands caused by the ossing shall be no greater than 100 feet;
iii. The total area of freshwater wetlands and/or State open waters sturbed or modified does not exceed 0.25 acres [or 100 cubic yards fill, whichever is smaller; and];
iv. **The total fill (gross) to be placed, per crossing, in State open aters does not exceed 200 cubic yards of fill below the top of bank high water mark;**
[iv.]**v.** The crossing is designed to minimize disturbance and other trimental effects upon freshwater wetland or State open waters rough the use of best management practices including, but not nited to:
(1)-(3) (No change.)
(4) Designing the crossing so as not to impede fish passage, when watercourse is present, by maintaining the existing gradient and ttom contours of the watercourse; using open arch or box culverts; id using single large open arches or culverts to span the water- urse[.]; **and**
vi. The activity would not result in a violation of the Flood Hazard rea Control Act, N.J.S.A. 58:16A-50 or implementing rules at .J.A.C. 7:13-1.
11. Construction of stormwater outfall structures and associated ormwater conveyance structures such as pipes, headwalls, rip-rap id other energy dissipation structures, provided the following contions are met:
i.-v. (No change.)
vi. The total amount of rip-rap or any other material **used for ergy dissipation at the end of the headwall** placed in the freshwater etland or State open water does not exceed 10 cubic yards per tfall structure [and associatd rip-rap apron]; [and]
vii. The upper 18 inches of material in any backfilled area must nsist of the original topsoil and the backfilled area **for pipes** shall e returned to the pre-existing elevation **and revegetated with ingenous wetland species[.];**
viii. Pipes used for stormwater conveyance through the wetlands shall e properly sealed with anti-seep collars;
ix. If a detention basin is being proposed as the method of preeatment for water quality, routing calculations shall show that the asin has been designed for the one-year storm event according to the tormwater Management Regulations (N.J.A.C. 7:8) and all subseuent amendments thereto; and
x. If a swale is being proposed to convey stormwater through the etlands, profiles from the outlet to the receiving water body, cross- ctions, and design support information shall show that the proposed vale will not result in drainage of the wetlands. Swales in wetlands ill only be permitted where no other alternative exists.
12. Surveying activities such as soil borings and the cutting of egetation for narrow (three to five feet in width) survey lines. Survey nes of less than three feet in width shall not require Department authorization. Soil borings dug by hand, using non-mechanized means, no greater than three feet in diameter or in depth, shall not require Department authorization **pursuant to N.J.A.C. 7:7A-2.3(c).**
13. [Fish and wildlife harvesting activities such as traps and duck blinds.] **Dredging activities in wetland for lake maintenance or restoration provided:**
i. The lake is lowered in accordance with a lake lowering permit approval by the Division of Fish, Game and Wildlife;
ii. The lake remains lowered for the minimal amount of time necessary to accomplish the desired maintenance activities;
iii. Documentation shows that the area to be dredgd will be confined to the original configuration and bottom contours of the lake;
iv. The total wetlands area to be disturbed for access is no more than 0.25 acre. Temporary effects on adjacent wetlands due to the draw down of the lake to perform maintenance activities are not included in the acreage calculation;
v. The results of representative core sample borings shall indicate that the spoil materials to be removed are non-contaminated;
vi. There is no detrimental effect to spawning of resident or downstream fish populations;
vii. If located in exceptional resource value wetlands, the activity will not negatively impact the documented threatened or endangered species or its habitat;
viii. No spoil material will be deposited and no dewatering will occur in freshwater wetlands, open waters or other environmentally sensitive areas;
ix. Dredging for a specific lake will not be authorized more than once every five years; and
x. The activity will not violate the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 or implementing rules at N.J.A.C. 7:13-1.
14. Placement of water level recording devices, water quality monitoring and testing devices, and similar scientific devices, **and the drilling of monitoring wells. The placement of water level or monitoring devices that require the disturbance of wetlands or State open waters of one square yard or less shall not require Department authorization as stated at N.J.A.C. 7:7A-2.3(c).**
15. (No change.)
16. Fish and wildlife management activities which do not involve the discharge of more than 10 cubic yards of clean fill, carried out in [county, State or Federal] **publicly owned or controlled** wildlife management areas, parks or reserves. These activities include, but are not limited to:
i.-iii. (No change.)
17. Trail and/or boardwalk construction on publicly owned **or controlled** park land, wildlife management areas or reserves, in freshwater wetlands or State open waters, provided:
i.-iv. (No change.)
18. The repair, rehabilitation, replacement, maintenance or reconstruction as required by the Dam Safety Standards (N.J.A.C. 7:20-1), of any previously authorized, currently serviceable dam structure, as defined at N.J.A.C. 7:20-1.2, including appurtenant structures, lawfully existing prior to July 1, 1988 or permitted under the Act, provided that the previously authorized structure has not been put to uses differing from those specified in any permit authorizing its original construction. Minor deviations due to changes in materials or construction techniques and which are necessary to make repairs, rehabilitation, replacement, maintenance or reconstruction are allowed provided that:
i. The activity is conducted in accordance with a Dam Permit issued pursuant to N.J.A.C. 7:20-1;
ii. The activity results in the filling of no more than one acre of wetlands or State open waters;
iii. If located in exceptional resource value wetlands, the activity will not negatively impact the documented threatened or endangered species or its habitat;
iv. The activity is designed to minimize disturbance and other detrimental effects upon freshwater wetlands or State open waters through the use of best management practices including, but not limited to:
(1) Stabilizing all disturbed areas; and
(2) Using suitable, clean, non-toxic fill material; and

v. The disturbance of greater than 0.25 acres of wetlands or State open waters shall be mitigated as specified at N.J.A.C. 7:7A-14, Mitigation. However, the resubmerging of wetlands which may form during construction will not require mitigation. The mitigation plan shall be submitted as a part of the General Permit authorization application. The Statewide General Permit authorization will not be issued until the mitigation plan is approved by the Division according to the standards at N.J.A.C. 7:7A-14.

19. The construction of recreational and fishing docks, or piers on pilings, cantilevered or floating piers, and public boat ramps that meet the following criteria:

i. The following criteria shall be met for the construction of docks and piers:

(1) The proposed dock will be the only one to serve a single residential lot;

(2) If located in exceptional resource value wetlands, the activity will not have a negative impact on a documented threatened or endangered species or its habitat;

(3) The proposed activity does not fill or disturb more than 0.10 acres;

(4) The width of the dock or pier does not exceed six feet, will be constructed perpendicular to the shoreline and the maximum allowable length will be the minimum length necessary to reach deep water for launching. However, structures shall be constructed a minimum of 50 feet outside of any authorized navigation channel and shall not hinder navigation;

(5) Space between horizontal planking is no less than 0.25 inches and the width of horizonal planking is no more than four inches; and

(6) The height of the dock or pier above the ground surface shall be no less than four feet.

ii. The following criteria shall be met for the construction of a boat ramp:

(1) It shall be demonstrated that there is no feasible onsite alternative location that will involve less or no disturbance of wetlands;

(2) The boat ramp shall be constructed of concrete or natural materials such as crushed stone or shells and placed at a location requiring negligible cut or fill;

(3) The proposed activity does not fill or disturb more than 0.10 acres; and

(4) If located in exceptional resource value wetlands, the activity will not impact a documented threatened or endangered species or its habitat.

20. The placement of gabions, rip-rap, geo-textiles, or other binding mat material for the purpose of bank stabilization activities in State open waters provided:

i. The bank stabilization activity is less than 150 feet in length;

ii. The activity is required by and designed in accordance with the Soil Conservation Service, Standards for Soil Erosion and Sediment Control in New Jersey, N.J.S.A. 4:24-42;

iii. The activity is limited to an average of less than one cubic yard of rip-rap per running foot placed along the bank within State open waters;

iv. The material to be placed is the minimum necessary for erosion protection according to the Soil Conservation Service;

v. No material is placed in any location or in any manner so as to impair surface water flow into or out of any wetland area;

vi. Only suitable, clean, non-toxic fill material is used;

vii. The activity is a single and complete project, not associated with any other construction activity. For example, this activity cannot be used at the same location as a minor road crossing or a stormwater outfall structure; and

viii. The activity will not violate the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 or implementing rules at N.J.A.C. 7:13-1.

21. The construction or installation of new utility lines including the installation of wood poles, steel poles, lattice towers, conductors, guy anchors, and pad mount transformers for the transport of electrical energy, telephone or telegraph messages, radio or television communication, or the discharge of fill to provide access to these new lines. The activities allowed by this Statewide General Permit shall comply with the following conditions:

i. The activity disturbs no more than one acre of wetlands or Stat open waters;

ii. The limits of clearing for construction is no more than 60 fee wide;

iii. The area to be maintained as a permanent right-of-way is maximum of 20 feet in width;

iv. If located in exceptional resource value wetlands, the activity wil not negatively impact associated water quality or the documente threatened or endangered species or its habitat;

v. When practicable, installation is done from outside wetland areas If installation requires encroachment in wetlands, the activity shall b performed when the ground is frozen or extremely dry; otherwise onl matting or track equipment shall be used. Matting will remain in plac for no more than five days;

vi. After completion the area used to gain access to the installatio location is replanted in accordance with applicable BMPs with native indigenous species;

vii. The activity is designed so as not to interfere with the natura hydraulic characteristics of the wetland and watershed; and

viii. The disturbance of greater than 0.25 acres of wetlands or Stat open waters shall be mitigated as specified at N.J.A.C. 7:7A-14 Mitigation. The mitigation plan shall be submitted as a part of th General Permit authorization application. The Statewide General per mit authorization will not be issued until the mitigation plan is approve by the Division according to the standards at N.J.A.C. 7:7A-14.

22. The modification of existing dam or dike structures or the con struction of new dam or dike structures for the detention of stormwate surges on a regional or watershed basis, as part of a county-approve plan in freshwater wetlands and/or State open waters. The activitie allowed by this Statewide General Permit shall comply with the follow ing standards:

i. The modification or construction of the dam or dike structure wil not result in the loss or substantial modification of more than one acr of freshwater wetland or State open water;

ii. The activities will not take place in a wetland of exceptiona resource value as defined in N.J.A.C. 7:7A-2.5(b), in a State open wate defined as a special aquatic site (in 40 CFR 230.1), or in trout as sociated waters;

iii. The activities shall meet with Stormwater Management Regu lations (N.J.A.C. 7:8) and be consistent with the water quality provisions. Specifically, all stormwater which is detained in a freshwate wetland or State open water shall first be filtered or otherwise treate outside of the freshwater wetland or State open water, to minimiz sediment, pollutants, and any other detrimental effects upon th freshwater wetland or State open water. Detention basins, contou terraces and grassed swales are examples of pre-discharge treatmen techniques which may be required by the Department;

iv. The activities shall not result in a duration of inundation exceed ing 36 hours for the 100 year storm;

v. The activities shall not result in an increase in water surfac elevation exceeding five feet; and

vi. The placement of greater than 0.25 acres of fill in wetlands o State open waters for the modification of existing dam or dike struc tures or the construction of new dam or dike structures shall b mitigated as specified at N.J.A.C. 7:7A-14, Mitigation. The mitigatio plan shall be submitted as a part of the General Permit authorizatio application and approved by the Department before the proposed activi ty may be authorized.

23. Regulated activities in freshwater wetlands or State open water which are the result of the construction or reconstruction of affordabl housing provided:

i. The project is part of a housing plan that has received substantiv certification, pursuant to N.J.S.A. 52:27D-301 et seq., that the projec meets affordable housing criteria by the New Jersey Council on Af fordable Housing; or the project is part of a municipal housing com pliance plan that was part of a settlement approved by the New Jerse Superior Court, resulting from *Mt. Laurel* litigation;

ii. If the proposed activity is to take place in an exceptional resourc value wetland, the applicant shall demonstrate to the Department' satisfaction that there is no practicable alternative to the propose activity that would reduce or eliminate impacts to wetlands or Stat open waters;

iii. The activity would not result in the loss or substantial adverse odification of more than one acre of freshwater wetlands or State open aters; and

iv. The disturbance of greater than 0.25 acres of wetlands or State pen waters shall be mitigated as specified at N.J.A.C. 7:7A-14, litigation. The mitigation plan shall be submitted as a part of the eneral permit authorization application and approved by the Depart-ent before the proposed activity may be authorized.

24. The placement of bulkheads adjacent to human-made lagoons rovided that:

i. The bulkhead is to be placed between two lawfully existing ulkheads which are not more than 75 feet apart;

ii. The connecting bulkhead shall not extend waterward of a straight ne connecting the ends of the existing bulkheads;

iii. The width of wetlands on the subject lot, adjacent to the lagoon oes not exceed an average of five feet;

iv. The total area of wetlands to be filled or disturbed does not exceed 75 square feet; and

v. The activities will not take place in a wetland of exceptional esource value as defined in N.J.A.C. 7:7A-2.5(b) or in a State open ater defined as a special aquatic site (in 40 CFR 230.1).

25. The repair or alteration of malfunctioning individual subsurface ewage disposal systems provided:

i. There is no expansion or change in the use of the building or acility which will result in an increase in the volume of sanitary sewage;

ii. Alterations made to correct a malfunctioning system shall meet ne requirements of N.J.A.C. 7:9A-3.3(c) and shall be undertaken only t the authorization of the administrative authority (the board of health aving jurisdiction or its authorized agent acting on its behalf);

iii. It is demonstrated to the administrative authority that there is o alternative location available with a seasonally high water table eeper than 1.5 feet from the existing ground surface which can support properly functioning subsurface sewage disposal system; and

iv. The total wetland area to be affected by the repair or alteration oes not exceed 0.25 acres.

(b) The Department may require an application for an Individual ermit if the Department finds that additional permit conditions would ot be sufficient, or that special circumstances make this action neces-ary to ensure compliance with the Act, this chapter, any permit or rder issued pursuant thereto, or the Federal Act. In addition, when he regulated activity(ies) of a project exceed either the individual limits llowed under the issued Statewide general permits or the cumulative imit of stacked Statewide general permits, then the impacts of the ntire project shall require an Individual Permit and will be reviewed nder the standards at N.J.A.C. 7:7A-3.

(c) Under no circumstances shall a project's impacts be segmented nd a portion of the project submitted for review under Statewide eneral permits while the remainder of the project is submitted for eview under an Individual Permit.

:7A-9.3 Standards **and** Conditions for all Statewide General Permit[s] **Authorizations**

(a) All regulated activities authorized under Statewide General 'ermits listed in N.J.A.C. 7:7A-9.2 are subject to the specific con-litions listed under each permit. In order to be authorized to conduct ctivities under these general permits, persons must comply with the tandard conditions set forth at (b) below, as well as the conditions t N.J.A.C. 7:7A-13.1 and 13.2 [and], the procedures in **N.J.A.C.** :7A-9.4 **and mitigation pursuant to N.J.A.C. 7:7A-14 where specified** nust be followed.

(b) The following standards [conditions] must be met in order for regulated activity to be authorized under the Statewide General 'ermits identified in N.J.A.C. 7:7A-9:

1. The request for authorization to fill or modify wetlands or State pen waters is associated with a proposed project or construction activi-y and is not solely being requested for the purpose of eliminating a atural resource in order to avoid future regulation;

[1.]**2.** The regulated activity shall not occur in the proximity of public water supply intake;

[2.]**3.** The regulated activity shall not jeopardize a threatened or ndangered species and the activity shall not destroy, jeopardize, or dversely modify the historic or documented habitat of such species;

[3. Any discharge of dredged or fill material shall consist of suitable material free from toxic pollutants (see section 307 of the Federal Act) in toxic amounts;

4. Any structure or fill authorized shall be properly maintained;]

[5.]**4.** The activity will not occur in a component of either the Federal or State Wild and Scenic River System; nor in a river officially designated by Congress or the State Legislature as a "study river" for possible inclusion in either system while the river is in an official study status; **and**

[6.]**5.** The activity shall not adversely affect properties which are listed or are eligible for listing on the National Register of Historic Places. If the permittee, before or during the course of work authorized, encounters a historic property that has not been listed or determined eligible for listing on the National Register, but which may be eligible for listing in the National Register, the permittee shall immediately notify the Department and proceed as directed by the Department[; and].

[7. Best management practices shall be followed whenever applicable.]

(c) The following conditions shall be met in order for a regulated activity to be authorized under the Statewide General Permits identified in N.J.A.C. 7:7A-9:

1. Any discharge of dredged or fill material shall consist of suitable material free from toxic pollutants (see section 307 of the Federal Act) in toxic amounts;

2. Any structure or fill authorized shall be maintained as specified in the construction plans;

3. In order to protect the fishery resources and/or the spawning of the downstream resident fish population, any activity within or adjacent to a stream channel which may introduce sediment into the stream or cause the stream to become turbid is prohibited during the time frames listed below or any subsequent updates to this listing as provided by the New Jersey Division of Fish, Game and Wildlife. The total restriction period will not exceed six months:

Timing restrictions:

Stream Classification	Dates of Restriction
Trout Production	
general	September 15-March 15
brook trout	September 15-February 28
brown trout	September 15-February 28
rainbow trout	February 1-April 30
Trout Maintenance	March 15-June 15
Trout Stocked	March 15-June 15

Anadromous

American Shad—For the Delaware River upstream of the Delaware Memorial Bridge, and for tidal Rancocas and Raccoon Creeks
April 1-June 30 and
September 1-November 30

American Shad—For the Delaware River from the Delaware Bay to the Delaware Memorial Bridge, and tidal Maurice River
March 1-April 30 and
October 1-November 30

All other waterways classified for anadromous fish
April 1-June 30;

For waterways classified, on a case by case basis, as spawning areas for warm water fish
May 1-June 30.

4. During construction activities, all excavation must be monitored to check for the presence of acid-producing deposits pursuant to N.J.A.C. 7:13-5.10 of the Flood Hazard Area Control Rules. If any such deposits are encountered, the mitigation and disposal standards described in N.J.A.C. 7:13-5.10 must be implemented. If any such deposits are encountered, an annual post-planting monitoring program shall be established to ensure that the reestablishment of vegetation in disturbed areas, shall have a minimum 85 percent plant survival and coverage rate after two complete growing seasons. Failure to achieve this survival rate will require implementation of additional corrective

measures and/or reevaluation of the acid producing soils mitigation proposal to ensure the 85 percent survival rate requirement.

5. Best management practices shall be followed whenever applicable.

7:7A-9.4. Use of multiple Statewide General Permits

(a) The Department may approve activities under the authority of more than one Statewide General Permit [on a single property, subject to the limitations below, and subject to the standard conditions for Statewide General Permits at N.J.A.C. 7:7A-9.3. For the purposes of this section, a single property is defined as all property contiguous with the property line of the property or properties on which the regulated activity or activities are proposed and which is in common ownership at the time of the proposal] **onsite as defined at N.J.A.C. 7:7A-1.4, Definitions.** No activity is authorized by a Statewide General Permit without an approval letter from the Department indicating that a Statewide General Permit authorizes the particular activity at the particular location.

(b) The Department may issue an approval letter, authorizing activities covered under a single Statewide General Permit, for more than one location on a single property, provided that the total area of wetlands or State open waters disturbed [on that property] **or modified** by activities covered by the Statewide General Permit does not exceed the maximum allowed under that general permit.

(c) [For Statewide General Permits at N.J.A.C. 7:7A-9.2(a)2, 6, 7, 10 and 11, the Department may approve activities covered under more than one general permit on a single property, provided that the total area of wetlands or State open waters disturbed on that property on-site by activities authorized under Statewide General Permits does not exceed one acre in total and provided that all conditions for each Statewide General Permit authorizing activities on-site are complied with, including acreage limitations.] **The Department may approve activities covered by different general permits onsite, provided that the individual limits of each general permit are complied with and that the total area of wetlands, State open waters, and transition areas disturbed or modified does not exceed one acre.** For example, the Department could approve on-site a minor road crossing disturbing 0.25 acres, stormwater outfall structures disturbing a total of 0.25 acres, and the filling of 0.5 acres of a ditch.

[(d) Only one approval letter for activities covered by the Statewide general permits at N.J.A.C. 7:7A-9.2(a)8 (Statewide General Permits 8) will be issued for a single property. Statewide General Permit 8 may not be used more than once on a single property. Later additions to a residence will require an individual permit.]

(d) An individual permit will be required for review of all regulated impacts onsite (as defined at N.J.A.C. 7:7A-1.4) if the cumulative impact of one acre will be exceeded by any combination of Statewide General Permits, or if the individual limits of Statewide General Permits 2, 6, 7, 8, 10, 11, 19, 20, 21, 22, 23 or 24 will be exceeded by the proposed activities.

(e) For Statewide General Permits at N.J.A.C. 7:7A-9.2(a)1, 3, 4, 5, 12, [13,] 14, [15,] 16 and 17, the Department may issue approvals for any number of activities on a single property covered by any number of these general permits. Later activities on the same property will also be eligible for approval under these Statewide general permits.

(f) No property will be the subject of Department approvals under Statewide General Permits [2, 6, 7, 10] **13, 15, 18, and 20** or more often than once every five years.

7:7A-9.5 Applictaion for activities under Statewide General Permits

(a) **Except for Statewide General Permit number 25 pursuant to N.J.A.C. 7:7A-9.2(a)25,** [A] **a** person proposing to engage in an activity covered by a Statewide General Permit shall provide [written, certified mail notice to the Department and to the clerk of the municipality and to the county clerk] **a fee pursuant to N.J.A.C. 7:7A-16 and three copies of the following information to the Department** [at least 30 working days prior to commencement of work.]:

1. An application form completed as per the instructions for a Statewide general permit;

2. Any information necessary to determine whether the conditions of the general permit will be satisfied, including, but not limited to, the following information:

i. Complete wetlands delineation including field delineation, folded plans at an appropriate scale, and wetlands field data sheets including soils and vegetation information (no formal report is required) for the area to be disturbed under the Statewide general permit application.

ii. A copy of the appropriate U.S. Geodetic Survey Quadrangle (USGS) Map for the project site and a determination of the State Plane Coordinates for the center of the project;

iii. For projects that are located in municipalities listed below at (a)1ii(1) and all amendments thereto, the applicant shall submit a signed statement certifying that the proposed activities will not result in any direct or indirect adverse impacts to Swamp pink (Helonias bullatta) or its documented habitat; and

(1) Municipalities which have documented record of Helonias bullata:

Atlantic County
Egg Harbor Township
Hammonton Township

Burlington County
Evesham Township
Medford Township
Pemberton Township
Southampton Township
Woodland Township
Medford Township

Camden County
Berlin Township
Clementon Borough
Gibbsboro Borough
Gloucester Township
Haddonfield Borough
Lindenwold Borough
Pine Hill Borough
Pine Valley Borough
Runnemede Borough
Voorhees Township
Waterford Township
Winslow Township

Cape May County
Cape May Point Borough
Lower Township
Middle Township

Cumberland County
Bridgeton City
Downe Township
Fairfield Township
Hopewell Township
Lawrence Township
Millville City
Stow Creek Township
Upper Deerfield Township
Vineland City

Gloucester County
Clayton Borough
Deptford Township
East Greenwich Township
Elk Township
Franklin Township
Glassboro Borough
Mantua Township
Monroe Township
Newfield Borough
Washington Township
Wenonah Borough
West Deptford Township
Woodbury Heights Borough
Woolwich Township

Mercer County
West Windsor Township

Middlesex County
East Brunswick Township
Edison Township
New Brunswick City
Sayreville Borough

Monmouth County
Brielle Borough
Colts Neck Township
Howell Township
Wall Township

Morris County
Mount Olive Township
Randolph Township

Ocean County
Brick Township
Jackson Township
Lacey Township
Lakewood Township
Manchester Township
Plumsted Township
Stafford Township
Barnegat Township

Salem County
Alloway Township
Lower Alloways Township
Pittsgrove Township
Quinton Township
Upper Pittsgrove Township

3. Photographs of the property.

(b) [The notice shall contain:] **In addition, a person proposing to engage in an activity covered by a Statewide General Permit shall provide verification that a certified mail notice with return receipt requested and a complete copy of the application has been forwarded to the clerk of the municipality and that a certified mail notice with return receipt requested (white receipts or green cards are acceptable) has been forwarded to the environmental commission, municipal planning board, municipal construction official, and landowners within 200 feet of the legal boundary lines of the property(ies) on which the proposed activity will occur. The applicant shall also provide a list of landowners within 200 feet. The notice shall contain:**

1. A description of the proposed activity; [and]
2. A description of the location of the activity including county, unicipality, lot(s), block(s), and a plan of the site detailing existing ructures, wetlands boundaries and proposed structures or activities, r both[.]; **and**
3. The following statement:

This letter is to provide you with legal notification that the referenced roperty owner is applying to the New Jersey Department of Environmental Protection, Division of Coastal Resources for a Statewide eneral permit.

Statewide general permit will allow the property owner to conduct ertain limited activities in freshwater wetlands or State open waters.

he complete Statewide general permit application package can be viewed at either the municipal clerk's office or by appointment at the ivision of Coastal Resources office at the address listed below. The epartment of Environmental Protection welcomes comments and any formation that you may provide concerning the wetlands or open aters on the referenced parcel. Please submit your written comments ithin 15 days of receiving this letter, along with a copy of this letter :

New Jersey Department of Environmental Protection
Division of Coastal Resources
Bureau of Regulation
CN 401
5 Station Plaza
Trenton, New Jersey 08625
tt: (County in which the property is located) Section Chief

s part of the review of this application, Department personnel may erform a site inspection on your property. This site inspection will volve only that area within a maximum of 150 feet from the border f the applicant's property. This site visit will involve a visual inspection nd possibly minor soil borings using a 4" hand auger. The inspection ill not result in any damage to the vegetation or improvements on your roperty.

he Department will notify your municipal environmental commission, lanning board and the municipal construction official of the Depart- ent's approval or denial of the Statewide general permit application."

(c) If the regulated activity involves a linear facility such as a pipeline r road of more than .5 miles, instead of notifying all landowners within 00 feet of the property(ies) lines, the applicant shall give public notice y publication of a display advertisement. The advertisement shall be minimum of four column inches and be published in at least one ewspaper of local circulation and one of regional circulation in the unicipality. In addition, notice shall be given to owners of all real roperty within 200 feet of any above surface structure related to the near facility, such as a pumping station or treatment plant.
[(c) In addition to the above information, the notice to the Depart- ent shall contain:
1. Any information necessary to determine whether the conditions f the general permit will be satisfied; and
2. A fee pursuant to N.J.A.C. 7:7A-16. If activities authorized nder more than one statewide general permit are proposed, a separate fee must be submitted for each of the Statewide General Permits.]
(d) The Department, within 30 days of receipt of this notification, hall **either return the package as incomplete or accept the application s administratively complete and** notify in writing the person propos- ng to engage in the activity covered by a general permit as to whether ey are covered by the Statewide General Permit, or whether an dividual permit is required for the activity pursuant to (e) below. ctivities begun or carried out without this written notification shall e a violation of the Statewide General Permit, the Act and this hapter. Issuance of authorizations shall be published in the DEP ulletin.
(e) Upon receiving [notice under (a) above] **an application for a eneral permit**, the Department may require that the owner apply for n individual permit. Cases where an individual permit may be re- uired include, but are not limited to:

1. The activity has more than a minimal adverse environmental effect;
2. The cumulative effects on the environment of the authorized activities are more than minimal; [or]
3. The applicant or project is not in compliance with the conditions of the general permit[.]; **or**
4. Public comment indicates that the application does not meet general permit criteria.

7:7A-9.6 Hearings and appeal
An applicant or other affected party may request an administrative hearing on any decision to issue or deny an authorization made by the Department pursuant to N.J.A.C. 7:7A-12.7.

7:7A-9.7 Duration of permit authorizations
(a) Authorizations for Statewide general permits shall be effective for a fixed term not to exceed five years from the date of authorization.
(b) The term of an authorization shall not be extended beyond the maximum duration specified in this section. However, if necessary, an authorization may be renewed through the application process set forth in this chapter.

7:7A-9.8 Cancellation, withdrawal, resubmission and amendment of applications
(a) Applications may be cancelled by the Department; or withdrawn, amended, or resubmitted by an applicant.
(b) If an application is not complete for final review within 60 days of a request for additional information, the Department shall send a letter canceling the application and stating that the application will be purged from Department files and that a new application will be required to reactivate the Department's review. If the applicant sends the Department a letter documenting good cause for not supplying the requested information within the 60 day period the Department will grant an automatic extension of 30 days.
1. All fees submitted with an application subsequently cancelled shall be non-refundable.
(c) An applicant may withdraw an application at any time in the application review process. All fees submitted with such applications are non-returnable when a significant portion of the review has been completed. In some cases however (see (d) below) the fees may be credited toward future applications.
(d) If an application is cancelled, denied or withdrawn, the applicant may resubmit an application for a revised project on the same site. The resubmitted application will be treated as a new application, although references may be made to the previously submitted application. A new fee will be required unless application is resubmitted within one year of the date of denial or withdrawal, in which case the original permit fee may be credited to the new application.
(e) A permit application may be amended at the applicant's discretion at any time as part of the permit review process. Copies of amendments and amended information shall be distributed by the applicant to the same person to whom copies of the initial application were distributed. All amendments to pending applications shall constitute a new submission and may at the Department's discretion require reinitiation of the entire review process.

SUBCHAPTER 10. PRE-APPLICATION CONFERENCES

7:7A-10.1 Purpose
A pre-application conference is optional, but highly recommended. It allows the Department to inform potential applicants of the various procedures and policies which apply to the freshwater wetlands , [and] open water fill, **stream encroachment, and coastal program** permitting process. Department staff will candidly discuss the apparent strengths and weaknesses of the proposed permit application at this conference, but the Department shall in no way commit itself to approval or rejection of a proposed project as a result of these discussions.

7:7A-10.2 Request for a pre-application conference
(a) Potential applicants [are encouraged to] **may** request a pre-application conference with the Department [at the earliest opportunity following the issuance of a letter of interpretation]. A request for a pre-application conference shall be made in writing and

shall include a project description, a tax lot and block designation of the site, **the location of the project site, including the municipality and county,** the **general** location of freshwater wetlands and State regulated waters, a copy of the appropriate United States Soil Conservation Service map(s) locating the project, [a list of dominant vegetation types,] **and** a United States Geological Survey quadrangle map showing the site. **The Department encourages the applicant to obtain a letter of interpretation prior to the preapplication conference.**

(b) The Department shall, within 15 days of receipt of such request, schedule a pre-application conference.

SUBCHAPTER 11. APPLICATION PROCEDURE

7:7A-11.1 Application contents **for Individual Freshwater Wetlands and Open Water Fill Permits, and Individual Water Quality Certificates**

(a) The Division will issue joint permits for projects requiring more than one Division permit whenever possible. It is strongly recommended that an applicant requiring more than one Division permit submit all applications materials simultaneously to facilitate joint permit processing. For example, the submission of all information necessary for both a Freshwater Wetlands permit and a Stream Encroachment permit at the same time will facilitate the issuance of a joint permit.

[(a)](**b**) The application for a freshwater wetland permit or open water fill permit shall include 10 copies of the following information:

1. A completed freshwater wetlands permit or open water fill permit application form including the names and addresses of all owners of property adjacent to the property which is the site of the proposed project[;]. **All activities which the applicant plans to undertake which are reasonably related to the same project should be included in the same permit application and will be considered simultaneously with the review of the individual permit. Only one application fee will be required to review all regulated activities in freshwater wetlands, State open waters and transition areas associated with the project;**

2. A **folded** preliminary site plan or subdivision map of the proposed regulated activities, or other map of the site if no preliminary site plan or subdivision map exists;

3. A written description of the proposed regulated activity, the total area to be used, filled or modified, the total area of the freshwater wetland or State open waters potentially affected, identification of the watershed in which the project is located, and the relationship of the area affected to the area of the entire freshwater wetland or State open waters complex, for example, one-half acre to be filled of a 15 acre freshwater wetland. **In addition, project elements affecting transition areas should be detailed;**

4. A description of the source of any [dredged or] fill material and [method of dredging used, if any;] a description of the type, composition and quantity of the material. [; the proposed method of transportation and disposal of the material, including the type of equipment to be used;] **For dredge projects, submit the information as listed at N.J.A.C. 7:7A-4.3(c)2;**

5. A description of alternatives to the proposed activity or discharge, including alternative sites, construction methods, methods of discharge, and reasons for rejecting the alternatives **pursuant to N.J.A.C. 7:7A-3, General Standards for Granting Individual Freshwater Wetlands and Open Water Fill Permits;**

6.-7. (No change.)

8. [A vicinity map identifying the proposed activity site and the local jurisdiction closest to the site] **A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map (available from the Department's Maps and Publications Office, CN 402, Trenton, NJ 08625) showing the location of the property and its general vicinity, indicating and labeling the location of the proposed activity and the property boundaries, and a determination of the State Plane Coordinates for the center of the property;**

9. Verification that a [registered mail] **certified mail** notice **with return receipt requested (white receipt or green card is acceptable)** and a copy of the vicinity map in (a)[7]**8** above have been forwarded to the clerk, environmental commission [(if any)] **or any other public body with similar responsibilities**, and planning board of the municipality in which the proposed regulated activity will occur; the planning board, environmental commission and county mosquito control agency of the county in which the proposed regulated activity wi occur; landowners within 200 feet of the property or properties o which the proposed regulated activity will occur (**applicant shall als provide a list of all landowners within 200 feet**), and all persons a **identified by the Department** who requested to be notified of propose regulated activities, which notice may, **at the applicant's option,** b filed concurrently with notices required pursuant to N.J.S.A 40:55D-1 et seq.[, describing the proposed regulated activity an advising these parties of their opportunity to submit comments there on to the Department;]. **A copy of the notice shall be included in th application to the Department. The notice shall include the following**

i. The name and address of the applicant and, if different, the addres or location of the activity or activities regulated by the permit;

ii. The name, address, and telephone number of the applicant o agent to contact for further information;

iii. A brief description of the proposed activity, its purpose an intended use, so as to provide sufficient information concerning th nature of the activity to generate meaningful comments, including description of the type of structures, if any, to be erected on fills, an a description of the type, composition and quantity of materials to b discharged;

iv. A plan and elevation drawing showing the general and specifi site location;

v. Any other information which would assist interested parties i evaluating the likely impact of the proposed activity; and

vi. The following statement:

"This letter is to provide you with legal notification that the reference property owner is applying to the New Jersey Department of En vironmental Protection, Division of Coastal Resources for an Individua Freshwater Wetlands permit.

An Individual permit will allow the property owner to conduct activitie in freshwater wetlands or State open waters.

The complete Individual permit application package can be reviewe at either the municipal clerk's office or by appointment at the Divisio of Coastal Resources office at the address listed below. The Departmen of Environmental Protection welcomes comments and any informatio that you may provide concerning the wetlands or open waters on th referenced parcel. Please submit your written comments within 15 day of receiving this letter. In addition, interested persons may request i writing that the Department hold a public hearing on this application Requests shall be made in writing within 30 days after the notice o application in the DEP Bulletin and shall state the nature of the issue proposed to be raised at the hearing. Both comments and hearin requests should be sent along with a copy of this letter to:

New Jersey Department of Environmental Protection
Division of Coastal Resources
Bureau of Regulation
CN 401
5 Station Plaza
Trenton, New Jersey 08625
att: (County in which the property is located) Section Chief

As part of the review of this application, Department personnel ma perform a site inspection on your property. This site inspection wi involve only that area within a maximum of 150 feet from the borde of the applicant's property. This site visit will involve a visual inspectio and possibly minor soil borings using a 4" hand auger. The inspectio will not result in any damage to the vegetation or improvements on you property.

The Department will notify your municipal environmental commissior planning board and the municipal construction official of the Depart ment's approval or denial of the Individual permit application";

10. Verification that notice of the proposed activity has been pub lished **as a display advertisement** in a newspaper of local circulatior For projects proposing more than 10 acres of fill, notification sha also be published in a newspaper of regional circulation;

11. A statement detailing any potential adverse environmental ef fects of the regulated activity and any measures necessary to prever and/or minimize those effects, and any information necessary for th

Department to make the findings pursuant to N.J.A.C. 7:7A-3 [and 4]. Applicants should review N.J.A.C. 7:7A-3 [and 4] in great detail and provide all the listed information to avoid unnecessary delays in permit processing;

12.-15. (No change.)

16. A description of technologies or management practices by which the applicant proposes to minimize adverse environmental effects of the activity or discharge. [Some guidance regarding minimizing adverse effects can be found at 40 CFR 230.]

(NOTE: The Department shall **upon request** provide permit applicants with guidance, either through the application form or on an individual basis, regarding the level of detail of information and documentation required under this subsection. The level of detail shall be reasonably commensurate with the type and size of the proposed project, proximity to critical areas, and degree of environmental degradation.)

[(b)](**c**) The application shall also include 10 copies (including one of reproducible quality—**a mylar copy is not required**) of a site plan, on 8½ inch by 11 inch paper if appropriate (if larger than 8½ inch by 11 inch, all copies shall be folded) indicating the following:

1. All existing structures **and related appurtenances** on the lot and immediately adjacent lots;

2. Distances and dimensions of areas, structures and lots, including freshwater wetlands, [and] State open waters, **transition areas,** and] **limits of inundation for the 100 year flood for non-delineated streams or flood hazard area flood for delineated streams (if applicable),** mean high water line (if appropriate), upland property, roads and utility lines;

3. A complete delineation of the wetlands boundary(**ies**) in accordance with the requirements of N.J.A.C. 7:7A-8.[2(b)2, 5, 6, 7 and 9]**3(a) and (b)**. A letter of interpretation issued by the Department [or a jurisdictional letter from the Army Corps of Engineers,] may be submitted to satisfy this requirement[.];

4. The proposed area which will be used for the activity or discharge;

5. The general site location in relation to development in the region;

6. The scale of the plan and a north arrow; **and**

[7. The name of the person who prepared the plan and the date of preparation; and

8. The name of the applicant and municipal lot and block number of the project site.]

7. A title block for each sheet containing the following information:

i. The name of the applicant and the name or the proposed project (if any):

ii. Identification of the proposed activity;

iii. County and municipality;

iv. Lot and block;

v. Number of the sheet and the total number of sheets in set; and

vi. Preparer, and date of the drawing and all revisions.

[(c)](**d**) The application shall also include **color** photographs **of sufficient quality and quantity to** show[ing] the project site including:

1. Location of known freshwater wetlands and State open waters; and

2. Proposed location of the regulated activity.

[(d)](**e**) If the proposed project involves the discharge of dredged or fill material, the application shall include a cross-sectional view of the proposed project showing the following:

1.-4. (No change.)

5. Location of wetlands; **and**

6. Delineation of disposal site[; and].

[7. A title block for each sheet submitted identifying the proposed activity and containing the name of the body of water, river mile, if applicable; name of county, State and nearest incorporated municipality; name of applicant; number of the sheet and the total number of sheets in set; and date the drawing was prepared.]

[(e)](**f**) A mitigation plan meeting the requirements of **N.J.A.C. 7:7A-14.4** may be submitted [N.J.A.C. 7:7A-14.4] with the permit application. The Department requires an approved mitigation plan as a condition precedent to engaging in a regulated activity.

7:7A-11.3 Signatories to permit applications and reports

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

(d) Any person signing a document under (a) or (b) above shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

7:7A-11.4 Confidentiality

(a) Any information submitted to the Department pursuant to these regulations may be claimed as confidential by the submitter at the time of submittal.

(b) Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;

2. Effluent data;

3. Permit application; and

4. Permit decision.

(c) Claims of confidentiality for all information not listed in (b) above will be denied unless the claimant can show that the information should be kept confidential under the requirements and procedures of 40 CFR Part 2.

SUBCHAPTER 12. REVIEW OF APPLICATIONS

7:7A-12.1 Initial Department action **for Individual Freshwater Wetlands and Open Water Fill Permits, and Individual Water Quality Certificates**

(a) Upon receipt of an application, **which includes the fee specified in N.J.A.C. 7:7A-16,** the Department shall, **if appropriate,** transmit copies to [the USEPA and] other reviewing agencies. [and] **In addition, the Department will** publish notice of the application in the DEP Bulletin. **If the application does not include the appropriate fee, no action will be taken by the Department under this section, and the submittal will not be considered an application, and completeness review will not begin.**

(b) Within 30 days of receipt of the application, the Department shall review the application for completeness and **may return the application as incomplete,** make any necessary requests for more information, or declare the application complete. However, **after assumption by the State of the 404 program,** this deadline for requesting additional information shall not apply if requests for more information are made by the Department because of comments received from the USEPA.

1. If the application is returned as incomplete a new application will be required;

2. New notices meeting the requirements at N.J.A.C. 7:7A-11.9 will be required if the new application is not filed within 60 days.

(c) (No change.)

[7:7A-12.2 Draft permits

(a) A draft permit will be prepared by the Department for all those activities listed at N.J.A.C. 7:7A-12.3(a).

(b) If the Department prepares a draft permit, the draft permit shall contain the following information:

1. All conditions under N.J.A.C. 7:7A-13.1 and 13.2; and

2. All monitoring requirements under N.J.A.C. 7:7A-13.1 and 13.2.

(c) All draft permits prepared by the Department under this section shall be accompanied by a statement of basis which meets the requirements of 40 CFR §124.7 or a fact sheet which meets the requirements of 40 CFR §124.8, and shall be publicly noticed in accordance with 40 CFR §124.10 and made available for public comment in accordance with 40 CFR §124.11.]

7:7A-[12.3]**12.2** USEPA review

(a) [The Federal Act requires that the USEPA be notified of and have the opportunity to comment on certain applications for a freshwater wetlands permit or open water fill permit within "Waters

of the State." The Department will provide copies of all appropriate applications to USEPA for review and comment. Permits for the following categories of activities will require USEPA review:] **The Federal Act requires that, after assumption by the State of the 404 program, the USEPA oversees the State's administration of the program. The procedures in (b) through (j) below explain USEPA's oversight role, and the procedures which the State will follow to facilitate USEPA's oversight.**

(b) Permits for at least the following categories of activities will require USEPA review. Anything not listed will be considered to be waived from the requirement of EPA review:

1. Discharges [which may affect freshwater wetlands or State open waters other than the one in which the discharge originates] **with reasonable potential for adverse impacts on waters of another state, as provided in N.J.A.C. 7:7A-12.3(d);**

2. Major discharges **as defined at N.J.A.C. 7:7A-1.4;**

3. Discharges into **or within** critical areas established under State or Federal law including, **but not limited to,** fish and wildlife sanctuaries or refuges, national and historic monuments, wilderness areas and preserves, national and State parks, components of State and Federal Wild and Scenic River systems, [the present or documented habitat of threatened or endangered species,] and sites identified or proposed under the National Historic Preservation Act of 1966, 16 U.S.C. §§470 et seq.;

4. [General] **Proposed Statewide general** permits; [and]

5. Discharges known or suspected to contain toxic pollutants in toxic amounts under Section 307(a)(1) of the Federal Act, or hazardous substances in reportable quantities under Section 311 of the Federal Act[.];

6. Discharges located in proximity of a public water supply; and

7. Discharges with potential for adversely affecting threatened or endangered species, identified pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531 et al. and subsequent amendments thereto.

[(b) The Department shall consider and give great weight to comments provided by USEPA.]

(c) The Department shall promptly transmit to the Regional Administrator:

1. A copy of the complete permit application received by the Department for which permit review has not been waived under (b) above. The Department shall supply the Regional Administrator with copies of the complete permit applications for which permit review has been waived whenever requested by USEPA;

2. A copy of a draft Statewide general permit whenever the Department intends to propose a general permit;

3. Notice of every significant action taken by the State agency related to the consideration of any permit application for which Federal review has not been waived, or of any draft Statewide general permit; and

4. A copy of every permit decision for which review has not been waived.

(d) If USEPA intends to comment upon, object to, or make recommendations with respect to a permit application, draft Statewide general permit, or the State's failure to accept the recommendations of an affected state pursuant to N.J.A.C. 7:7A-12.3(d); USEPA may notify the State of this intent within 30 days of receipt of the permit application. If the State has been so notified, the permit shall not be issued until after the receipt of such comments or within 90 days of the USEPA's receipt of the application, draft Statewide general permit or State response, whichever comes first. The USEPA may notify the State within 30 days of receipt that there is no comment but that USEPA reserves the right to object within 90 days of receipt, based on any new information brought out by the public during the comment period or at a hearing.

(e) When the Department has received a USEPA objection or requirement for a permit condition to a permit application or draft Statewide general permit under this section, the State shall not issue the Federal 404 permit unless the steps required by the USEPA to eliminate the objection have been taken.

(f) Within 90 days of receipt by the Department of an objection or requirement for a permit condition by the USEPA, the State or any interested person may request that the USEPA hold a public hearing on the objection or requirement. USEPA shall conduct a public hearing whenever requested by the state proposing to issue the permit, or if warranted by significant public interest based on requests received.

(g) If a public hearing is held under (f) above, USEPA shall, following that hearing, reaffirm, modify or withdraw the objection or requirement for a permit condition, and notify the Director of this decision.

1. If the USEPA withdraws the objection or requirement for a permit condition, the State may issue the Federal 404 permit.

2. If the USEPA does not withdraw the objection or requirement for a permit condition, the Department must either issue a revised permit satisfying the USEPA's objection or including the required permit condition, or notify USEPA of its intent to deny the permit within 30 days of receipt of the USEPA's notification.

(h) If no public hearing is held under (f) above, the Department shall, within 90 days of receipt of the objection or requirement for a permit condition, either issue the revised permit to satisfy USEPA's objections or notify USEPA of its intent to deny the permit.

(i) In the event that the Department neither satisfies USEPA's objections or requirement for a permit condition nor denies the permit, the Federal 404 permit application will no longer be processed by the Department and shall be transferred to the Army Corps of Engineers for processing.

(j) No Federal 404 permit shall be issued by the Department in the following circumstances:

1. When the Regional Administrator has objected to issuance of the permit and the objection has not been resolved;

2. When the proposed discharges would be in an area which has been prohibited, withdrawn, or denied as a disposal site by the USEPA under Section 404(c) of the Federal Act, or when the discharge would fail to comply with a restriction imposed thereunder; or

3. If the Army Corps of Engineers determines, after consultation with the Secretary of the Department in which the Coast Guard is operating, that anchorage and navigation of any of the navigable waters would be substantially impaired.

7:7A-[12.4]**12.3** Soliciting public comment

(a) The Department shall provide notice of application **pursuant to N.J.A.C. 7:7A-12.1** for an **individual** freshwater wetlands or open water fill permit, **transition area permit or Water Quality Certificate**, in addition to the **applicant's** notice requirements [for submission of the application] in N.J.A.C. 7:7A-11.1(a), in the DEP Bulletin upon receipt of the application. **The public shall have 30 days from publication to submit written comments.**

(b) Copies of all freshwater wetlands [or] **and** open water fill permit applications, **transition area permit, or Water Quality Certificate applications** will be available for public scrutiny by interested persons in **the municipal clerk's office and by appointment in** the offices of the Department in Trenton (see N.J.A.C. 7:7A-1.3 for address) during normal business hours.

(c) (No change.)

(d) If a proposed discharge may affect the biological, chemical, or physical integrity of the waters of any state(s) other than New Jersey, the Department shall provide an opportunity for such state(s) to submit written comments within the public comment period and to suggest permit conditions. If these recommendations are not accepted, the Department shall notify the affected state and the USEPA in writing, prior to permit issuance, of the State's failure to accept these recommendations, together with the reasons for so doing. The Regional Administrator shall then have the time provided for in N.J.A.C. 7:7A-12.2(d) to comment upon, object to, or make recommendations.

7:7A-[12.5]**12.4** Hearings on applications

(a) Within [20] **30** days [of] **after** publication of the notice of application in the DEP Bulletin, interested persons may request in writing that the Department hold a public hearing on a particular application. **Requests shall state the nature of the issues proposed to be raised at the hearing.**

[(b) Within 60 days after the Department receives comment on a complete application for a permit from USEPA, or upon receipt of notice from USEPA that no comment will be forthcoming, the Department may hold a non-adversarial public hearing on the application for a permit or on a draft permit if one is issued].

[(c)](b) The Department may issue or deny a permit without a public hearing, unless there is a significant degree of public interest in the application as manifested by written requests for a hearing within 20 days after the publication of notice of the permit application in the DEP Bulletin [of the Department] **or unless a hearing is requested by USEPA.**

[(d)](c) If a hearing is to take place, the Department shall, within 15 days of declaring the application complete **or within 30 days of publication in the DEP Bulletin (whichever is later),** set a date, place, and time for the public hearing and shall so notify the applicant, in accordance with the following:

[1. The date for the hearing shall not be later than 60 days after the Department receives comment from USEPA on the complete application; and]

[2.]**1.** The hearing shall be in the county wherein the freshwater wetland or State open waters is located whenever practicable.

[(e)](d) The Department shall publish a notice announcing the date, place, and time of the public hearing in the DEP Bulletin.

[(f)](e) The applicant shall give public notice of the public hearing at least 30 days before the hearing [and in accordance with the following].

1. This notice shall comply with the notice requirements for applications found at N.J.A.C. 7:7A-11.1(b)7, 9 and 10 using the following format:

[1. Such notice shall describe the proposed regulated activity, identify its agency project number, announce the date, place, and time of the public hearing on the application, and indicate that written comments may be submitted to the Division of Coastal Resources (or its successor), New Jersey Department of Environmental Protection, CN 401, Trenton, New Jersey 08625, at or within 15 days after the public hearing]

"NOTICE OF STATE FRESHWATER WETLANDS INDIVIDUAL PERMIT APPLICATION PUBLIC HEARING

TAKE NOTICE that the New Jersey Department of Environmental Protection, Division of Coastal Resources will hold a public hearing on the following permit application submitted under the Freshwater Wetlands Protection Act N.J.S.A. 13:9B-1 et seq.

APPLICANT: Name
FILE NUMBER: Division's file number
PROJECT NAME: Name (if any)
PROJECT DESCRIPTION: Detailed description of the proposed improvements including all construction activities
LOCATION: Block and Lot
MUNICIPALITY: Municipality in which project is located
COUNTY: County in which project is located
PROJECT ADDRESS: Street address of project

The Division of Coastal Resources invites the public to attend the hearing and present written or oral comments on the application.

HEARING DATE & TIME: As assigned by Division
HEARING LOCATION: As assigned by Division
HEARING OFFICER: Your project review officer
DATE OF PREVIOUS HEARING (If one was held):

A copy of the complete application is available for review at the township clerk's office. The Division of Coastal Resources invites the public to submit written comments on the Freshwater Wetlands Individual Permit application within fifteen (15) days of the hearing to:

Your project review officer
Division of Coastal Resources
CN 401/501 E. State St. 5 Station Plaza
Trenton, NJ 08625

DATE OF THIS NOTICE: Date";

[2. If the regulated activity involves a linear facility such as a pipeline or road, the applicant shall also give public notice by publication of a display advertisement of at least four column inches in a newspaper of general circulation in the municipality, and to owners of all real property within 200 feet of any above surface structure related to the linear facility, such as a pumping station or treatment plant; and]

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

[(g)](f) The Department shall maintain a copy of the hearing transcript **and all written comments received. The transcript and written comments shall be made part of the official record on the application and shall be available** for public inspection in its Trenton Office. See N.J.A.C. 7:7A-1.3 for address.

[(h)](g) The applicant shall **provide a court reporter,** bear the cost of the hearing **and provide the Department with a transcript.**

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

[(j)](i) Any interested person may submit information and comments, in writing, concerning the application [or draft permit at or] within 15 days after the hearing.

7:7A-[12.6]**12.5** Final decisions

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

(c) The Department may issue a permit imposing conditions necessary for compliance with the Act, this chapter, the Federal Act and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. **Any regulated activities undertaken under authority of any issued permit shall constitute an acceptance by the applicant of the entire permit including all conditions therein.**

(d) Decisions by the Department shall be published in the DEP Bulletin **and a copy of every issued individual permit for which USEPA review has not been waived shall be transmitted to USEPA.**

(e) (No change.)

7:7A-[12.7]**12.6** Cancellation, withdrawal, resubmission and amendment of applications

(a) (No change.)

(b) If an application is not complete for final review within 60 days of a request for additional information, the Department [may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. If good cause is demonstrated, a 60 day extension in which to submit the information shall be granted.] **shall send a letter canceling the application and stating that the application will be purged from Department files and that a new application will be required to reactivate the Department's review. If the applicant sends the Department a letter documenting good cause for not supplying the requested information within the 60 day period, the Department will grant an automatic extension of 30 days.**

1. All fees submitted with an application subsequently cancelled shall be non-refundable.

[2. A resubmission of a previously cancelled application shall be accompanied by a new fee.]

(c) An applicant may withdraw an application at any time in the application review process. All fees submitted with such applications are non-returnable **when a significant portion of the review has been completed**. In some cases however (see (d) below) the fees may be credited toward future applications.

(d) If an application is **cancelled,** denied or withdrawn, the applicant may resubmit an application for a revised project on the same site. The resubmitted application will be treated as a new application, although references may be made to the previously submitted application. [A new fee will be required however, if the application was withdrawn prior to being declared complete, the original permit fee from the previously withdrawn application may be credited to the new fee, provided the application is resubmitted within one year of the date of withdrawal.] **A new fee will be required except for applications that are withdrawn and resubmitted within one year of the withdrawal date.**

(e) [Permit] **A permit** application may be amended at the applicant's discretion at any time as part of the permit review process. Copies of amendments and amended information shall be distributed by the applicant to the same person to whom copies of the initial application where distributed. All amendments to pending applications shall constitute a new submission and may at the Department's discretion require reinitiation of the entire review process.

7:7A-[12.8]**12.7** Hearings and appeal **of permit decisions**

(a) An applicant for a freshwater wetlands or open water fill permit or other affected party may request of the Commissioner an administrative hearing on any decision to issue or deny a permit made by the Department pursuant to the Act and this chapter. **When a request for an administrative hearing is filed by an affected party contesting an approved permit, the effective date of the approved permit may be stayed at the discretion of the Commissioner until the matter is resolved.**

(b) Such request shall be submitted in writing within 30 days of [the contested decision] **the DEP Bulletin publishing date, or the date of receipt of the permit decision, whichever is later. The request shall state in what way the Department has acted improperly in issuing or denying the permit, and what issues will be raised by the requestor should a hearing be held.**

(c) **The request for a hearing shall be sent to:**

Adjudicatory Hearings
Division of Coastal Resources
501 East State Street, CN 401
Trenton, NJ 08625

1. Upon receipt of such a request, the Commissioner [shall] **may** refer the matter to the Office of Administrative Law, which shall assign an administrative law judge to conduct a hearing on the matter in the form of a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

2.-3. (No change.)

SUBCHAPTER 13. PERMIT CONTENTS

7:7A-13.1 Conditions applicable to all permits

(a) The following conditions apply to all **individual and Statewide general** freshwater wetlands and open water fill permits[. All such conditions shall be incorporated into the permits]:

1. Duty to comply: The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Act and this chapter, and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. **In some cases, permit noncompliance may also constitute a violation of the Federal Act.**

2.-3. (No change.)

4. Duty to [mitigate] **minimize environmental impacts:** The permittee shall take all reasonable steps to prevent, minimize or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit. Mitigation consistent with N.J.A.C. 7:7A-14 will also be required **for freshwater wetlands permits, open water fill permits and those Statewide General permits described at N.J.A.C. 7:7A-9.2(a).**

5.-17. (No change.)

7:7A-13.2 Establishing permit conditions

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

(c) In addition to the requirements in N.J.A.C. 7:7A-13.6, each permit shall include [conditions] **information** meeting the following requirements, when applicable:

1. A specific identification and description of the authorized activity, including:

i.-iii. (No change.)

iv. Any structures proposed to be erected; [and]

v. The location and boundaries of the activity site(s), including a detailed sketch and the name and description of affected freshwater wetlands [and], State open waters, **and transition areas,** identification of the major watershed and subwatershed; **and**

vi. A reference to the specific site plans depicting the approved regulated activity(ies);

2.-8. (No change.)

(d) (No change.)

7:7A-13.3 Duration of permits

[(a)] Freshwater wetlands and open water fill permits shall be effective for a fixed term not to exceed five years.

[(b) The term of a permit shall not be extended beyond the maximum duration specified in this section. However, if necessary, a permit may be renewed through the application process set forth in this chapter.]

7:7A-13.6 Modification or revocation and reissuance of permits

(a) (No change.)

(b) Any permit modification not processed as a minor modification must be made for cause and with the [draft permit (if applicable) and] public notice and hearings procedures required for permit applications under N.J.A.C. 7:7A-[12.3 and 12.4.] **11.1(a)7, 9 and 10 12.1(a), 12.3, 12.4, and 12.5.**

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

(e) When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision, [and] public hearings and comments, and the permit may be reissued for a new term.

(f) No Federal 404 permit shall be modified or revoked and reissued if USEPA objects (see N.J.A.C. 7:7A-12.3).

[(f)](g) Any modification **except for those issued pursuant to N.J.A.C. 7:7A-13.9(b)4** will be published in the DEP Bulletin.

(h) Except for minor modifications of permits as described at N.J.A.C. 7:7A-13.9, a fee shall be submitted for modifications according to the requirements set forth for permit fees at N.J.A.C. 7:7A-16.

7:7A-13.9 Minor modifications of permits

(a) (No change.)

(b) Minor modifications may only:

1.-3. (No change.)

[4. Extend the term of a permit, so long as the modification does not extend the term of the permit beyond five years from its original effective date.]

4. Allow for a change in materials or construction techniques required by another permitting agency provided the change will not result in additional wetland, State open water or transition area impacts from that of the originally approved permit.

SUBCHAPTER 14. MITIGATION

7:7A-14.1 Mitigation goals

(a) The Department shall require **mitigation** as a condition of an individual freshwater wetlands **or State open water fill** permit**, Water Quality Certifications and certain Statewide general permits.** [that all appropriate measures have been carried out to mitigate adverse environmental impacts, restore vegetation, habitats, and land and water features, prevent sedimentation and erosion, minimize the area of freshwater wetland disturbance and ensure compliance with the Federal Act and implementing regulations. In addition, mitigation] Mitigation [pursuant to this subchapter may also be required and] may include restoration, creation, enhancement, or donation of money or land or both to the Mitigation Bank**, or through other public or non-profit mechanisms approved by the Division.**

(b) When an individual **freshwater wetlands permit, State open water fill** permit**, Water Quality Certification or certain Statewide general permits** allow[s] the disturbance or loss of wetlands **or State open waters,** this disturbance or loss shall be compensated for as specified [below] at N.J.A.C. 7:7A-14.2, unless the applicant can prove, through the use of productivity models or other similar studies, that by restoring or creating a lesser area, there will be a replacement of wetlands **or State open water** of equal ecological value. **In order to demonstrate equal ecological value, the applicant shall survey and provide written documentation regarding, at a minimum, existing soil, vegetation and wildlife habitat conditions and detail how the proposed mitigation plan will replace the ecological values of the wetland to be lost or disturbed.**

(c) Mitigation must be performed prior to or concurrently with **permitted** activities that will permanently disturb wetlands **or State open waters**, and immediately after activities that will temporarily disturb wetlands **or State open waters. Applicants shall be required to obtain a secured bond, or other surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the applicant default. The performance bond for the construction of the proposed mitigation shall be posted in an amount equal to 115 percent of the estimated cost of the activity.**

In addition, a maintenance bond to assure the success of the mitigation shall be posted in an amount equal to 30 percent of the estimated cost of construction. The performance and maintenance bonds will be reviewed annually and shall be adjusted to reflect current economic factors.

[(d) Where the Department permits mitigation on less than a 2:1 basis, frequent monitoring will be required by the permittee. In such cases, the Department will require additional mitigation or further remedial action when a net loss of equal ecological value is indicated. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of wetlands from other existing climax habitats is discouraged.]

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

(e) As a condition of every creation or enhancement plan authorized under this subchapter, an applicant shall sign a Department approved conservation easement and register this restriction on the deed for the subject parcel. This restriction will provide that no regulated activities will occur in the created or enhanced wetland area. This restriction shall be memorialized in a deed restriction meeting the Department's requirements and shall run with the land and be binding upon the applicant and the applicant's successors in interest in the premises or any part thereof. The freshwater wetland permit will not become effective until the deed restriction is registered with the county clerk. Any regulated activities undertaken on the site before a copy of the registered restriction is submitted to the Department will be considered in violation of the Act and this chapter.

(f) [Any] **Except for publicly funded projects, as described at (f)2 below, any** mitigation carried out offsite shall be on private property. [, and no future development will be permitted on the mitigation site.]

1. No future development will be permitted on the mitigation site unless the Department finds that the regulated activity has no practicable alternative which would:

i. Not involve a freshwater wetland or State open water; or

ii. Involve a freshwater wetland, or State open water but would have a less adverse impact on the aquatic ecosystem;

iii. Not have other significant adverse environmental consequences, that is it shall not merely substitute other significant environmental consequences for those attendant on the original proposal; and

iv. That there is a compelling public need for the activity greater than the need to protect the mitigation site.

2. Mitigation for publicly funded projects may be carried out on public lands if the following conditions are met:

i. If the lands are encumbered by Green Acres funding, the use of the land for mitigation must be approved by the Green Acres Administration and the State House Commission;

ii. If the lands are not encumbered, the use of the land as mitigation must be approved by the public agency administering the land; and

iii. The Department must determine that the use of the public land for mitigation will result in a net gain in environmental value and does not simply provide equal ecological value.

(g) When loss or disturbance of freshwater wetlands or State open waters results from a violation of the Act, this chapter, or any permit, order or approved mitigation plan issued pursuant thereto, the mitigation portion of the penalty shall be that specified in N.J.A.C. 7:7A-[16]**15. The Department may, at its discretion, condition approval of a mitigation plan, or a permit, or both, on the resolution of the violation.**

7:7A-14.2 Wetland or **State open water** mitigation options

(a) The Department distinguishes between four types of mitigation: restoration, creation, enhancement, and contribution. Depending on the circumstances under which wetlands **or State open waters** are lost or disturbed, different types of mitigation may be required by the Department. The types of mitigation are explained below[, in decreasing order of their desirability]:

1. Restoration refers to actions performed on the site of a regulated activity, within six months of the regulated activity, in order to reverse or remedy the effects of the activity on the wetland **or State open waters**, and to restore the site to pre-activity condition.

i. Restoration will be required at a ratio of one acre restored to one acre lost, **modified** or disturbed. If restoration type actions are performed more than six months after the regulated activity which disturbed the wetland, these actions will no longer be considered restoration, but will be considered creation, and will be governed by the provisions of (a)2 below. **At the Department's discretion, restoration activities may exceed six months in cases where a violation has occurred.**

[ii. If restoration type actions are performed on degraded freshwater wetlands offsite, these actions will be considered enhancement, and will be governed by the provisions of (a)3 below.]

2. Creation refers to actions performed to establish freshwater wetland **or State open water** characteristics, habitat and functions on **upland areas. The creation of freshwater wetlands or State open waters shall be governed by the following provisions**:

[i. A non-wetlands site; or]

i. Creation will be required at a ratio of two acres created to one acre lost or disturbed unless the applicant demonstrates equal ecological value pursuant to N.J.A.C. 7:7A-14.1(b). Where the Department permits mitigation on less than a 2:1 basis, frequent monitoring will be required by the permittee. In such cases, the Department will require additional mitigation or further remedial action if a net loss of equal ecological value occurs over time. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of wetlands from other existing climax habitats is discouraged.

ii. [A formerly freshwater wetlands site which has been filled or otherwise disturbed such that it no longer retains wetland characteristics. If the] **Creation shall not be permitted on a** site **that** retains wetlands characteristics [such that it meets the definition of a degraded wetland pursuant to N.J.A.C. 7:7A-1.4, it is not eligible for use in creation]. Rather [it] **such a site** is only eligible for enhancement activities pursuant to (a)3 below. [If the disturbance to a formerly wetlands site is the result of a violation of the Act or this chapter, the Department may, at its discretion, condition approval of a mitigation plan, or a permit, or both, on the resolution of the violation.]

iii. In addition to the wetlands created in the ratio required, the mitigation site shall include the appropriate transition area. The transition area width will be that which is required for the resource value classification of the closest adjacent wetland areas and will be a minimum of 50 feet.

3. Enhancement refers to actions performed to improve the characteristics, habitat and functions of an existing, degraded wetland such that the enhanced wetland will [function] have resource values and functions similar to an undisturbed wetland. [Enhancement will be required at a ratio of seven acres enhanced to one acre lost or disturbed.] **The ratio of enhanced wetlands to wetlands disturbed or modified will be determined based on the documented assessment of the loss of ecological value of the wetlands disturbed or modified.**

4. Contribution refers to the donation of money or land to the Mitigation Bank. The Department will permit the donation of land only after determining[, in consultation with the USEPA,] that [all alternatives to the donation], **other forms of mitigation** are not practicable or feasible **or would not be as ecologically beneficial as the land donation. If creation, restoration, or enhancement cannot be carried out in the same watershed, the Department may make the finding that a land contribution to the Mitigation Bank is more ecologically beneficial. The Department will consider the contribution of money to the Mitigation Bank only after determining that creation or restoration of wetlands onsite is not feasible. The Department will consult with USEPA in making this determination for projects for which USEPA review has not been waived.** [If money is donated, the Department will require an amount equivalent to:]

i. [The] **If money is donated, the donation shall be in an amount equivalent to the** cost of purchasing an area [which was historically a freshwater wetland but which has been legally filled, and restoring that area to] **and creating** a functional freshwater wetland, [resulting in preservation of freshwater wetlands of equal ecological value to those which are being lost] **at a ratio of two acres of wetlands created for each acre disturbed unless the applicant demonstrates equal ecological value pursuant to N.J.A.C. 7:7A-14.1(b)**[; or].

[ii. The cost of purchasing an area which was historically an upland, and creating freshwater wetlands of equal ecological value to those which are being lost, and preserving the created wetland.]

[5]**ii.** If the Department determines that land [may be donated] **donation is appropriate,** as part or all of a contribution, [the Wetlands Mitigation Council must first determine that the donated land has the potential to be a valuable component of the freshwater wetlands ecosystem] **only land which has been determined by the Department or the Mitigation Council to have the potential to be a valuable component of the freshwater wetlands ecosystem will be acceptable to satisfy the mitigation requirement.**

7:7A-14.3 Location of mitigation sites

(a) All mitigation projects shall be carried out on-site to the maximum extent practicable.

(b) If on-site mitigation is found to be impracticable, the mitigation shall be carried out within the same watershed **to the maximum extent practicable.**

(c) If the Department determines that mitigation onsite is not feasible or less ecologically beneficial, the Department may approve mitigation in a different watershed.

7:7A-14.4 Wetland mitigation proposal requirements

(a) A proposal for mitigation shall include the following information, as appropriate:

1. A description of the size and type of mitigation project proposed, including [any proposed] **a** transition area, a description of the freshwater wetlands which are being lost or disturbed and how the proposal satisfies the requirement for creation of wetlands of equal ecological value within the same watershed;

2. [Current] **The names and addresses of current** and proposed owner(s) of the mitigation project site;

3. (No change.)

4. A monitoring and maintenance plan to ensure 85 percent survival and 85 percent [area] **areal** coverage of the mitigation plantings for at least three years after planting;

5.-8. (No change.)

9. A metes and bounds description of the proposed mitigation site, **which will form the basis for the deed restriction;** [and]

10. Five **folded** copies of a site plan for the mitigation project which includes:

i. Project location within the region and in relation to adjacent development;

ii. [Lot] **The lot** and block number **of the project location** [and name and address of property owner];

iii. Existing and proposed elevations and grades of the project shown in one foot intervals; and

iv. Plan views and cross sectional views[.]; **and**

ii. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map (available from the Department's Maps and Publications Office, CN 402, Trenton, NJ 08625) showing the location of the property and its general vicinity, indicating and labeling the location of the proposed mitigation and the property boundaries, and a determination of the State Plane Coordinates for the center of the property.

7:7A-14.5 Acceptability of wetlands mitigation proposals

(a) Wetlands **and State open water** mitigation proposals shall be reviewed by the Department for acceptability. The Department will base the acceptibility determination upon the following criteria:

1.-3. (No change.)

4. Suitability of the monitoring program and maintenance to ensure 85 percent survival and 85 percent [area] **areal** coverage of the mitigation plantings for at least three years following planting;

5.-9. (No change.)

(b) When a mitigation plan is submitted subsequent to the permit decision, within 30 days of the receipt of the submission, the Department shall review the submission for completeness and make any necessary requests for additional information, or declare the submission complete. Within 60 days of accepting a submission as complete, the Department shall issue a decision on the acceptability of a proposed mitigation plan unless extended by consent of the permittee.

7:7A-14.6 Wetlands Mitigation Council

(a) The Wetlands Mitigation Council shall have oversight of the creation and implementation of the Wetlands Mitigation Bank. **The Wetlands Mitigation Bank will serve all programs within the Division of Coastal Resources for which wetlands and open water mitigation is required as a condition of a permit.** The Council duties and function shall include:

1. Accepting donations of money or land when the Departmen has determined donation to be an acceptable form of mitigation fo a permit or a violation;

2. Determining if land to be donated has the potential to be a valuable component of the [freshwater] wetlands **or surface wate** ecosystem;

3. Disbursement of funds from the Wetlands Mitigation Bank t finance mitigation projects; [and]

4. Purchasing land to provide areas for restoration of degrade freshwater wetlands and to preserve [freshwater] wetlands, **and sur face waters** and transtion areas determined to be of critical import ance[.]; **and**

5. Reviewing and approving the establishment of private mitigatio banks.

[(b) The Wetlands Mitigation Council shall not engage in resto ration of degraded wetlands on public lands, except those lands whic became public lands solely by virtue of being held by the Bank.]

[(c)](**b**) The Council may transfer any funds or lands restricted b deed, easement or other appropriate means to mitigation an freshwater wetlands conservation purposes, to a State or Federa conservation agency that consents to the transfer, to expand o provide for:

1.-3. (No change.)

4. Research to [enhance the practice of] **determine more successfu** mitigation **techniques.**

[(d)](**c**) Under no circumstances will the resources of the Mitiga tion Bank be used to aid permittees or violators in [pursuing mitiga tion] **locating mitigation sites** required of them because of their permi or violation.

SUBCHAPTER 15. ENFORCEMENT

7:7A-15.1 [Burden of proof] **General provisions**

The burden of proof and degrees of knowledge or intent require to establish a violation of the Act or of any permit, order, rule o regulation promulgated pursuant thereto shall be no greater than th burden of proof or degree of knowledge or intent which USEPA mus meet in establishing a violation of the Federal Act or implementin regulations.

7:7A-15.2 USEPA review

The Department shall make available without restriction any infor mation obtained or used in the implementation of the Act to USEPA upon [a] request [therefor].

7:7A-15.3 Administrative order

(a) Whenever, on the basis of available information, the [Com missioner] **Department** finds a person in violation of any provisio of the Act, or of any permit, order, rule or regulation issued pursuan thereto, the [Commissioner] **Department** may issue an order:

1.-2. (No change.)

3. Requiring **immediate** compliance with the provision o provisions violated;

4.-5. (No change.)

7:7A-15.4 Civil action

(a) Whenever, on the basis of available information, the [Com missioner] **Department** finds a person in violation of any provisio of the Act, or of any rule or regulation adopted, or permit or orde issued, pursuant to the Act, the [Commissioner] **Department** is authorized to institute a civil action in Superior Court for appropriate relief. Such relief may include, singly or in combination:

1.-2. (No change.)

3. Assessment of the violator for any costs incurred by the State in removing, correcting, or terminating the adverse effects upon the freshwater wetlands [or], State open waters **or transition areas** result ing from any unauthorized regulated activity for which legal action under this section may have been brought;

4. Assessment against the violator for compensatory damages fo any loss or destruction of wildlife, fish or aquatic life, and for any

other actual damages caused by an unauthorized regulated activity. Assessments under this section shall be paid to the State Treasurer except that compensatory damages shall be paid by specific order of the court to any persons who have been aggrieved by the unauthorized regulated activity; **and/or**

5. (No change.)

7:7A-15.5 Civil administrative penalty

(a) Whenever, on the basis of available information, the [Commissioner] **Department** finds a person in violation of any provision of the Act, or of any rule or regulation adopted, or permit or order issued, pursuant to the Act, the [Commissioner] **Department** is authorized to assess a civil administrative penalty of not more than $10,000 for each violation. Each day during which each violation continues shall constitute an additional, separate, and distinct offense. Specific penalty amounts, and procedures for their assessment and for adjudicatory hearings on penalties assessed, can be found at N.J.A.C. 7:7A-17.

1.-2. (No change.)

3. The ordered party shall have 20 days from receipt of the notice within which to deliver to the [Commissioner] **Department** a written request for a hearing in accordance with N.J.A.C. 7:7A-17.9. Such hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

4. (No change.)

5. Any civil administrative penalty assessed under this section may be compromised by the [Commissioner] **Department** upon the posting of a performance bond by the violator, or upon such terms and conditions as the [Commissioner] **Department** may establish by regulation.

7:7A-15.6 Civil penalty

(a) [A] **Each** person who violates the Act or this chapter, or an administrative order or a court order issued pursuant to the Act, **and** who fails to pay a civil administrative assessment in full pursuant to N.J.A.C. 7:7A-15.5, shall be subject, upon order of a court, to a civil penalty not to exceed $10,000 per day of such violation. Each day during which the violation continues shall constitute an additional, separate, and distinct offense.

(b) (No change.)

7:7A-15.8 Notice of violation recorded on deed to property

In addition to the penalties prescribed in this subchapter, a notice of violation of the Act shall be recorded on the deed of the property wherein the violation occurred, on order of the [Commissioner] **Department**, by the clerk or register of deeds and mortgages of the county wherein the affected property is located and with the clerk of the Superior Court and shall remain attached thereto until such time as the violation has been remedied and the [Commissioner] **Department** orders the notice of violation removed.

7:7A-15.9 "After the fact" permit

(a) [If the violation is one in which the Department has determined that the restoration or rehabilitation of the site to its previolation condition would increase the harm to the freshwater wetlands or State open waters or its ecology, the] **The** Department may issue an "after the fact" permit for the regulated activity that has already occurred[.] **only when:**

[(b)An "after the fact" permit shall only be issued when:]

1. The Department has determined that the restoration or rehabilitation of the site to its previolation condition would increase the harm to the freshwater wetlands, State open waters or its ecology; or the regulated activity meets the standards for permit approval pursuant to the Act;

[1.]**2.** Assessment against the violator for costs or damages enumerated in N.J.A.C. 7:7A-15.4 has been made **and collected**;

[2.]**3.** The creation or enhancement of freshwater wetlands or State open waters at another site has been required of the violator;

[3.]**4.** An opportunity has been afforded for public hearing and comment; and

[4.]**5.** The reasons for the issuance of the "after the fact" permit are published in the [New Jersey Register] **DEP Bulletin** and in a newspaper of general circulation in the geographic area of the violation.

(c) Any person violating an "after the fact" permit issued pursuant to this section shall be subject to the provisions of this chapter.

7:7A-15.10 Termination of permits

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

1. Noncompliance by the permittee with **the permit or** any condition of the permit; [or]

2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time[.]; **or**

3. The permit has unanticipated negative environmental impacts which become apparent during construction.

(b) Prior to a termination, the Department shall furnish written notice to the permittee by certified mail. The notice shall provide 10 days within which the permittee shall either remedy the violations, **or unanticipated negative environmental impacts,** [request a hearing or] offer a [mitigation] plan as to how [the violation will be corrected] **to bring the permit back into compliance or correct the unanticipated impact, or request a hearing.** Within [90] **60** days of Department approval of a plan, the violations **or unanticipated impact** shall be remedied.

(c) If the requirements of (b) above have not been met **within 10 days of the Department's notice,** the permit shall [be terminated. The regulated activity shall cease] **automatically terminate** and the **unanticipated negative environmental impacts or** violations shall be remedied. Once the violations are remedied, the [permittee] **Department** may **reinstate the permit or require the applicant to** apply for a new permit, following the application procedures in this chapter.

(d) (No change.)

(e) [A permittee may appeal termination of a permit according to the provisions of N.J.A.C. 7:7A-11.7 only if the regulated activity has ceased.] **The State shall provide for public participation in the State enforcement process by providing assurance that the State agency or enforcement authority will:**

1. Investigate and provide responses to all citizen complaints submitted pursuant to State procedures;

2. Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

3. Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action in the DEP Bulletin.

[7:7A-15.11 Remedies not exclusive

Recourse to any of the remedies available in this subchapter shall not preclude recourse to any of the other remedies therein.]

SUBCHAPTER 16. FEES

7:7A-16.1 Payment of fees

(a) Except when submitted by an agency of the State, each request for a letter of interpretation, or freshwater wetlands permit application, open water fill permit application, [or notice of proposed activity covered by a general permit,] **letter of authorization for a Statewide general permit activity, transition area permit application, or request for a letter of exemption** shall be accompanied by the appropriate fee as set forth [below] at N.J.A.C. 7:7A-16.2 to 16.6. Except when submitted by an agency of the State, no request, application, or notice will be considered complete, and therefore will not be acted on by the Department, unless accompanied by the appropriate fee.

(b) All fees shall be paid by personal check, certified check, attorney check, or money order. Checks and money orders shall be payable to "Treasurer, State of New Jersey" and submitted **with the application.** [to:

Division of Coastal Resources
New Jersey Department of Environmental Protection
CN 401
5 Station Plaza
501 East State Street
Trenton, New Jersey 08625]

(c) Each check or money order shall be marked to identify the nature of the submittal (for example, freshwater wetlands **Individual** permit application) for which the fee is paid and the name of the applicant.

7:7A-16.2 Fees for review of requests for letters of interpretation

(a) If a request is made for a letter of interpretation to determine [only whether any freshwater wetlands are present or absent on a parcel of land, the fee shall be $100.00.]:

i. Whether freshwater wetlands, State open waters or transition areas are present or absent on a parcel of land or right-of-way, pursuant to N.J.A.C. 7:7A-8.2(a)1, the fee shall be $100.00;

ii. Whether freshwater wetlands, State open waters or transition areas are present or absent on a footprint of land, pursuant to N.J.A.C. 7:7A-8.2(a)2, the fee shall be $200.00.

(b) Any request for a letter of interpretation which requires any freshwater wetlands **or State open water** boundary delineation, or verification of a delineation, shall be accompanied by the following fee:

1. For a parcel of land **or right-of-way** which is smaller than one acre, **pursuant to N.J.A.C. 7:7A-8.2(a)3,** the fee shall be [$100.00] **$250.00** or

2. For parcel of land **or right-of-way, with total acreage** of one acre or more, **pursuant to N.J.A.C. 7:7A-8.2(a)4,** the fee shall be $250.00 plus [$20.00] **$35.00** per acre or any fraction thereof, **with a total not to exceed $50,000. For example, the fee for line verification of a parcel with a total acreage of 7.2 acres would be $250.00 + (8 acres × $35.00)= $530.00.**

(c) For a request for the reissuance of a letter of interpretation pursuant to N.J.A.C. 7:7A-8.7, the fee shall be 25 percent of the original fee or $100.00, whichever is larger.

[(c)] **(d)** (No change in text).

7:7A-16.3 Fees for review of **individual** freshwater wetlands[,] **and open water fill** permits **or individual water quality certificate** applications

[(a) The fee for the review and processing of a freshwater wetlands permit application to drive pilings shall be $500.00. If a freshwater wetlands permit application is for any regulated activity set forth in (b) below, in addition to pile driving, the fee for review will be that set forth in (b) below.]

[(b)]**(a)** The fee for the review and processing of an **individual** freshwater wetlands **and open water fill** permit **or individual water quality certificate** application [for any of the following activities] shall be $1,000 plus $100.00 per one-tenth acre, or any fraction thereof, of freshwater wetlands **or State open waters** affected by any [of the following proposed] regulated activities[:]. **For a permit requiring both an individual freshwater wetlands and open water fill permit, the fee shall be $1,000 plus $100.00 per one-tenth acre, or any fraction thereof, of freshwater wetlands and State open waters affected by any regulated activities.**

(b) For projects that require both an individual freshwater wetlands/ open water fill permit and a transition area permit, only one fee for the review and processing of the permit shall be required, the higher of the two fees.

[1. The removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind:

2. The drainage or disturbance of the water level or water table;

3. The dumping, discharging or filling with any materials:

4. The placing of obstructions other than pilings; and

5. The destruction of plant life which would alter the character of a freshwater wetland, including the cutting of trees.]

(c) (No change.)

[7:7A-16.4 Fees for review of open water fill permit applications

(a) The fee for the review and processing of an open water fill permit application shall be $1,000 plus $100.00 per one-tenth acre, or any fraction thereof, of State open waters affected by the proposed discharge of dredged or fill material.

(b) If, in order to review and process an open water fill permit application, more than one inspection by the Department is necessary because of any act or omission of the applicant, the Department may assess an additional fee for each additional visit in an amount not to exceed $1,000. No permit shall be issued until this fee has been paid.]

7:7A-[16.5]**16.4** Fees for review of [notices of proposed activity covered by a general permit] **Statewide general permit authorization applications**

(a) The fee for review of a [notice of proposed activity covered by a general permit] **Statewide general permit authorization application** pursuant to N.J.A.C. 7:7A-9.4(a) shall be [$100.00] **$250.00** **except in the case of Statewide General Permits at N.J.A.C. 7:7A-9.2(b)12, 13 and 14, which require no fee].**

(b) If a proposed project requires more than one type of general permit, the fee shall be [$100.00] $250.00 for [each] **the first** general permit **and $100.00 for each additional general permit.**

7:7A-[16.6]**16.5** Fees for review and processing of transition area [waiver] **permit** applications

(a) Each request for a transition area [waiver] **permit** shall be accompanied by the appropriate fee as follows:

1. If a letter of interpretation has been performed on the property by the Department pursuant to N.J.A.C. 7:7A-8 confirming or delineating the freshwater wetlands boundary, the transition area [waiver] **permit** application fee shall be:

i. For a property or right of way of one acre or less: $100.00; [and]

ii. For a property or right of way over one acre: [$200.00] **$250.00** plus $20.00 per acre, or any fraction thereof, of the standard transition area affected or disturbed by the proposed activity[.]; **and**

iii. For review of applications for more than one type of transition area permit, the fee shall be $250.00 plus $20.00 per acre, or any fraction thereof of the standard transition area affected or disturbed by the proposed activity, plus $100.00 for each additional special activity permit.

2. If no letter or interpretation for the property has been prepared by the Department pursuant to N.J.A.C. 7:7A-8 confirming or delineating the freshwater wetlands boundary, the transition area [waiver] **permit** application fee shall be:

i. For a property or right of way of one acre or less: [$200.00; and] **$350.00;**

ii. For a property or right of way over one acre: $450.00 plus [$25.00] **$40.00** per acre, or any fraction thereof, of the total property[.]; **and**

iii. For review of applications for more than one type of transition area permit, the fee shall be $450.00 plus $40.00 per acre, or any fraction thereof of the total property plus $100.00 for each additional special activity permit.

3. If a letter of interpretation for the property which provides only a determination of the presence or absence of freshwater wetlands has been prepared for a property by the Department pursuant to N.J.A.C. 7:7A-8, the transition area [waiver] **permit** application fee shall be:

i. For a property or right of way of one acre or less: [$100.00]; **$350.00**; **and**

ii. For a property or right of way over one acre: $450.00 plus [$25.00] **$40.00** per acre, or any fraction thereof, of the total property.

[4. If a transition area waiver is sought by an agency of the State, no application fee is required.]

4. For special activity permits for activities covered by Statewide general permits, the permit application fee shall be:

i. For the review of a special activity permit pursuant to N.J.A.C. 7:7A-7.4(e): $250; and

ii. If a proposed project requires more than one type of special activity permit, the fee shall be $250.00 for the first special activity permit and $100.00 for each additional special activity permit.

5. If, in order to review and process a transition area [waiver] **permit** application, more than one site inspection by the Department is necessary because of any act or omission of the applicant, the Department may assess an additional fee for each additional visit in an amount not to exceed $1,000. No transition area [waiver] **permit** shall be issued until this additional fee is paid.

7:7A-[16.7] **16.6** Fees for the review and processing of requests for exemption letters

(No change in text.)

7:7A-16.7 Fees for the review and processing of requests for permit modifications

Except for minor modifications pursuant to N.J.A.C. 7:7A-13.9 for which no fee will be charged, the fee for the review and processing of a request for permit modification shall be 25 percent of the original fee.

7:7A-16.8 Fee refunds

All fees submitted with an application that is declared administratively complete shall be non-refundable.

SUBCHAPTER 17. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:7A-17.1 General penalty provisions

(a) This subchapter shall apply only to violations of the Act and this chapter which involve freshwater wetlands and transition areas. This subchapter shall not apply to regulated activities in State open waters. The penalty procedures and amounts for **State** open water fill [permit] violations are set by N.J.A.C. 7:14-8. This subchapter shall also govern the procedures for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

(b) Each violation of any provision of the Act or any rule, administrative order, approved mitigation plan, [waiver] **permit** or permit issued pursuant thereto, shall constitute an additional, separate, and distinct violation for which a separate penalty may be assessed.

(c) Each day during which such violation exists and/or continues shall constitute an additional, separate, and distinct violation for which a separate civil administrative penalty may be assessed. A violation shall be considered to continue as long as it is not rectified, remedied, repaired, or removed, to the satisfaction of the Department. For example, each day that an obstruction, structure, piling, fill or discharge placed or constructed in violation of the Act remains in place shall constitute an additional, separate, and distinct violation. Also for example, for destruction, dredging, or removal of freshwater wetland components such as soil or vegetation, each day between the destruction or removal and the replacement, restoration, or remediation to the satisfaction of the Department shall constitute an additional, separate, and distinct violation.

i. For the purposes of calculating the duration of any violation, the first day of the violation shall be the day which is the earliest point in time that the Department can establish that the violation occurred, had occurred, or was occurring.

ii. The last day of the violation shall be as follows:

(1) The day upon which a complete application for a permit to pursue the activity is submitted to the Department;

(2) The day upon which a complete restoration plan is submitted to the Department (in the case of an unpermittable activity); or

(3) The first day upon which a good faith effort was made to comply with the Department's requirements. If such a good faith effort is shown, the Department may, in its sole discretion, consider the first day of such efforts to be the last day of the violation.

iii. To demonstrate a good faith effort, the violator shall show that all regulated activity has been halted, shall promptly submit any information required by the Department, shall promptly remedy all deficiencies in any application or other materials submitted to the Department, and shall otherwise promptly comply with all Department requirements.

iv. For the purposes of penalty assessment, the number of days required by the Department to render a decision and give notice of such decision on a submitted permit application or restoration proposal shall be excluded from the per day penalty calculation.

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

7:7A-17.2 Civil administrative penalty determination

(a) Except for those violations set forth in N.J.A.C. 7:7A-[17.3] **17.4** through 17.6, the Department may assess a civil administrative penalty for violations described in this section [on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges unless adjusted pursuant to (d) below:] **using three factors: conduct of violator, acreage of impact, and the resource value classification of impacted wetland. Point values are assigned to the three ranges within each factor, as described below. For each violation, the total number of points are determined and the total is used at (c) below to determine penalty amount per day.**

[SERIOUSNESS

CONDUCT	MAJOR	MODERATE	MINOR
MAJOR	$10,000	$7,000-$10,000	$6,000-$8,000
MODERATE	$7,000-$10,000	$6,000-$8,000	$4,000-$7,000
MINOR	$6,000-$,8000	$4,000-$7,000	$1,500-$5,000

(b) The seriousness factor of the violation shall be determined as major, moderate or minor as follows:

1. Major shall include:

i. Any violation which has caused or may cause serious harm to human health or the environment; or

ii. Any violation which has caused or may cause irreparable or irreversible harm to the environment;

2. Moderate shall include:

i. Any violation which has caused or may cause substantial harm to human health or the environment; or

ii. Any violation which has caused or may cause harm to the environment, which harm can only be reversed with difficulty or will take more than 30 days to repair; and

3. Minor shall include any violation not covered in (b)1 or 2 above.]

[(c)] **(b) The following is a description of the factors to be used in penalty determination and the point values assigned to them:**

1. The conduct factor of the violation shall be determined as major, moderate or minor as follows:

[1.] **i.** Major shall include an intentional, deliberate, purposeful, knowing or willful act or omission by the violator **and is assigned three points**;

[2.] **ii.** Moderate shall include any unintentional but foreseeable act or omission by the violator **and is assigned two points**; and

[3.] **iii.** Minor shall include any other conduct not identified in [(c)1 or 2] **(b)1i or ii** above **and is assigned one point**.

2. The acreage of wetlands impacted by the violation factor shall be determined as:

i. An impact to greater than three acres of wetlands is assigned three points;

ii. An impact to one to three acres of wetlands is assigned two points;

iii. An impact to less than one acre of wetlands is assigned one point.

3. The resource value classification factor shall be determined as:

i. An impact to exceptional resource classification wetlands is assigned three points;

ii. An impact to intermediate resource classification wetlands is assigned two points;

iii. An impact to ordinary resource classification wetlands is assigned one point.

(c) The total points from the above factors shall be used to determine the penalty assessment per day according to the following table:

Total Points	Penalty Amount Per Day
9	$10,000
8	9,000
7	7,500
6	6,000
5	4,500
4	3,000
3	1,500

(d) (No change.)

7:7A-17.3 Civil administrative penalty for engaging in regulated activities without approval

(a) The Department may assess a civil administrative penalty in accordance with the provisions of this section against each violator who engages in a regulated activity in a freshwater wetland without

a freshwater wetlands permit or engages in a regulated activity in a transition area without a transition area [waiver] **permit**.

(b) For each violation under this section, [the penalty shall be $10,000.] **the Department may assess a penalty of up to $10,000.** Each day, from the day the regulated activity begins to the day its effects are rectified, remedied, repaired, or removed to the satisfaction of the Department, shall constitute an additional, separate, and distinct violation.

7:7A-17.4 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, record, or other document required to be submitted or maintained, under the Act or any rule, administrative order, permit, mitigation plan, or [waiver] **permit** issued pursuant thereto.

(b) Each day, from the day [of receipt of the information by the Department, to the day of receipt of a written correction by the violator, by the Department] **that the violator knew or had reason to know that it submitted inaccurate or false information to the Department until the day of receipt by the Department of a written correction by the violator**, shall be an additional, separate, and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty for violations decribed in this section based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful, knowing, or willful act or omission by the violator, the civil administrative penalty shall be in an amount of not more than $10,000 nor less than $8,000 for violations decribed in **N.J.A.C. 7:7A-15**; and

2. For each other violation, the penalty shall be in the amount of $1,000.

7:7A-17.5 Civil administrative penalty for failure to allow entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who refuses, inhibits or prohibits immediate **lawful** entry and inspection of any premises, building or place by any authorized Department representative.

(b) Each day [from the initial day of failure by the violator to allow immediate entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit or prohibit immediate entry] **that a violator refuses, inhibits or prohibits immediate lawful entry** and inspection[,] shall be an additional, separate, and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty for violations described in this section as follows:

1. For refusing, inhibiting or prohibiting immediate **lawful** entry and inspection of any premises, building or place for which an administrative order, freshwater wetlands permit, open water fill permit, transition area [waiver] **permit**, approved mitigation plan [or transition area averaging plan,] or general permit authorization notification exists for the property in question under the Act, the civil administrative penalty shall be [in amount] no more than $10,000 nor less than $7,000; and

2. For any other refusal, inhibition or prohibition of immediate **lawful** entry and inspection, the civil administrative penalty shall be in an amount not more than $7,000 nor less than $1,500.

7:7A-17.7 Economic benefit factor

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as a civil administrative penalty the economic benefit (in dollars) which the violator has realized as the result of not complying, or by delaying compliance with the requirements of the Act or any rule, permit, mitigation plan, [waiver] or administrative order issued pursuant thereto. If the total economic benefit was derived from more than one violation, the total economic benefit amount may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than $10,000 per violation.

7:7A-17.8 Procedures for assessment of civil administrative penalties under the Act

(a) To assess a civil administrative penalty under the Act, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the Act, rule, mitigation plan, [waiver, permit or administrative order violated;

2. Concisely state the facts alleged to constitute the violation[.]

3.-4. (No change.)

(b) (No change.)

HEALTH

(a)

PUBLIC HEALTH COUNCIL

State Sanitary Code
Chapter IX, Public Recreational Bathing
Proposed Readoption with Amendments: N.J.A.C. 8:26

Authorized By: New Jersey Public Health Council, Louise Chut, Ph.D., M.P.H., Chairperson.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1991-91.

A public hearing concerning this proposed readoption with amendments will be held on March 11, 1991 at 1:30 P.M. at the following address:

Department of Health
First Floor Auditorium
John Fitch Plaza
Trenton, N.J. 08625

Submit written comments by March 21, 1991 to:

Joseph Kolakowski
Coordinator, Health Projects
Department of Health
Consumer Health Services Unit
363 West State Street, CN 364
Trenton, New Jersey 08625-0364
(609) 984-3947

The agency proposal follows:

Summary

Chapter IX of the State Sanitary Code (N.J.A.C. 8:26) entitled "Public Recreational Bathing" was orginally adopted by the Public Health Council on July 14, 1986 and became effective on August 4, 1986. On May 16, 1988, the Public Health Council, pursuant to its authority delegated in N.J.S.A. 26:1A-7, adopted amendments to N.J.A.C. 8:26-1.2, 1.3, 3.15, 3.17, 4.3, 4.4, 5.2, 5.3, 5.10, 5.11, 7.9, 8.9 and 8.10. (R.1988 d.229; see 20 N.J.R. 464(a), 20 N.J.R. 1079(a)). The purpose of this chapter of the State Sanitary Code is to set reasonable sanitary and safety rules for all public recreational bathing places, in order to preserve and improve public health in this State.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:26 will expire on August 4, 1991. The Public Health Council (hereafter, the Council) and the Department of Health (hereafter, the Department) therefore propose to readopt this chapter with amendments reflecting technical changes, corrected citations and typographical errors, the addition of explanatory language for the purpose of bringing clarity to several of the requirements, and substantive modifications to existing rules that have been deemed no longer necessary or reasonable.

The Council and the Department have reviewed these rules and, with the exceptions that will be summarized below, have determined that they are necessary, reasonable, and proper for the purpose for which they were initially promulgated. This administrative review was accomplished through the convening of an advisory committee comprised of representatives from local and State public health departments, the New Jersey Health Officers Association, and the New Jersey Environmental Health Association. Additionally, the Department met with representatives from various groups of the regulated community for the purpose of soliciting their input including suggestions and recommendations for improving the rules governing public recreational bathing. Unsolicited public comments have also been provided over the past several years which were evaluated

and taken into consideration during the formulation of this readoption proposal.

Public comment is invited so that the Council and the Department can make a fully informed decision as to whether these rules should be readopted as proposed before they expire on August 4, 1991. The proposed readoption with amendments is summarized as follows:

Subchapter 1. Purpose, Scope, and Definitions

N.J.A.C. 8:26-1.1 and 1.2 establish the purpose and scope of the rules governing public recreational bathing places.

N.J.A.C. 8:26-1.3 establishes definitions of terms used in this chapter of the State Sanitary Code. The proposed amendments add and define the terms "common interest community" and "private lake/river/bay or private community lake/river/bay association" which are necessary, since these types of public recreational bathing facilities will have specific and varying requirements under subchapter 5, Waterfront Safety. Additionally, the term "save" is being deleted since it is also being proposed that the reporting of saves be deleted (see N.J.A.C. 8:26-8.9 and 8.10) and, therefore, the term and definition are no longer necessary.

Subchapter 2. Administration

N.J.A.C. 8:26-2.1 through 2.9 provide for the review of plans, procedures for obtaining written approval to locate and construct, the denial of approval, procedures for obtaining approval to alter, preoperational inspection, approval to operate, and the modification and waiver of standard for public recreational bathing places.

Subchapter 3. Swimming Pools

N.J.A.C. 8:26-3.1 provides for the general layout and design of swimming pools. The proposed amendment permits the installation of entrances and exits of closures at the deep end of the swimming pool provided that a minimum of six feet of decking or another physical barrier exists between the pool and the enclosure.

N.J.A.C. 8:26-3.2 through 3.7 provide for the standards for construction material used for; dimensional design of; diving area design of; and bottom slope, wall, and offset ledges specifications for swimming pools.

N.J.A.C. 8:26-3.8 provides for the use of water depth markings. The proposed amendment clarifies the use of feet or inch designations after the depth marking numbers.

N.J.A.C. 8:26-3.9 through 3.11 provide for the design and specifications of overflow collection systems, decks and walkways, and ladders and stairs for swimming pools.

N.J.A.C. 8:26-3.12 provides for the standards to be followed in installing swimming pool enclosures. The proposed amendment removes the recommendation that the pool enclosure should be 10 feet high since this is not always reasonable, practical, or necessary.

N.J.A.C. 8:26-3.13 provides for the electrical, illumination, and ventilation requirements for swimming pools. The proposed amendment adds clarity to the requirement that the illumination standard needs only to be met when the swimming pool is in use.

N.J.A.C. 8:26-3.14 provides for construction and installation of diving stands, boards, slides, and floats.

N.J.A.C. 8:26-3.15 provides for design and construction of recirculation systems of swimming pools. The proposed amendment eliminates the requirement of a flow meter on the backwash line.

N.J.A.C. 8:26-3.16 through 3.19 provide for the design, construction, and operation of wading pools, water slides, rope drops, and floats.

N.J.A.C. 8:26-3.20 provides for chemical disinfection of swimming and wading pools. The proposed amendment deletes the requirement that erosion-type chlorinators feed the disinfectant solution to the suction side of the pump. It is being proposed that all chemical feeders be installed downstream from the filter and heater.

Subchapter 4. Hot Tubs and Spas

N.J.A.C. 8:26-4.1 through 4.13 provide for the design, construction, and operation of hot tubs and spas including general construction and design; deck construction and design; heater and temperature requirements; electrical, illumination, and ventilation requirements; protection of potable water; inlets and outlets; circulation systems; pumps and strainers; disinfectants and chemical feeders; air induction systems; overflow systems; and hot tubs and spa enclosures.

Subchapter 5. Waterfront Safety

N.J.A.C. 8:26-5.1 through 5.11 provide for the use of trained and qualified adult supervision, first aid, lifesaving, and pool operator personnel; use of emergency equipment; bather and facility operation rules; identification and elimination of hazards; posting of precautionary signs; and waterfront restrictions for swimming pools, wading pools, hot tubs and spas, water slides, and bathing beaches. Several substantive amendments are being proposed in this subchapter which are further summarized as follows:

- A new section, N.J.A.C. 8:26-5.1, Exceptions, is proposed which would exempt private lake/river/bay or private community lake/river/bay associations and common interest communities that restrict the use of its recreational bathing place (other than those utilizing ocean waters) to the owners of the dwelling units and their invited guests from mandatory compliance with the first aid and lifeguard personnel and associated requirements contained in subchapter 5. Private lake/river/bay or private community lake/river/bay associations and common interest communities eligible for this exemption which choose not to voluntarily comply with these requirements must prominently post precautionary signage. The Council and the Department accept the compelling arguments presented by this segment of the regulated community and are, therefore, proposing this new rule for the purpose of eliminating the undue hardship of compliance and making the rules more reasonable and practicable without compromising the health, safety, and well-being of the bathing public. It must be mentioned that similar arguments have been presented by the representatives of the hotel, motel, and campground industries who are also requesting that their facilities be exempted from the lifeguard and first aid personnel requirements. While compelling arguments have also been presented in this matter, N.J.S.A. 26:4A et seq., entitled Public Swimming Pools and Places, clearly states that, "Every person operating a swimming pool or public swimming place, directly or indirectly, for profit shall provide adequate trained personnel and proper appliances for lifesaving and resuscitation at all times when the pool or place is open to the public." Applying the reading of this law, its intent, and, more importantly, the case law surrounding the subject statute, hotels, motels, and campgrounds are considered public facilities, and therefore, must comply with the statutory requirements of providing lifesaving and first aid personnel. Notwithstanding the evidence and arguments presented, it is not within the Council's or Department's powers or prerogative to promulgate rules that would be inconsistent with the aforementioned statute and the interpretation thereof.
- Explanatory language is included clarifying the requirement for a certified pool operator, specifically, the degree of availability necessary to fulfill this requirement.
- The requirement of an approved means of communications is expanded to all public swimming pools. The present rule requires this of only those public swimming pools capable of accommodating 500 patrons or more.
- Amendatory language is added prohibiting swimming during an electrical storm in outdoor pools only. The current rule does not differentiate between indoor and outdooor swimming pools, hot tubs, and spas.
- Head first entries into less than five feet of water (currently prohibited) during competitive swim meets are permitted, provided that the water depth is at least four feet, only a flat forward start dive is used, precautionary signs are conspicuously placed, swimmers be under the supervision of a team swimming coach, and, if the diving blocks cannot be removed, a safety policy be established to ensure that these blocks are not used on an untrained swimmer or the general public. The Council and the Department feel that this proposed amendment is reasonable, does not compromise the safety of the competitive swimmer, and is also consistent with NCAA standards governing these types of athletic events.
- Explanatory language is included clarifying the requirement of a certified person in standard first aid and cardiopulmonary resuscitation (CPR), specifically, the meaning and intent of the requirement that said personnel shall be present at all times when the swimming pool, hot tub, or spa is in use.
- A provision to allow the designation of each bathing beach by allowing the use of flags or any other method approved by the health authority is added, in addition to the current rule of using only water buoys. Additionally, an amendment is being proposed to allow each bathing beach that cannot maintain a 200-foot neutral zone between the bathing zone and watercraft activities to establish and enforce a policy, subject to the approval by the health authority, restricting boat traffic to a specific area and ensuring bather safety by channeling boat traffic and regulating boat speed.
- Language is added relaxing the requirement for a lifeguard training program certified by the United States Lifesaving Association, if the recreational bathing place uses tidal waters that are not influenced by strong currents and tides, subject to the approval of the health authority.

• A minor technical change is made eliminating the size requirement of the paddle rescue board and replacing it with the performance standard of being capable of supporting two adults.

• The requirements are relaxed governing the use of fixed platforms and floats to allow the use of floats without significant restrictions and to allow for the use of fixed platforms in tidal waters (prohibited under the current rule) as long as specific criteria to ensure bather safety are met.

Subchapter 6. General Sanitation and Maintenace

N.J.A.C. 8:26-6.1 through 6.3 provide for sanitary construction, maintenance, and operation of public recreational bathing places including the dressing rooms, bathhouses, and showers.

N.J.A.C. 8:26-6.4 provides for the installation and maintenance of water closets. The proposed amendment, being only a minor technical change, allows for the use of safety glass, in addition to unbreakable mirrors which are currently allowed.

N.J.A.C. 8:26-6.5 through 6.12 provide for the sanitary management of wastewater disposal, solid waste disposal, potable water supply, drinking water fountains, food service, plumbing and recreational equipment, and insect, rodent, and weed control.

Subchapter 7. Sampling and Water Quality Criteria

N.J.A.C. 8:26-7.1 through 7.8 provide for the standards governing water sources, microbiological sampling and analysis, and sample collection and disposition; microbiological water quality standards; sample results are not meeting established water quality standards; and chemical and physical water quality analyses for swimming pools and wading pools.

N.J.A.C. 8:26-7.9 provides for the establishment of chemical water quality standards for swimming pools and wading pools. The proposed amendment increases the range for free chlorine residual by extending the maximum limit for indoor and outdoors to 3.0 ppm and 4.0 ppm, respectively. This will provide greater flexibility and ease in complying with the chemical disinfectant standards.

N.J.A.C. 8:26-7.10 through 7.16 provide for the establishment of physical water quality standards for swimming pools and wading pools and salt water swimming and wading pools utilizing ocean and/or bay water, microbiological water quality standards for hot tubs and spas, chemical water quality standards for hot tubs and spas, physical water quality standards for hot tubs and spas, and sanitary survey criteria for bathing beaches.

N.J.A.C. 8:26-7.17 provides for the collection of samples at bathing beaches. The proposed amendment allows for the relaxing of the sampling frequency from weekly to biweekly (every two weeks) subject to the approval of the health authority based on three months of consecutive satisfactory water quality analyses.

N.J.A.C. 8:26-7.18 provides for the technique to be applied when taking recreational bathing water samples. The proposed amendment provides detailed specifications for obtaining water samples previously provided in an administrative policy memorandum issued to all local health authorities participating in the Cooperative Coastal Monitoring Program administered by the Department of Environmental Protection.

N.J.A.C. 8:26-7.19 through 7.21 provide for the establishment of microbiological water quality standards for bathing beaches, chemical water quality standards for natural waters, and physical water quality standards for natural waters.

Subchapter 8. Enforcement Procedures

N.J.A.C. 8:26-8.1 through 8.8 provide for legal authority; the inspection of public swimming pools, hot tubs, spas, and bathing beaches; report of inspections; the public availability of inspection records; and the criteria for closure of public recreational bathing facilities.

N.J.A.C. 8:26-8.9 provides for the establishment of specific recordkeeping requirements. The proposed amendment will delete the requirement that every public recreational bathing place keep records on the number and nature of saves performed. The Council and the Department have determined that this requirement failed in fulfilling the original intent of collecting information for the purpose of measuring the effectiveness of the current rules. It is also a burdensome recordkeeping requirement which has placed undue hardship on a number of the public recreational bathing facilities.

N.J.A.C. 8:26-8.10 provides for the reporting of all deaths and/or serious injuries including saves to the local authority by November 1 of each year. The proposed amendment would delete this requirement for saves for the reasons specified above.

N.J.A.C. 8:26-8.11 and 8.12 provide for the assessment of penalties and the separability of any and all provisions of this chapter.

The Appendix provides a listing of organizations currently recognized by the Council and the Department to certify the personnel and/or programs required in subchapter 5 of these rules. It also lists the approved contents of a 24 Unit First Aid Kit. The proposed amendment would add the National Pool and Waterpark Lifeguard Training Association to the listing of recognized lifesaving/lifeguarding certification organizations.

Social Impact

The Council and the Department believe that this readoption with amendments will continue to have a positive social impact; that is, to ensure the health and safety of the recreational bathing public. The public benefits that would be derived from these rules are the prevention of water borne disease and serious injury or death through water related accidents.

The effect of the rules as proposed will impact primarily on all public recreational bathing facilities such as ocean and bay beaches; hotel, motel campground, condominium, youth camp, and apartment swimming pools; government institutions providing recreational bathing activities fitness centers and clubs; etc. These facilities are required to comply with this comprehensive set of rules which the Council and the Department consider reasonable, necessary, understandable, and responsive for the purposes for which they were promulgated.

It is expected that the regulated community will welcome the proposed amendments, since they were developed utilizing input provided by the regulated community over the past several years and represent, overall a relaxation of a number of rules which were found to be either unnecessary, unreasonable, or impracticable since the rules were first promulgated in 1986. Several rules are also being amended by adding explanatory language for clarification, which will also be welcomed by the regulated community, since clarification will limit confusion and ambiguity and encourage consistent interpretation of the rules. The Council and the Department also expect that the rules as proposed will receive a positive reaction from the general public, since the public at large not only expects, but demands, that public beaches and bathing places be well maintained, the water is of safe quality, and properly trained lifesaving personnel be provided.

Economic Impact

The economic impact of the proposed readoption with amendments primarily falls on the owners and operators of public recreational bathing places. However, it is expected that the proposed amendments will have a positive economic impact on the regulated community, especially common interest communities and private lake/river/bay associations, since, with the relaxation of the lifeguarding and first aid personnel standards, cost savings will be realized in salaries and penalties for noncompliance. Another example of a potential cost savings for compliance is the proposed deletion of the recordkeeping and reporting of saves. This activity can be burdensome and labor intensive and will no longer be required as proposed in the rule amendments. The general public may also benefit economically from the proposed amendments since user fees may stabilize or be reduced at a level commensurate with cost savings realized by the regulated community.

It is also predicted that the proposed readoption with amendments will have a positive economic impact on the Department, since, with the improvements to the rules being proposed, it is expected that less Department staff time will be expended in addressing problems associated with unclear requirements, confusion in interpretation, and matters of a controversial nature. Finally, the Council and the Department feel that the proposed readoption with amendments will have a positive economic impact on the State's tourism industry since these rules provide the necessary controls to ensure the safe and sanitary operation of recreational bathing places which is an integral part of the State's tourism industry.

Regulatory Flexibility Analysis

The readopted rules and amendments primarily impact on all public recreational bathing places, many of which can be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption with amendments imposes reporting, recordkeeping, and compliance requirements on all public recreational bathing places as outlined in the Summary and does not establish differential compliance requirements for small businesses, since public health may be compromised should the standards not be followed. Professional services likely to be needed to comply with the requirements include engineering for the design, construction, and in-

stallation of new facilities; certified analytical laboratories to evaluate water quality; lifeguards, first aid personnel; and certified pool operators.

However, the amendments as proposed would relax or provide an alternative method for compliance to a number of the health and safety requirements including removing the mandatory lifeguard and first aid personnel requirement for common interest communities and private lake/river/bay associations that restrict the use of their public recreational bathing facilities to the owners of the dwelling units and their invited guests, allowing head first entries into less than five feet of water during competitive swim meets as long as certain conditions are met, and eliminating the paperwork and recordkeeping requirement of logging all saves incidents and reporting same to the health authority by November 1 of each year. Many small businesses will benefit from these proposed amendments.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:26.

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

8:26-1.3 Definitions

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

. . .

"Common interest community" means:

1. Property subject to the Condominium Act, P.L. 1969, c.257 (N.J.S.A. 46:8B-1 et seq.) or the Horizontal Property Act, P.L. 1963, c.168 (N.J.S.A. 46:8A-1 et seq.);

2. A housing corporation or association, commonly known as a cooperative, which entitles the holder of a share or membership interest thereof to possess and occupy for dwelling purposes a house, apartment, manufactured or mobile home or other unit of housing owned or leased by the corporation or association, or to lease or purchase a unit of housing constructed or to be constructed by the corporation or association; or

3. Real estate with respect to which a person, by virtue of the ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in the instrument, however denominated, which creates the common interest community. Ownership of a unit does not include holding a lease-hold interest of less than 20 years in a unit, including renewal options.

. . .

"Private lake/river/bay or private community lake/river/bay association" means an organization of property owners within a fixed or defined geographical area with deeded or other rights to utilize, with similarly situated owners, various lakefront, riverfront, or bayfront properties, which said properties are not open to the general public, other than bona fide guests of a member of the private lake/river/bay or private community lake/river/bay association.

. . .

["Save" means any incident that requires assistance to a person in the water that is injured or in distress]

. . .

8:26-3.1 General layout and designs

(a) (No change.)

(b) The layout of the pool facility shall be such that bathers leaving the dressing rooms will have access to toilets and then shower facilities. Exits and entrances to the pool enclosure [shall] **should** be located at the shallow end of the pool. **Exits and entrances to the pool which are located at the deep end shall be separated from the pool by a minimum of six feet of decking or by a physical barrier.**

8:26-3.8 Markings

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

(e) The depth marking numbers shall be at least four inches (10 centimeters) minimum height, of a contrasting color to the background and of a permanent nature. **Depth marking numbers shall be indicated in feet or ft. and inches or in.**

(f)-(h) (No change.)

8:26-3.12 Enclosure

(a) Pools shall meet the fencing and enclosure requirements of the New Jersey Uniform Construction Code, N.J.A.C. 5:23.

[NOTE: A 10 foot high fence for public swimming pools is recommended.]

8:26-3.13 Electrical, illumination and ventilation requirements

(a) (No change.)

(b) Illumination shall be such that a black disk six inches (15.2 centimeters) in diameter, superimposed upon a white field placed at the bottom of the deepest end of the pool shall be clearly visible from the pool sidewalk, at all distances up to 10 yards, measured in a horizontal distance from the project of the disk onto the pool surface **when the pool is in use.**

8:26-3.14 (No change)

8:26-3.15 Recirculation system

(a)-(e) (No change.)

(f) Filters shall be designed so that after cleaning per manufacturer's instructions, the system can provided the water clarify noted in N.J.A.C. 8:26-7.10.

1.-2. (No change.)

3. Rate of flow meters shall be installed and located so that [both] the rate of circulation [and backwashing] will be registered in gallons per minute.

i. Flow meters shall have a range between 10 percent below **and 10 percent above** the established filtration rate [and 10 percent above the established backflush].

ii. (No change.)

4.-5. (No change.)

(g) (No change.)

8:26-3.20 Disinfection

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

(d) Chemical feeders installation and use shall conform to the following:

1. When using chemical feeders, they shall be installed downstream from the filter and heater. [The only exception to this would be erosion-type chlorinators which feed their solution to the suction side of the pump.]

2.-3. (No change.)

(e)-(i) (No change.)

8:26-5.1 Exceptions

(a) This subchapter in its entirety applies to all public recreational bathing places, with the exception of private lake/river/bay or private community lake/river/bay associations and common interest communities that restrict the use of its recreational bathing places to the owners of the dwelling units thereof and their invited guests. Under this condition, said facilities shall be exempt from mandatory compliance with N.J.A.C. 8:26-5.2(b), (d), (f), (g) and (i); 5.5(b); 5.6(a); 5.7(a)1; 5.8(c)2, 4, 6 and 7; and 5.8(d). This exception does not apply to facilities utilizing ocean waters.

(b) Private lake/river/bay or private community lake/river/bay associations and common interest communities that restrict the use of its recreational bathing places to the owners of the dwelling units and their invited guests which do not voluntarily comply with the specific sections referenced above shall post a sign which shall be prominently displayed at every entrance of the recreational bathing place stating:

—"No lifeguard on duty."

—"Persons under the age of 16 must be accompanied by an adult."

—"No swimming alone."

8:26-[5.11]**5.2** Swimming pool supervision

(a) (No change.)

(b) At least one person currently certified in standard first aid and cardiopulmonary resuscitation (CPR) **by an organization listed in the Appendix** shall be [present at all times when the swimming pool is open for use.] **on the premises, available, and readily accessible when the pool is in use. If the trained and qualified personnel are not stationed at the pool side, then the facility shall effectively demonstrate to the health authority that said personnel are available, in reasonable proximity to the pool, and can be easily contacted to enable them to render**

the necessary and appropriate assistance in a timely manner. [These certifications shall be from an organization recognized by the New Jersey State Department of Health. (See Appendix).]

(c) [Within three years of the promulgation of this chapter, the] **The maintenance and mechanical operation of a swimming pool[, when open for use,] shall be under the supervision of a certified pool operator (CPO). The CPO shall be available to respond to mechanical and maintenance problems if they occur or to detect the potential for such a problem before it occurs; however, it is not necessary for the CPO to be at pool side or on the premises at all times when the pool is in operation. The property owner, a resident, a facility employee, or an employee of a contracted pool service firm are examples of individuals that can be used to fulfill this requirement, once the individual has successfully completed the CPO course and assumes responsibility for providing this function.** The certification of a pool operator shall be from an organization recognized by the New Jersey State Department of Health[.] ([See] **see** Appendix).

(d)-(i) (No change.)

8:26-[5.21]**5.3** Emergency equipment for swimming pools

(a) Swimming pools shall be provided with the following equipment, which shall be properly stored and readily accessible:

1.-4. (No change.)

5. Every swimming pool capable of accomodating 500 patrons or more shall have readily accessible a room or area designated and equipped for emergency care. [A telephone, citizen band radio signaling devices, or other approved means of communication shall be provided as close as possible to the lifeguard station for emergency use. Emergency numbers of the nearest rescue squad, physician, ambulance, police department, hospital, clinic, or other appropriate entity shall be posted in a weather resistant display adjacent to the telephone.]

6. A telephone, citizen band radio signaling devices, or other approved means of communication shall be provided as close as possible to the pool for emergency use. Emergency numbers of the nearest rescue squad, physician, ambulance, police department, hospital, clinic, or other appropriate entity shall be posted in a weather resistant display, adjacent to the telephone.

8:26-[5.3]**5.4** Bather rules for swimming pools, wading pools, hot tubs and spas

(a) Bather rules covering admission, bathing and conduct of patrons shall be conspicuously posted and shall include the following:

1.-6. (No change.)

7. [Bathing] **Outdoor bathing** shall be prohibited during an electrical storm.

8. (No change.)

(b) (No change.)

(c) Head first entries during competitive swim meets and practices shall be prohibited in less than five feet of water, unless the following standards are met:

1. Water depth of the pool at the bulkhead (at pool side) where starting blocks are located shall be at least four feet;

2. Only the "flat dive" also known as a "formed start" shall be used;

3. Signs shall be conspicuously placed to remind swimmers of the danger of using any other type of dive when diving into waters less than five feet deep;

4. Swimmers shall be under the direct supervision of the team swim coach; and

5. When the diving blocks cannot be removed, a safety policy shall be established to assure that the diving blocks are not inadvertently used by an untrained swimmer or by the general public.

8:26-[5.4]**5.5**

(a) (No change.)

(b) A wading pool [operating independently and not in conjunction with a swimming pool] shall have a person currently certified in standard first aid and [basic life support in] **child and infant** cardiopulmonary resuscitation (CPR) [present when the wading pool is in operation.] **on the premises, available, and readily accessible when the wading pool is in use. If the trained and qualified personnel are not stationed at the wading pool, then the facility must effectively demonstrate to the health authority that said personnel are available, in reasonable proximity to the wading pool, and can be easily contacted to enable them to render the necessary and appropriate assistance in a timely manner.**

8:26-[5.5]**5.6** Water slides

(a) Supervision of the waterfront areas of water slides shall be protected by a lifeguard as specified in N.J.A.C. 8:26-[5.1] **5.2** and as follows:

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

8:26-[5.6]**5.7** Hot tubs and spas

(a) Supervision of a hot tub or spa, when open for use, shall be provided by a designated adult supervisor, who is [knowledgable] **knowledgeable** of these rules and shall be responsible for all phases of the operation, [and] as follows:

1. At least one person currently certified in standard first aid and cardiopulmonary resuscitation (CPR) shall be [present at all times when the spa is in use.] **on the premises, available, and readily accessible when the hot tub or spa is in use. If the trained and qualified personnel are not stationed at the hot tub or spa, then the facility shall effectively demonstrate to the health authority that said personnel are available, in reasonable proximity to the hot tub or spa, and can be easily contacted to enable them to render the necessary and appropriate assistance in a timely manner.** These certifications shall be from an organization recognized by the New Jersey State Department of Health (see Appendix).

2. [Within three years of the promulgation of this chapter, the] **The** maintenance and mechanical operation of a hot tub or spa [when open for use] shall be under the supervision of a certified pool operator (**CPO**). **The CPO shall be available to respond to mechanical and maintenance problems if they occur or to detect the potential for such a problem before it occurs, however, it is not necessary for the CPO to be at hot tub or spa or on the premises at all times when the hot tub or spa is in operation. The property owner, a resident, a facility employee, or an employee of a contracted pool service firm are examples of individuals that can be used to fulfill this requirement, once the individual has successfully completed the CPO course and assumes responsibility for providing this function.** The certification of a pool operator shall be from an organization acceptable to the New Jersey State Department of Health (see Appendix.)

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

8:26-[5.7] **5.8** Bathing beaches

(a) (No change.)

(b) Each bathing beach shall be designated by means of water buoys, **flags, or any other method approved by the health authority**. A neutral zone of 200 feet between the bathing area and watercraft activities, such as motorboats and sailboats, shall be maintained. **Bathing beaches that can not maintain a 200 feet neutral zone shall establish and enforce a policy subject to the approval of the health authority in which boat traffic is restricted within a specific area by channeling boat traffic and regulating boat speed to ensure bather safety.** Each bathing beach shall establish its own policy to allow for a buffer zone based upon the size constraints of its bathing beach, for human-powered, slow-moving water craft, such as rowboats and pedal-boats.

(c) A bathing beach open for use shall establish and post hours of operation and shall be under the management of a designated adult supervisor who is familiar with these regulations and who shall be responsible for all phases of operation, during set hours which shall include a reasonable time period, such as 9:00 A.M. to 5:00 P.M., or similar time period, reflecting hours of maximum use.

1. A lifeguard training program certified by the United States Lifesaving Association, Office of Certification, Mid-Atlantic Region, P.O. Box 1, Avon, New Jersey 07717, shall be established by the owner or operator for ocean and tidal waters. **Tidal water beaches that are not influenced by strong currents and tides may provide lifeguard provision as specified in N.J.A.C. 8:26-5.2(d), subject to the approval of the health authority.**

2.-3. (No change.)

4. At least one person currently certified in standard first aid and cardiopulmonary resuscitation (CPR) shall be [present at all times when the swimming pool is open for use.] **on the premises, available,**

and readily accessible when the bathing beach is in use. If the trained and qualified personnel are not stationed at the bathing beach, then the facility shall effectively demonstrate to the health authority that said personnel are available, in reasonable proximity to the bathing beach, and can be easily contacted to enable them to render the necessary and appropriate assistance in a timely manner. These certifications[,] shall be from an organization recognized by the New Jersey State Department of Health[.] (see Appendix).

5.-8. (No change.)

(d) (No change.)

8:26-[5.8] **5.9** Bather rules for beaching beaches

Bather rules and policies shall be provided as specified in the regulations governing swimming pools at N.J.A.C. 8:26-[5.3(a)3, 4, 6, 7, 8.] **5.4(a)3, 4, 6, 7 and 8.**

8:26-[5.9] **5.10** Lifesaving equipment for bathing beaches

(a) Lifesaving equipment shall be provided in case of an emergency. The equipment shall include, but not be limited to:

1.-3. (No change.)

4. A paddle rescue board that is [a minimum of 12 feet and] capable of supporting [sufficient people for rescue work] **two adults**;

5.-8. (No change.)

8:26-[5.10] **5.11** Diving stands and boards for bathing beaches

(a) Diving stands and boards shall conform to the bather rules as specified in N.J.A.C. 8:26-[5.3] **5.4** governing swimming pools.

(b) Fixed platforms [and floats] may be permitted if constructed with a visible one foot (30.5 centimeters) air space below the platform [or floats]. There shall be as little underwater construction as is consistent with strength and all braces and struts shall be designed to prevent entanglement or trapping of bathers.

1. Fixed platforms [and floats are not] permitted for [ocean,] bay[,] or tidal waters **provided that there is a visible one foot (30.5 centimeters) air space below the platform at the flood high tide mark.**

2. (No change.)

8:26-[5.11] **5.12** (No change in text.)

8:26-6.4 Water closet and lavatories

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

(c) Fixtures shall conform to the following requirements[.]:

1. Toilet tissue holders, supplied with tissues, shall be provided at each toilet.

2.-4. (No change.)

5. [Only] **Safety glass or** unbreakable mirrors shall be provided.

8:26-7.9 Chemical water quality standards for swimming pools and wading pools

(a) Free chlorine, combined chlorine, bromine and pH values shall be continuously maintained within the following ranges:

	Minimum	Ideal	Maximum	
			Indoor Pools	Outdoor Pools
Free chlorine residual part per million (ppm)	1.0	1.0-1.5	[2.0]**3.0**	[3.0]**4.0**
Combined chlorine (ppm)	None	None	0.2†	0.2†
Bromine (ppm)	2.0	2.0-4.0	4.0	4.0
pH	7.2	7.4-7.6	7.8	7.8

†Remedial action shall be taken if combined chlorine exceeds 0.2 as it will result in reduced chlorine efficacy.

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

8:26-7.17 Collection of samples at bathing beaches

(a) Bathing beach water, with the exception of ocean waters, sample(s) shall be obtained one week prior to the opening of the beach and at intervals of no longer than one week during the bathing season. Sample(s) shall be obtained whenever possible during peak bathing loads at a depth representative of the water being used for bathing. **Subject to the approval of the health authority, sampling frequency may be changed to biweekly (every other week), based on three months of consecutive satisfactory samples.**

1.-3. (No change.)

8:26-7.18 Techniques of sampling

(a) Technique of sampling shall be as specified in N.J.A.C. 8:26-7.4(d) **and also include the following, in the case of natural bathing waters:**

1. Water samples shall be taken in an area with a stabilized water depth between the sampler's lower thighs and chest with an optimum depth being at the sampler's waist.

2. At the desired depth facing away from the shoreline and in an area of the bathing zone not in close proximity to bathers, sample container shall be placed, with lid or stopper still attached, approximately eight to 12 inches below the water surface. With arms extended in front, the container shall be held near its base and downward at a 45 degree angle, the cap removed and the container filled in one slow sweeping motion (downward or horizontally, not upward) with the mouth of the container ahead of the sampler's hand and the container recapped while it is still submerged. The cap shall remain submerged during the sample collection and care shall be taken not to touch the inner surfaces of the cap. The only exception to this procedure would be in the event that samples need to be taken during cold water conditions that require the use of reach assist poles to obtain the samples. In this situation, the cap may be removed prior to submersion as long as the container is pointed downward upon entry into the water. If a head space in the container is needed, the sampler, once on the beach, can carefully pour out a small amount of the sample and recap.

(b) No sampling shall be performed when such oceanographic or meteorological conditions exist that present an imminent health and safety hazard.

8:26-8.9 Record keeping

(a) Accurate and complete records on the following items shall be kept on the premises and be available upon request of the authorized agent or the health authority. Such records shall be kept for a minimum period of one year.

1.-7. (No change.)

[8. Records on the number of saves shall include the date, the description of the occurrence and, if possible, the name and address of the person.]

8:26-8.10 Deaths and/or serious injuries

All deaths, head, neck, **and** spinal cord injuries, and any injury which renders a person unconscious shall be reported to the health authority within 24 hours of occurrence. [All saves shall be reported in writing to the health authority by November 1, of each year.] The local health authority shall report such injuries [and saves] to the State Health Department in January of each year.

APPENDIX

The following organizations are currently recognized by the New Jersey State Department of Health to certify the personnel and/or program required in N.J.A.C. 8:26-5.

First Aid Certification
American Red Cross

CPR Certification
American Red Cross
American Heart Association

Lifesaving/Lifeguarding Certification
Swimming Pools and Lake Bathing

American Red Cross	—Advanced lifesaving certificates Lifeguarding certificate
Boy Scouts of America	—BSA lifeguard certificate
YMCA	—Advanced lifesaving certificate Lifeguarding certificate
National Pool and Waterpark Lifeguard Training	**—Pool guard certificate Deep water guard certificate**

Ocean and Tidal Waters
United States Lifesaving Association
Office of Certification
Mid-Atlantic Region
P.O. Box 1
Avon, N.J. 07717

Certified Pool Operators Certification
YMCA
National Swimming Pool Foundation
10803 Gulfdale
Suite 300
San Antonio, Texas 78216

24 UNIT FIRST AID KIT CONTENTS

2 Units—1 inch Adhesive Compress
2 Units—2 inch Bandage Compress
2 Units—3 inch Bandage Compress
2 Units—4 inch Bandage Compress
1 Unit—3 inches by 3 inches Plain Gauze Pads
2 Units—Gauze Roller Bandage
1 Unit—Eye Dressing Packet
4 Units—Plain Absorbent Gauze—½ square yard
3 Units—Plain Absorbent Gauze
4 Units—Triangular Bandages
1 Unit—Adhesive Tape—Scissors—Tweezers

HUMAN SERVICES

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Social Services Program for Individuals and Families
Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes

Proposed Amendments: N.J.A.C. 10:123-3.1 through 3.4

Authorized By: Alan J. Gibbs Commissioner, Department of Human Services.
Authority: N.J.S.A. 44:7-87.
Proposal Number: PRN 1991-84.

Submit comments by March 21, 1991 to:
Kathryn A. Clark
Administrative Practice Officer
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

The proposed amendments make changes in the existing text of N.J.A.C. 10:123-3, Personal Needs Allowance. Firstly, the purpose and scope statements and the definition of "eligible resident" in N.J.A.C. 10:123-3.1, 3.2 and 3.3 are amended to state in clear, direct language that the population served by this program consists of Supplemental Security Income and General Public Assistance recipient residents of residential health care facilities and boarding houses.

These amendments are proposed as a result of discussions between the Division of Youth and Family Services and the Director of the Ocean County Board of Social Services, who commented on the lack of clarity in the definition and the apparent expansion of the program to persons not previously covered when these rules were readopted. In the readoption notice published at 22 N.J.R. 2318(b), the Division stated that it would work with the commenter to resolve these problems. In doing so, it became clear that the definition under review, N.J.A.C. 10:123-3.3, would be better stated in plain language, and that the inclusion of the phrase "rooming house" in the purpose and scope statements, N.J.A.C. 10:123-3.1 and 3.2, was a misstatement. Consequently, the Division has decided to amend the purpose and scope statements and the definition. The Division also thanks the Director of the Ocean County Board of Social Services for her comment and her assistance.

Additionally, N.J.A.C. 10:123-3.4, Amount, is being amended. The amount of the personal needs allowance to be reserved by owners and operators of residential health care facilities and boarding houses, for the use of Supplemental Security Income or General Public Assistance recipient residents, is being increased by three dollars from $59.00 to $62.00. This increase is based on a proportionate share of the total 1991 Federal cost-of-living increase in the Federal Supplemental Security Income (SSI) rate, published at 55 Fed. Reg. 45856 (1990).

Social Impact

The amendments to the purpose, scope, and definition will assist in the implementation of the Personal Needs Allowance rules by making it clear exactly who is eligible to receive a personal needs allowance. Since the amendments spell out in plain language the actual conditions under which this program has always operated, these amendments will not result in any increase or decrease in the number of eligible recipients of personal needs allowances. Residents of rooming houses have never received personal needs allowances under this program, although the text of the rules implied that they were eligible. These amendments remove the possibility of misinterpretation.

The personal needs allowance increase will have a beneficial impact on residents in that it will allow residents who rely on Supplemental Security Income or General Public Assistance to maintain their spending power in equilibrium with the cost of living. The personal needs allowance will continue to be used at the resident's discretion to purchase clothing and incidentals which the residential health care facilities and boarding homes do not provide.

Economic Impact

There will be no economic impact from the amendments to the purpose, scope, or definition of "eligible resident." The amendments merely reflect, in clearer terms, the persons who have always been deemed eligible to receive a personal needs allowance.

The approximately 8,000 residents in over 500 New Jersey residential health care facilities and boarding houses who are eligible to receive a personal needs allowance will benefit by having their spending power increased to keep pace with the cost of living. There will be no negative impact on facility owners, since they also will benefit from the Federal cost-of-living increase in the Supplemental Security Income rate.

Regulatory Flexibility Statement

The proposed amendments do not impose reporting, record keeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required. The proposed amendments are intended to clarify the purpose and scope statements, and the definition of "eligible resident" and to increase the amount of the personal needs allowance from $59.00 to $62.00 for SSI and GA recipient residents of residential health care facilities and boarding houses.

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

10:123-3.1 Purpose

The purpose of this subchapter is to ensure that each eligible resident of a [rooming house,] boarding house or residential health care facility has reserved to him or her a monthly amount as a personal needs allowance.

10:123-3.2 Scope

This subchapter applies to all eligible residents, as defined in this subchapter, of all [rooming houses,] boarding houses and residential health care facilities in the State of New Jersey as such are defined in this subchapter.

10:123-3.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings.

. . .

"Eligible resident" means a resident of a [rooming house,] boarding house[,] or residential health care facility who receives [services from agencies funded under the latest New Jersey Social Services Block Grant Pre-Expenditure Report for the use of funds appropriated under Title XX of the Federal Social Security Act,] **Supplemental Security Income or General Assistance,** and as otherwise

efined in the Rooming and Boarding House Act of 1979, N.J.S.A. 0:1A and 11A.

. .

0:123-3.4 Amount

The owner or operator of each residential health care facility or ıoarding home shall reserve to each Supplemental Security Income ecipient residing therein, and the owner or operator of each residen- ial health care facility shall reserve to each General Public Assistance ecipient residing therein, a personal needs allowance in the amount ıf at least [$59.00] **$62.00** per month. No owner or operator or ıgency thereof shall interfere with the recipient's retention, use, or ontrol of the personal needs allowance.

CORRECTIONS

(a)

THE COMMISSIONER

Security and Control

ntroduction; Keep Separate Status

Proposed Amendments: N.J.A.C. 10A:3-1.1 through 1.4

Proposed New Rules: N.J.A.C. 10A:3-2

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

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

Proposal Number: PRN 1991-82.

Submit comments by March 21, 1991 to:

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

The agency proposal follows:

Summary

The proposal adds another "purpose" to N.J.A.C. 10A:3-1.1 and defines at N.J.A.C. 10A:3-1.3 "keep separate status" as "the intentional assignment of certain inmates to different correctional facilities or different units within a correctional facility so as to maintain a separation between these inmates in order to prevent the possible retaliation because of a previous act or occurrence." At N.J.A.C. 10A:3-1.2, reference to subchapter 2 was added and "keep separate status" forms were added at N.J.A.C. 10A:3-1.4.

The proposed new rules, at N.J.A.C. 10A:3-2, establish the policies and procedures to be followed by the correctional facility staff in recommending placement in and removal from keep separate status and authorize the Superintendent to place an inmate in or to remove an inmate from keep separate status.

Social Impact

The proposed amendments and new rules will ensure that inmates placed to keep separate status do not come into contact with other inmates who may wish to retaliate against them for some previous act or occurrence. Assigning certain inmates to keep separate status contributes to the safety of these inmates, to the maintenance of security and enhances the orderly operation of a correctional facility.

Economic Impact

The proposed amendments and new rules will have no economic impact because additional financial resources will not be required to implement or maintain these amendments or new rules. The proposed rules do not require additional facilities or staffing to implement.

Regulatory Flexibility Statement

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

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

10A:3-1.1 Purpose

(a) The purpose of this chapter is to:

1.-4. (No change.)

5. Establish procedures for fingerprinting and photographing juvenile inmates; [and,]

6. Establish policies and procedures regarding the transportation of inmates outside the correctional facility and from one jurisdiction to another[.]; **and**

7. Establish procedures for placing inmates in and removing inmates from keep separate status.

10A:3-1.2 Scope

(a) Subchapters **2,** 3, 5, 6 and 7 shall be applicable to the Division of Adult Institutions and the Division of Juvenile Services.

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

10A:3-1.3 Definitions

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

. . . .

"Keep separate status" means the intentional assignment of certain inmates to different correctional facilities or different units within a correctional facility so as to maintain a separation between these inmates in order to prevent the possibility of retaliation because of a previous act or occurrence.

. . . .

10A:3-1.4 Forms

(a) The following forms related to Security and Control shall be reproduced by each **correctional** facility from originals that are available by contacting the Standards Development Unit:

1.-5. (No change.)

6. 173-I Placement In Keep Separate Status

7. 173-II Removal From Keep Separate Status

[6.]**8.** 285-I Request for Polygraph Examination.

SUBCHAPTER 2. [(RESERVED)] KEEP SEPARATE STATUS

10A:3-2.1 Recommending placement of an inmate in keep separate status

(a) Any staff person may recommend that an inmate be placed in keep separate status.

(b) The staff person recommending that an inmate be placed in keep separate status shall complete the recommendation section of Form 173-I, PLACEMENT IN KEEP SEPARATE STATUS, and submit Form 173-I to the Superintendent giving the reason(s) for the recommendation.

(c) The Superintendent may order an immediate Internal Affairs investigation and written report to determine whether the information received is accurate and placement of the inmate in keep separate status is warranted.

10A:3-2.2 Authorization of placement of inmate in keep separate status

(a) The Superintendent shall authorize the placement of an inmate in keep separate status in instances when the Superintendent determines that such placement is warranted for the maintenance of security and the orderly operation of the correctional facility.

(b) If the Superintendent authorizes that an inmate be placed in keep separate status, the completed Form 173-I, along with the supporting documents shall be forwarded to:

1. The Senior Classification Officer to be filed in the inmate's classification folder; and

2. The correctional facility housing the other inmate(s) involved in this assignment of keep separate status.

(c) A "Keep Separate" notation should be prominently placed in the inmate's disciplinary, assignment and transfer notes.

10A:3-2.3 Recommending removal from keep separate status

(a) Any staff person may recommend that an inmate be removed from keep separate status.

(b) Any staff person recommending that an inmate be removed from keep separate status shall complete the removal recommendation section of Form 173-II REMOVAL FROM KEEP SEPARATE STATUS and submit FORM 173-II to the Superintendent, giving the reason(s) for the recommendation.

(c) The Superintendent may order an Internal Affairs investigation and written report to determine whether the information received is accurate and removal of the inmate from keep separate status is warranted.

10A:3-2.4 Authorization for removal from keep separate status

(a) The Superintendent may authorize the removal of an inmate from keep separate status when a review of the factors in the inmate's case indicates that the keep separate status is no longer appropriate.

(b) Whenever a decision is made to remove an inmate from keep separate status, the original FORM 173-II along with the supporting documents shall be forwarded to the Senior Classification Officer to be filed in the inmate's classification folder.

(c) A copy of the removal notice Form 173-II shall be sent to the Classification Department of the correctional facility at which the other inmate(s) involved in the keep separate status is housed.

INSURANCE

(a)

DIVISION OF FRAUD

Reductions in Premium Charges for Private Passenger Automobiles Equipped with Anti-Theft and Safety Features

Proposed New Rules: N.J.A.C. 11:3-39

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

Authority: N.J.S.A. 17:1-8, 17:1C-6e, and 17:33B-44.

Proposal Number: PRN 1991-88.

Submit comments by March 21, 1991 to:

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

The agency proposal follows:

Summary

In accordance with Section 53 of the Fair Automobile Insurance Reform Act, P.L. 1990, c.8 (hereinafter, N.J.S.A. 17:33B-44), the Commissioner of Insurance is authorized to order reductions in the base rates of physical damage coverages for private passenger automobiles which are equipped with anti-theft devices and safety features. The following proposed new rules are an exercise of the authority provided by N.J.S.A. 17:33B-44.

The proposed new rules establish the reductions to be provided for the various types of devices, and describe which devices qualify for a base rate reduction. Anti-theft devices have been divided into four categories, with progressively greater percentages in base rate reductions assigned to those categories of devices considered to be more effective in deterring theft, and/or facilitating recovery. Safety features, at this time, are fewer and less varied, and therefore have not been comprehensively categorized and detailed.

The proposed new rules provide that automobile insurers may require reasonable proof that a device or feature is actually in use on the insured automobile. Under the proposed new rules inspection of the automobile in accordance with N.J.A.C. 11:3-36 is considerable reasonable proof.

N.J.A.C. 11:3-39.1 sets forth the purpose of the subchapter.

N.J.A.C. 11:3-39.2 sets forth the scope of the subchapter. This subchapter applies to all insurers and to all policies which include provisions for collision and comprehensive and/or fire and theft coverages regardless of the type of private passenger vehicle, or the primary driver of that vehicle.

N.J.A.C. 11:3-39.3 defines certain terms used in the subchapter.

N.J.A.C. 11:3-39.4 details the base rate reductions applicable for th various categories of anti-theft devices.

N.J.A.C. 11:3-39.5 details the types of anti-theft devices which qualif for base rate reductions.

N.J.A.C. 11:3-39.6 details the base rate reductions applicable for safe features, and details which safety features must be considered for ba rate reductions.

N.J.A.C. 11:3-39.7 provides that penalties may be incurred by insure failing to comply with the terms of the subchapter.

N.J.A.C. 11:3-39.8 provides for severability of the rules.

Social Impact

These proposed new rules have two purposes: reduction of physic losses for consumers, and reduction of claims costs for auto insurers. Th Department expects that these proposed rules will provide consume with an added incentive to purchase anti-theft devices and safety feature and have them installed in their automobiles. Automobiles which a more secure against theft represent a more favorable insurance risk fc insurers, as do automobiles which incur fewer and less costly physic damage claims as a result of a collision.

Additionally, as the use of anti-theft devices increases, the Departmer expects that car theft will become less lucrative and less appealing. Th result should be a reduction of all types of car thefts and other illeg activity often linked to or associated with thefts of automobiles in thi State.

Economic Impact

Consumers with anti-theft or safety features on their automobiles wi receive reductions in their premiums for physical damage coverages. Aut insurers should expect a decrease in claims for losses due to thefts an losses due to physical damage as the utilization of anti-theft and safet features increases.

Regulatory Flexibility Analysis

The Department is not aware of any insurance companies authorize to transact private passenger automobile insurance which would qualif as "small businesses" as that term is defined in the Regulatory Flexibilit Act, N.J.S.A. 52:14B-16 et seq. While rate reduction compliance require ments are imposed, these new rules do not impose new reporting o record-keeping requirements. Additionally, the Department does not an ticipate that any insurer, large or small, will incur capital costs in orde to comply with these new rules, in and of themselves, inasmuch as insurer are permitted to determine what is "reasonable" proof that the devic or feature exists, and may combine this proof method with the automobil physical damage inspection procedures of N.J.A.C. 11:3-36, for the mos part. In any event, the Department is of the opinion that compliance wit these rules is required of all insurers to fully facilitate the goal of th rules, which is to encourage all New Jersey drivers to equip their auto mobiles with anti-theft devices and safety features. Since all insurers wil benefit by a reduction in theft of and physical damage to automobiles and the greatest benefit will be derived by full participation of the market no differentiation in requirements based upon business size is warranted

Full text of the proposed new rules follows:

SUBCHAPTER 39. REDUCTIONS IN PREMIUM CHARGES FOR PRIVATE PASSENGER AUTOMOBILES EQUIPPED WITH ANTI-THEFT AND SAFETY FEATURES

11:3-39.1 Purpose

The purpose of this subchapter is to encourage consumers to invest in and use anti-theft devices and safety features in private passenger automobiles by providing that there shall be a reduction in the base rates applicable to automobile physical damage coverage, in accordance with N.J.S.A. 17:33B-44, for those private passenger automobiles equipped with anti-theft devices and safety features.

11:3-39.2 Scope

(a) This subchapter shall apply to all insurers which write private passenger automobile insurance in this State.

(b) This subchapter shall apply to all policies which include provisions for physical damage coverage and which are issued or renewed on or after the operative date of this subchapter.

11:3-29.3 Definitions

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

"Alarm" means a device which emits sounds audible at 300 feet or more, such as a horn, bell or siren, but does not include those sounds that reasonably may be confused with police or emergency response vehicle sirens.

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

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

"Electronic lock or keyless lock device" means an electronic coding device possessing 10,000 possible combinations or more, which may be unlocked by use of a keyboard or similar data entry device or by means of a remote control device.

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

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

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

"Nonpassive" means a device or system designed to remain inoperative and nonfunctional until actively engaged by the user.

"Passive" means a device or system designed to become automatically operative and functional when the automobile's ignition key is moved or stationed in the off position.

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

"Tubular lock" means a lock which may be opened by a specific cylindrically shaped key and which possesses at least 50,000 possible combinations.

11:3-39.4 Reductions in rates for anti-theft devices

(a) Every insurer writing automobile physical damage insurance shall provide a reduction in the base rates of its comprehensive and fire and theft coverages, if different, for all private passenger automobiles equipped with one or more anti-theft devices, as described at N.J.A.C. 11:3-39.5. The reductions in the base rates shall be as follows:

1. At least five percent for devices which qualify as Category I anti-theft devices;
2. At least 10 percent for devices which qualify as Category II anti-theft devices;
3. At least 20 percent for devices which qualify as Category III anti-theft devices; and
4. At least 25 percent for devices which qualify as Category IV anti-theft devices.

(b) Insurers are not required to provide greater or additional reductions in the base rates of the comprehensive and fire and theft coverages when a private passenger automobile is equipped with more than one qualified anti-theft devices, except as follows:

1. The greater category reduction shall apply when a private passenger automobile is equipped with two or more anti-theft devices qualifying from two or more categories.
2. A private passenger automobile equipped with a Category III anti-theft device and a Category IV anti-theft device in combination shall receive a reduction of at least 30 percent, (b)1 above notwithstanding.

(c) An insurer may require reasonable proof that a private passenger vehicle is equipped with or has been installed with a device which qualifies as a Category I, II, III, or IV anti-theft device, or a combination of such categories, before providing any reduction in the base rates for comprehensive and fire and theft coverages for that private passenger automobile.

1. An inspection for the issuance or renewal of physical damage coverages, as set forth at N.J.A.C. 11:3-36, shall be considered reasonable proof.
2. Insurers shall not refuse to provide a reduction for a private passenger automobile in which a qualifying anti-theft device has been installed solely on the grounds that the device was installed by the owner of the private passenger automobile.

(d) Insurers may elect not to provide a reduction for a private passenger automobile in which an anti-theft device has been installed for a period of up to 24 months following installation of the device, if the device is provided to the insured by the insurer without charge or at a below retail market price, where the reduction in price is equivalent to the reduced premium charges which would otherwise apply.

(e) If an insurer provides an insured with an anti-theft device pursuant to (d) above, and the insured terminates the automobile insurance policy, or elects not to renew such insurance with the insurer, prior to the end of the 24 month period, the insurer may demand payment for the cost of the anti-theft device provided.

11:3-39.5 Categories of anti-theft devices

(a) A device qualifies as a Category I anti-theft device if it meets the requirements of one of the devices listed below.

1. an ignition or starter cut-off switch device is qualified if a warning label announces the presence of the device, and the device is designed so that the cut-off switch:
   i. Is wired into the ignition's wiring;
   ii. Is tripped and activated upon exiting of the automobile;
   iii. Shall be re-set in order to start the automobile; and
   iv. Is installed so as not to be visible from the driver's normal seating position.
2. A nonpassive, externally operated alarm is qualified if a warning label announces the presence of the device, and the device is designed so that the alarm is:
   i. Turned off and on by a key used in an externally mounted lock; and
   ii. Triggered by the opening of a door, the trunk or hood, when engaged.
3. A steering column armored collar is qualified if a warning label announces the presence of the device, and the device is designed so that the collar:
   i. Clamps onto the steering column, over the ignition lock;
   ii. Prevents access to the ignition lock;
   iii. Prevents the automobile from being steered, if the automobile is started; and
   iv. Is in no manner attached to the steering column when the device is not is use.

(b) A device qualifies as a Category II anti-theft device if it meets the requirements of one of the devices listed below:

1. A nonpassive fuel cut-off device is qualified if a warning label announces the presence of the device, and the device is designed so that the device:
   i. Shall be activated and deactivated by a switch or key, which is hidden from normal view; and
   ii. Blocks the fuel line, when activated.
2. A nonpassive steering wheel lock device is qualified if a warning label announces the presence of the device, and the device is designed so that:
   i. A steel collar and barrel, into which the shackle of a lock fits, are permanently attached to the steering column;
   ii. The shackle fits over the steering wheel spoke and into the barrel of the collar;
   iii. A tubular key must be used to operate the lock;
   iv. When in use, the steering wheel is prevented from turning;
   v. The shackle is made of case hardened alloy steel; and
   vi. The shackle, collar and barrel resist cutting by a file.
3. An armored cable hood lock and ignition cut-off switch is qualified if the device is designed so that:
   i. The ignition cut-off switch:
   (1) Is wired into the ignition's wiring;
   (2) Is tripped and activated by exiting of the automobile;
   (3) Shall be re-set in order to start the automobile; and
   (4) Is installed so as not to be visible from the driver's normal seating position;
   ii. The armored cable hood lock:

(1) Shall be engaged and disengaged by a push button or such similar device installed within the driver's reach when the driver is seated;

(2) Shall extend through the firewall and be secured so as to prevent retraction; and

(3) Must be of a material similar to that used in outdoor telephone booths.

4. An emergency handbrake lock is qualified if the device is designed so that:

i. A lock replaces the handbrake grip and is permanently attached to the handbrake lever;

ii. The lock is only released by entering a preset digital combination;

iii. The lock encasement is of all metal construction; and

iv. The handbrake cannot be released without releasing the lock.

(c) A device qualifies as a Category III anti-theft device if it meets the requirements of one of the devices listed below.

1. A passive alarm system is qualified if a warning label announces the presence of the system, and the system is designed so that:

i. The alarm is trigged by entry of the automobile's doors, hood or trunk;

ii. The alarm sounds for not more than eight minutes and is automatically re-set upon its cessation from sounding;

iii. The alarm is installed in the engine compartment so as to be inaccessible without opening the hood;

iv. The hood shall not open unless unlocked from within the automobile by a key or a keyless device;

v. The ignition or starter shall be cut-off or disabled automatically upon triggering of the alarm; and

vi. The system shall be disengaged by use of a tubular lock or an electronic keyless device within a maximum time elapse of 20 seconds following entry or re-entry of the automobile.

2. A fuel cut-off device is qualified if a warning label announces the presence of the device, and the device is designed so that:

i. The fuel line is blocked when the automobile is turned off and is not re-opened unless a switch is tripped each time the automobile is started;

ii. The switch opening the fuel line is accessible from the driver's seat, but:

(1) Is hidden from view; or

(2) Is operable only by a tubular key or an electronic keyless device;

iii. Any under-the-dash wiring installed in connection with the system shall blend with factory wiring; and

iv. Any override switch which is installed shall be hidden from view. The override switch shall either:

(1) Not be accessible from the forward passenger compartment; or

(2) If accessible from the forward passenger compartment, be subject to initiating a warning alarm which sounds while the engine is running and the override switch is engaged.

(A) If a warning alarm is required, pursuant to (c)2iv(2) above, then the system shall be designed so that disconnection of the override alarm shall result in disconnection of the entire passive fuel cut-off device.

3. An armored ignition cut-off switch is qualified if a warning label announces the presence of the device, and the device is designed so that:

i. The device, when engaged, prevents normal ignition or "hot wiring" of the automobile, interrupting the ignition current;

ii. A cable runs from a locking system, separate from the ignition lock, to the ignition coil, starter solenoid, or other engine component;

iii. The cable is of a material and a design similar to that used in outdoor telephone booths, which either effectively prevents cutting, or collapses when cut to prevent ready re-connection of cut interior wires; and

iv. The separate locking system shall be installed within the interior of the automobile in a position which is accessible to the driver in normal seating and may be of the tubular type or an electronic keyless device.

4. A passive multi-component cut-off switch is qualified if a warning label announces the presence of the device, and the device is designed so that:

i. When engaged, the primary wire to the ignition coil is disconnected, the starter is disconnected and one or more wires to the electronic ignition system, or the points and condenser are grounded to the chassis;

ii. The wiring blends with factory installed wiring;

iii. The disconnected/grounding wires shall be routed to random points in the electrical system away from the components the wires affect;

iv. The control module, if separate from the electronic locking mechanism, shall be hidden in the engine compartment or other part of the automobile, so that the control module is not easily detectable and

v. The automobile cannot be started unless the device is deactivated through a locking system installed within the interior of the vehicle. The locking system shall be accessible to the driver in normal seating position. The lock may be either of a tubular type or a system which uses an electronic keyless device.

5. A passive time delay ignition system is qualified if a warning label announces the presence of the system, and the system is designed so that:

i. The system allows the automobile to be started only if the operator waits a prescribed time period before moving the ignition key from on to start;

ii. The prescribed time period varies from one system to another in a range of three seconds to 20 seconds;

iii. The system requires an additional waiting period of at least 90 seconds before the operator may try to start the automobile again with success;

iv. The system includes a hood lock which is operated by a tubular key; and

v. The system shall resist tampering.

6. An armored cable or electronically operated hood lock and ignition cut-off switch system is a qualified system if a warning label announces the presence of the system, and the system is designed so that:

i. When engaged, the ignition cannot be started, or is cut-off;

ii. When an armored cable hood lock is used:

(1) The cable shall be made of case-hardened solid steel tubing which resists cutting;

(2) The cable shall extend through the firewall and be secured so as to prevent retraction;

(3) No portion of the cable may be accessible so as to be grasped from beneath the automobile, and if accessible through the grill work the armor shall extend to the hood locking mechanism; and

(4) The system shall be engaged by a push button within the automobile's interior, or a similar device, which is installed so as to be readily accessible to the driver in normal seating position;

iii. When an electronically operated hood lock is used:

(1) The hood lock is electronically operated and functions so as to remain locked even when wiring which operates the hood is cut.

(2) The hood lock, if accessible through the grill work, or from beneath the car, shall be shielded or armored to prevent manual operation;

(3) The system shall be passively engaged by turning the ignition key to the off position; and

(4) The system shall be disengaged through use of a separate key and lock, or an electronic keyless device; and

iv. The locks controlling the hood lock systems shall be either of the tubular type or be operated electronically.

7. A passive delayed ignition cut-off system is qualified if a warning label announces the presence of the system and the system is designed so that:

i. The ignition circuit is interrupted automatically when the engine reaches a pre-set speed, unless the system is actively disengaged;

ii. The speed is pre-set in a range between 1500 and 2000 revolutions per minute (RPM);

iii. The system is engaged when the ignition is turned off;

iv. The system may be disengaged by a push button or other specific device within the interior of the vehicle, but shall be hidden from view;

v. The system may be disengaged by use of either a lock of the tubular type or an electronic keyless device;

vi. Wiring shall blend with factory wiring, if placed under the dash;

vii. An alarm shall sound when the ignition is disabled; and

viii. If an override switch is provided, the switch shall be hidden from view, and work in conjunction with an alarm that sounds continuously while the engine is running.

8. A passive ignition lock protection system is qualified if a warning label announces the system, and the system is designed so that:

i. A case-hardened steel protective cap fits over the ignition;

ii. The cap fastens to a steel collar fitted around the steering column and over the ignition lock; and

iii. The cap contains a slotted opening through which the ignition key fits and is operable.

9. A high security replacement lock device is qualified if a warning label announces the device, and the device is designed so that it is a case-hardened steering column ignition lock conforming to the National Highway Traffic and Safety Association's Standard No. 114-1, incorporated herein by reference. A copy of Standard No. 114-1 may be obtained by writing:

National Highway Traffic and Safety Association
Docket Room
NAD-52
400 Seventh Street, S.W.
Washington, D.C. 20590

10. A hydraulic brake lock device is qualified if a warning label announces the presence of the device and the device is designed so that:

i. The device is mounted on the dash;

ii. When activated and pressurized with the brake pedal, hydraulic pressure is maintained on the brakes at two or more of the automobile's wheels;

iii. The device has a high security locking system with at least 50,000 combinations; and

iv. The lock is such that it cannot be pulled using a conventional slide hammer or lock puller equipment.

11. A window etching vehicle identification system is qualified if a warning label announces the presence of the system, and the system is designed so that:

i. A specific, identifiable set of numbers is permanently etched into all primary window glass areas, either by sandblasting or a chemical process;

ii. The set of numbers must be traceable to the automobile's registered owner; and

iii. Immediate telephonic notification or identification of the registrant must be available 24 hours a day, seven days per week.

(d) A device or system qualifies as a Category IV anti-theft device if it meets the following requirements:

1. The device or system is activated or initiated when an automobile is stolen;

2. Information concerning the automobile must be transmittable to the police in the jurisdiction where the automobile was stolen; and

3. The system shall be designed so that upon recovery, information concerning the automobile's location may be transmitted to the proper authorities and/or automobile's owner and insurer.

(e) All warning labels announcing the presence of an anti-theft device or system shall be located so as to be visible from the automobile's exterior, preferably on the forward passenger and driver's side door windows.

11:3-39.6 Reductions in rates for safety features

(a) Every insurer writing automobile physical damage insurance shall provide a reduction in the base rates of its collision damage coverage for all private passenger automobiles equipped with one or more safety features. Reductions in the base rates shall be as follows:

1. At least five percent for a private passenger automobile equipped with one safety feature;

2. An additional 2.5 percent reduction shall be provided for each additional safety feature with which the automobile is equipped; and

3. No insurer shall be required to provide more than a 10 percent total reduction for safety features, (a)2 above notwithstanding.

(b) Insurers shall develop a list of features which will qualify as collision damage safety features. This list may include features which are standard features for some private passenger automobiles, but which are options or not available for other private passenger automobiles. This list shall include:

1. Anti-lock braking systems;

2. Traction control systems; and

3. Five-mile-per-hour bumpers.

(c) An insurer may require reasonable proof that a private passenger automobile is equipped with a safety feature before providing any reduction in the base rates for collision damage coverage for private passenger automobiles. An inspection for the issuance or renewal of physical damage coverages, as set forth at N.J.A.C. 11:3-36, shall be considered reasonable proof.

11:3-39.7 Penalties

Any insurer which fails to comply with the terms of this subchapter shall be in violation of this subchapter, and subject to the assessment of any and all penalties in accordance with the laws of this State.

11:3-39.8 Severability

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

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Private Inspection Center Licensing

Proposed New Rule: N.J.A.C. 13:20-31.1

Authorized By: Col. Clinton L. Pagano, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:8-10, 39:8-11, 39:8-23 and 39:8-40.

Proposal Number: PRN 1991-97.

Submit written comments by March 21, 1991 to:

Col. Clinton L. Pagano, Director
Division of Motor Vehicles
25 South Montgomery Street, 7th Floor
Trenton, NJ 08666

The agency proposal follows:

Summary

The proposed new rule provides that notwithstanding any other provision of N.J.A.C. 13:20 to the contrary, no initial private inspection center (hereinafter "PIC") license authorizing such licensee to initially inspect and reinspect motor vehicles in this State pursuant to N.J.S.A. 39:8-1 et seq. shall be issued by the Division of Motor Vehicles to any person or business applying for same more than 10 days after the effective date of the rule, with one exception. The exception to the foregoing is that an initial PIC license may be issued by the Division of Motor Vehicles to a person or business applying for same more than 10 days after the effective date of the rule if the applicant is seeking such licensure for a business which it has purchased which was licensed as a private inspection center on the date of such purchase, provided: the applicant meets all applicable legal requirements for such licensure; the application for such licensure is submitted to the Division of Motor Vehicles not more than 30 days after the date of purchase; the existing private inspection center license is not to be relocated by the seller to another location pursuant to subsection (b) of the proposed new rule; and the purchase included the real estate or leasehold interest of the existing licensee or the applicant has entered into a lease with the owner of the real estate on which the seller conducted business. The rule also contains language specifying that nothing in the rule is intended to restrict or in any way affect the application for renewal of a private inspection center license by a person or business, or the issuance of such renewal licenses by the Division of Motor Vehicles, or the relocation of a licensed private inspection center, or the

restoration by the Division of Motor Vehicles of a private inspection center license which had been suspended or revoked.

There are approximately 4,000 licensed PICs at the present time, each of which is subject to regular audits by Division personnel trained in that task. These PICs inspect approximately one million vehicles per year, and have the capacity to examine even more vehicles. These PICs are also widely dispersed throughout the State of New Jersey, providing service widely accessible to all motorists who wish to use the PIC inspection option. The Director of Motor Vehicles has determined that given the number and geographical distribution of PICs at the present time, a need for additional PICs does not exist. Limiting the number of PICs at this time is also consistent with the obligation of the Director to monitor these PICs for compliance since it is incumbent upon the Division to monitor on a regular basis each PIC licensee. The proposed new rule also serves to effectuate a recommendation issued by the United States Environmental Protection Agency (EPA) as part of the 1989 EPA audit (National Air Audit System) of the New Jersey Inspection and Maintenance Program. One EPA recommendation was that New Jersey "consider limiting stations that can be licensed to conduct emission and tampering tests to a number that the State can effectively monitor, . . ." The Division has, therefore, determined it to be appropriate to cease issuing initial PIC licenses in accordance with the proposed new rule, subject to the exception set forth in the rule. The Division deems the exception set forth in the rule to be appropriate since it should not result in an increase in the number of PIC licenses.

Social Impact

The proposed new rule should have a beneficial impact upon the general public, since it promotes the public interest in proper PIC license monitoring by the Division. The monitoring of PIC licensees by the Division is essential to assure that each PIC is properly conducting initial inspections and reinspections of motor vehicles. The availability to the public of the PIC inspection option will not be affected by the new rule, since there are approximately 4,000 licensed PICs at the present time which are widely dispersed throughout the State and are readily accessible to all motorists who wish to use the PIC inspection option.

Although a person or business that is unable to obtain initial PIC licensure as a result of the implementation of this new rule will be negatively impacted by the rule, the Division perceives the rule to be appropriate when viewed in the context of the aforementioned EPA recommendation and the overriding public interest in proper PIC license monitoring by the Division. The proposed new rule has no social impact upon the Division.

Economic Impact

The proposed new rule will have a negative economic impact upon a person or business seeking initial licensure as a PIC who makes application for same more than 10 days after the effective date of the proposed new rule, since such applicant will be unable to obtain an initial license from the Division at that time subject to the exception set forth in the rule. However, the impact is mitigated somewhat in that the proposed new rule will not affect a person or business entity who applies for such initial licensure not more than 10 days after the effective date of the proposed new rule.

The proposed new rule will have a beneficial impact upon the State by allowing the Division to more effectively monitor the approximately 4,000 PICs presently licensed. The new rule also implements the aforementioned EPA recommendation, promotes the public interest in proper PIC license monitoring by the Division, and helps the State of New Jersey avoid costly sanctions for failure to meet federal clean air standards. The positive economic impact of the proposed new rule upon the Division consists of a reduction in the number of PIC license applications which Division employees will be called upon to review and process, and avoidance of large numbers of additional PICs requiring monitoring by Division employees.

The proposed new rule will have a slight negative economic impact upon the State to the extent that because the Division now proposes (subject to the previously mentioned exception) to limit the number of private inspection centers which may be licensed to those which are currently licensed or who have applied for such license not more than 10 days after the effective date of the proposed new rule, the number of initial applicants for such initial licensure will decrease, thereby resulting in fewer $25.00 application fees for such licenses being collected by the Division pursuant to N.J.S.A. 39:8-16 to be remitted to the General Treasury. That portion of the public desiring to utilize a PIC rather than a State operated inspection station will not be limited to any appreciable degree since there are approximately 4,000 currently licensed PICs as we as those entities applying for such initial license not more than 10 da after the effective date of the proposed new rule.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required because the propose new rule does not impose reporting, recordkeeping or other complianc requirements on small businesses, as defined by the Regulatory Flexibili Act, N.J.S.A. 52:14B-16 et seq. The operations of the approximately 4,0 PICs which are currently licensed as such by the Division of Mot Vehicles are not changed by the proposed new rule.

Full text of the proposed new rule follows:

SUBCHAPTER 31. PRIVATE INSPECTION CENTER LICENSING

13:20-31.1 Restriction of initial licensing

(a) Notwithstanding any other provision of this chapter to th contrary, no initial private inspection center license authorizing suc licensee to initially inspect and reinspect motor vehicles in this Stat pursuant to N.J.S.A. 39:8-1 et seq. shall be issued by the Divisio of Motor Vehicles to any person or business applying for same mor than 10 days after the effective date of this rule, with the followin exception:

1. An initial private inspection center license may be issued by th Division of Motor Vehicles to a person or business applying for sam more than 10 days after the effective date of this rule if the applican is seeking such licensure for a business which it has purchased whic was licensed as a private inspection center on the date of suc purchase, provided:

i. The applicant meets all applicable legal requirements for suc licensure;

ii. The application for such licensure is submitted to the Divisio of Motor Vehicles not more than 30 days after the date of purchase

iii. The existing private inspection center license is not to be re located by the seller to another location pursuant to (b) below; an

iv. The purchase included the real estate or leasehold interest o the existing licensee or the applicant has entered into a lease wit the owner of the real estate on which the seller conducted business

(b) Nothing in this section is intended to restrict or in any wa affect the application for renewal of a private inspection center licens by a person or business, or the issuance of such renewal licenses b the Division of Motor Vehicles, or the relocation of a licensed privat inspection center, or the restoration by the Division of Motor Ve hicles of a private inspection center license which had been suspende or revoked.

(a)

STATE BOARD OF PHYSICAL THERAPY

Fees

Proposed Amendment: N.J.A.C. 13:39A-1.4

Authorized By: The State Board of Physical Therapy, Patricia E. Stuart, Executive Director.

Authority: N.J.S.A. 45:9-37.18; N.J.S.A. 45:1-3.2.

Proposal Number: PRN 1991-85.

Submit written comments by March 21, 1991 to:

Patricia E. Stuart, Executive Director
State Board of Physical Therapy
1207 Raymond Boulevard
Newark, NJ 07102

The agency proposal follows:

Summary

In order to cover increased investigative, examination and program costs associated with the administration of the New Jersey Board o Physical Therapy, the Board is proposing to increase a group of fees listed in its current schedule. Examination fees for physical therapists will rise to $185.00 from the present $125.00 and, for physical therapist assistants to $160.00 from the present $110.00. The initial licensure fee for both types of licensees is increased to $150.00 from $100.00. The fee for a temporary license for certain purposes (assistance in a medical emergency

ngagement in a special project, or a teaching assignment) will rise to 90.00 from $60.00, and the same increase applies to license renewal or estoration of a lapsed license. The other fees in the schedule remain at resent levels.

Social Impact

The proposed increases, which will affect all current and potential icensees of the Board of Physical Therapy, are necessary for the Board o carry out its mandated duties, which ultimately benefit the public. The iew fee schedule will allow the Board to continue to protect the public iealth, safety and welfare by ensuring professional competence and the naintenance of high standards in the practice of physical therapy.

Economic Impact

The proposed amendment will increase all except three categories of ees charged by the Board. The economic impact of the amendment will e felt directly by its licensees; however, the Board has a statutory duty o cover its expenses. The increases have been calculated not to exceed he amount necessary to fund the Board's administration. The Board elieves that the increased fees are not burdensome and that they will iot result in higher charges to patients.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., physical therapists are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The proposed amendment, which constitutes a general increase in the Board's fee schedule, is needed in order to avoid operating at a loss. They do not involve any reporting or recordkeeping nor do they necessitate he retention of professional services for compliance. As a business expense, the proposed fees will have minimal effect on licensees, and since hey have been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

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

13:39A-1.4 Fees and charges

(a) The following fees shall be charged by the New Jersey State Board of Physical Therapy:

1. Examination fee for Physical Therapist (includes temporary license) ..... [$125.00] **$185.00**
2. Examination fee for Physical Therapist Assistant (includes temporary license) ..... [$110.00] **$160.00**
3. Initial licensure fee for Physical Therapist and Physical Therapist Assistant ..... [$100.00] **$150.00**
4. Fee for issuance of a temporary license pursuant to N.J.S.A. 45:9-37.29(b) to practice on a temporary basis to assist in a medical emergency or to engage in a special project or teaching assignment ..... [$60.00] **$90.00**
5. Biennial renewal licensure fee for Physical Therapist and Physical Therapist Assistant ..... [$60.00] **$90.00**
6. Restoration charge for lapsed license ..... [$60.00] **$90.00**
7. Provision of duplicate license or wall certificate $10.00
8. Provision of certification of eligibility for examination (for persons not yet seeking the issuance of a temporary license) or certification of licensure status $25.00
9. Recordation of name change and issuance of replacement license and wall certificate $25.00

(a)

STATE BOARD OF CHIROPRACTIC EXAMINERS

Advertising

Proposed New Rule: N.J.A.C. 13:44E-2.1

Authorized By: The State Board of Chiropractic Examiners, Charles Bender, D.C., President.

Authority: N.J.S.A. 45:9-41.23(h).

Proposal Number: PRN 1991-96.

Submit written comments by March 21, 1991 to:

Jay Church, Executive Director
State Board of Chiropractic Examiners
1207 Raymond Boulevard
Newark, NJ 07102

The agency proposal follows:

Summary

The newly created State Board of Chiropractic Examiners is proposing a new rule, N.J.A.C. 13:44E-2.1, in order to set forth specific standards which will govern and define advertising conduct. The rule is intended to provide licensees with a framework within which to clearly and accurately advertise their services to the public.

The proposed rule provides examples of advertising conduct deemed to be professional misconduct and specifically prohibits uninvited, in-person solicitation of potential patients who, because of their particular circumstances, are vulnerable to undue influence. The rule also requires that references to a fee must be limited to references to a fixed or a stated range of fees for a specifically described professional service and must include all relevant variables; no additional charges may be made for an advertised service unless the advertisement includes a disclaimer that additional charges may be incurred for related services which may be required in individual cases. The rule also sets forth provisions regarding offers of discounts, fee reductions or free services, testimonials and the required content of the advertisement. Under the rule, licensees must keep copies of advertisements for three years and may be required to provide to the Board factual substantiation of the truthfulness of any objective assertion or representation set forth in the advertisement. Video or audio tapes of advertisements must be retained and made available to the Board for review upon request.

The Board has made every effort in this proposal to carefully balance the chiropractor's right to advertise truthful information with the Board's duty and responsibility to protect the public from advertising which may be misleading or deceptive.

Social Impact

Under the Chiropractic Board Act of 1989, N.J.S.A. 45:9-41.17 et seq., the State Board of Chiropractic Examiners is charged with the duty of ensuring standards of competency and integrity of the profession and preventing unsafe, fraudulent or deceptive practices. The proposed new rule, which provides a comprehensive scheme for the regulation of advertising by chiropractic licensees, will aid the Board in fulfilling its duties under the Act.

The proposed new rule will have a beneficial impact on the public by improving the quality of information available about a practicing chiropractor's services and expertise in order to better enable the consumer to make an informed choice from among those offering chiropractic services. In addition, the rule mitigates against overzealous or deceptive solicitation of potential patients by prohibiting any guarantee that services rendered will result in a cure and by limiting testimonials to matters which the commenter is competent to assess. An additional safeguard provided to the public is the requirement that all advertisements, including video or audio tapes of every advertisement communicated by electronic media, must be retained for Board review to determine the propriety of the content.

Finally, the specificity of the rule will benefit Board licensees by eliminating any uncertainty with regard to proper advertising practices, thereby enabling licensees to provide clear and accurate advertising services to the public.

Economic Impact

The proposed new rule should have a favorable economic impact upon the consumer. The requirement that advertising setting forth a fee for a specifically described professional service be limited to that which contains a fixed or stated range of fees and that all variables be disclosed

will allow the consumer to anticipate actual as well as potential additional costs of the services offered. Moreover, when free or discounted services are advertised, the rule enables the consumer to make meaningful and fairly accurate advertising comparisons based upon standardized requirements for disclosing a fixed or stated range of fees against which the discount is to be made and/or the value of the free service.

In requiring certain affirmative statements and disclosures to be made in the advertisement, the proposed new rule may have an economic impact upon Board licensees who advertise their services. Costs will vary depending upon the amount and type of advertising selected by the licensee.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., chiropractors are deemed "small businesses," within the meaning of the statute, the following statement is applicable:

The proposed new rule, which governs and defines advertising conduct, will apply to all licensees of the Board of Chiropractic Examiners.

The proposed compliance requirements relate generally to advertising conduct and include specific requirements with regard to testimonials and offers of discounts, fee reductions or free services. With regard to reporting and recordkeeping requirements, licensees will be required to keep copies of all advertisements for a period of three years following the date of publication or dissemination, and all advertisements must indicate the accurate date and place of publication. Video or audio tapes of every advertisement communicated by electronic media must be retained and made available upon request by the Board. Licensees may be required to provide to the Board, upon request, factual substantiation of the truthfulness of any objective assertion or representation set forth in an advertisement. In addition, licensees who in their advertising communicate personally identifiable facts or information about a patient must first obtain the patient's permission in writing. Any costs of compliance, either initial or annual, will be dependent upon the amount and type of advertising selected by the chiropractor. No professional services are likely to be needed for compliance.

The Board considers these requirements to be reasonable and to be the minimum necessary for the protection of the public health, safety and welfare. For that reason, the proposed rule must be uniformly applied to all licensees without differentiation as to size of practice.

Full text of the proposed new rule follows:

CHAPTER 44E
STATE BOARD OF CHIROPRACTIC EXAMINERS

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. GENERAL RULES OF PRACTICE

13:44E-2.1 Advertising

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

1. The term "advertisement" shall refer to the attempt, directly or indirectly by publication, dissemination, solicitation, endorsement or circulation in print or electronic media or in any other way, to attract directly or indirectly any person to enter into an expressed or implied agreement to accept chiropractic services or treatment or goods related thereto.

2. The term "routine professional service" shall refer to a service which the advertising licensee, professional association or institution providing chiropractic care routinely performs.

3. The term "print media" shall refer to newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, fliers or other publications, the content of which is disseminated by means of the printed word.

4. The term "electronic media" shall include, but not be limited to, radio, television, telephone, facsimile machine, and computer.

5. The term "range of fees" shall refer to an expressly stated upper and lower limit on the fee charged for a professional service.

(b) A licensed chiropractor who is actively engaged in the practice of chiropractic in the State of New Jersey may provide information to the public by advertising in print or electronic media.

(c) A licensee who engages in the use of advertising which contains the following shall be deemed to be engaged in professional misconduct:

1. Any statement, claim, or format which is false, fraudulent misleading or deceptive;

2. Claims that the professional service performed or the material used are superior to that which is ordinarily performed or used unless such claims can be substantiated by the licensee;

3. Promotion of a professional service which the licensee know or should know is beyond the licensee's ability to perform;

4. Techniques of communication which appear to intimidate, exer undue pressure or undue influence over a prospective patient;

5. The communication of personally identifiable facts, data, o information about a patient without the patient's signed writte permission obtained in advance;

6. The use of any misrepresentation;

7. The suppression, omission or concealment of any material fac under circumstances which a Board licensee knows or should kno that the omission is improper or prohibits a prospective patient fron making a full and informed judgment on the basis of the informatio set forth in the advertisement;

8. Any print, language or format which directly or indirectly ob scures a material fact;

9. Any guarantee that services rendered will result in a cure; o

10. Any violations of (d) through (m) below.

(d) The Board may require a licensee to provide factual substantia tion of the truthfulness of any objective assertion or representatio set forth in an advertisement.

(e) A Board licensee shall not engage directly or indirectly i uninvited, in-person solicitation of actual or potential patients who because of their particular circumstances, are vulnerable to undu influence. This subsection shall not prohibit the offering of service by a Board licensee to any bona fide representative of prospectiv patients including, but not limited to, employers, labor union rep resentatives, or insurance carriers.

(f) Advertising making reference to or setting forth a fee shall b limited to that which contains a fixed or a stated range of fees fo a specifically described professional service or class of services. A licensee who advertises shall disclose all the relevant variables an considerations which are ordinarily included in such a service so tha the fees will not be misunderstood. In the absence of such a dis closure, the stated fees shall be presumed to include everything ordi narily required for such a service. No additional charges shall b made for an advertised service unless the advertisement includes th following disclaimer:

"Additional charges may be incurred for related services whic may be required in individual cases." The disclaimer cannot be use for treatment where related services are ordinarily required.

1. In any advertisement in which examination fees are set forth the cost of x-rays shall also be set forth along with the disclosure "if needed."

(g) Offers of discounts or fee reductions or free services shal indicate the advertiser's fixed or stated range of fees against whic said discount is to be made and/or the value of the free services Any service for which there is routinely or ordinarily no charge shal not be advertised as "free."

1. The fixed or stated range of fees or value of free services shal mean and be established on the basis of the advertiser's most com monly charged fee for the stated service within the most recent 6(days prior to, or to be charged in the first 60 days following, th effective date of the advertisement.

2. Offers of across-the-board discounts shall include a representa tive list of services and the fixed or stated range of fees against whic discounts are to be made for these services. The list shall include a sampling of the advertiser's most frequently performed services.

i. "Across-the-board discounts" shall mean the offer of a specifiec discount on an undefined class of services or the offer of a specifiec discount to a defined class of patients. For example, "15% discoun during April on all chiropractic services" or "15% discount to senio citizens on all chiropractic services."

ii. Example of Representative List of Services:

	Regular Fee	Discount Fee
:onsultation	$_____	$_____
:xamination	_____	_____
:omplete X-Rays	_____	_____
'hysical Modality	_____	_____

iii. The effective period during which a fee or discount shall remain ı effect shall be set forth on the face of the advertisement. In the bsence of such disclosure, the effective period shall be deemed to e 30 days from the date of the advertisement's initial publication.

(h) An advertisement may contain either a lay or expert testiıonial, provided that such testimonial is based upon personal knowldge or experience obtained from a provider relationship with the censee or direct personal knowledge of the subject matter of the estimonial. A lay person's testimonial shall not attest to any techniıl matter beyond the testimonial giver's competence to comment ıpon. An expert testimonial shall be rendered only by an individual ıossessing specialized expertise sufficient to allow the rendering of bona fide statement or opinion. An advertiser shall be able to ubstantiate any objective, verifiable statement of fact appearing in he testimonial.

(i) All licensee advertisements and public representations shall ontain the name and address or telephone number of the licensee, ırofessional service corporation or trade name under which the pracice is conducted and shall also set forth the name of at least one icensee responsible for the chiropractic practice in the facility idenified in the advertisement and/or public representation.

(j) A licensee shall be presumed to have approved and shall be ıersonally responsible for the form and contents of an advertisement vhich contains the licensee's name, office address, or telephone ıumber. A licensee who employs or allows another to employ for ıis or her benefit an intermediary source or other agent in the course ır advertising shall be personally responsible for the form and conents of said advertisement.

(k) A video or audio tape of every advertisement communicated ıy electronic media shall be retained by the licensee and made availıble for review upon request by the board or its designee.

(l) A licensee shall be required to keep a copy of all advertisements 'or a period of three years. All advertisements in the licensee's posession shall indicate the accurate date and place of publication.

(a)

STATE BOARD OF CHIROPRACTIC EXAMINERS

Patient Records

Proposed New Rule: N.J.A.C. 13:44E-2.2

Authorized By: The State Board of Chiropractic Examiners, Charles Bender, D.C., President.
Authority: N.J.S.A. 45:9-41.23(h).
Proposal Number: PRN 1991-94.

Submit written comments by March 21, 1991 to:
Jay Church, Executive Director
State Board of Chiropractic Examiners
1207 Raymond Boulevard
Newark, NJ 07102

The agency proposal follows:

Summary

In its ongoing effort to establish a detailed regulatory scheme in order to fulfill its duties under the Chiropractic Board Act, N.J.S.A. 45:9-41.17 et seq., the State Board of Chiropractic Examiners is proposing a new rule, N.J.A.C. 13:44E-2.2, Patient records. The rule is intended to provide Board licensees with minimum requirements for the creation, maintenance and transfer of patient records and to create uniformity in the profession with regard to recordkeeping.

Subsections (a), (b) and (c) set forth in specific detail the information required to appear on treatment records, bills, claim forms and radiograph labels, all of which records must be maintained for at least seven years from the date of the last entry. Provisions for the release of records to the patient or another designated health care provider and the circumstances under which the licensee may refuse to release the record to the patient are set forth in subsection (d). The rule makes clear that a failure to release the record because of nonpayment of fees is professionally unacceptable when there is a medical need for the record. Subsection (e) sets forth the general rule that all patient records must be protected from unwarranted disclosure and details three exceptions to this general rule. The provisions of subsection (f) concern the licensee's obligations when a third party has requested examination or evaluation of a person for a purpose unrelated to treatment. The final subsection of the rule, subsection (g), specifies the procedure for the care of patient records in the event a licensee ceases to engage in practice or remains out of practice for more than three months.

Social Impact

The proposed new rule will benefit the chiropractic patient in several respects. First, to the extent the patient's record may be reviewed by consultants, subsequent treating chiropractors or other evaluators, the record will be clear and complete. Furthermore, the provisions regarding timely release of records to the patients or another designated health care provider should ensure that the patient has ready access to his or her records. This is particularly important where the patient's continued care is contingent upon receipt of the records. An additional protection to the patient is the prohibition against a licensee's refusal to provide records, if the records are needed by another health care professional for the purpose of rendering care, on the grounds that the patient owes the licensee an unpaid balance. The rule also protects the patient against unwarranted disclosure of the contents of his or her records. Finally, the Board has noted that patients often have a great deal of difficulty obtaining their records when the treating chiropractor ceases to engage in practice or remains out of practice for a period of time. To alleviate this problem, the rule sets forth a procedure for the care of patient records in these circumstances.

The proposed new rule will also benefit licensees, who will be clearly advised of the Board's requirements for the creation, maintenance and transfer of patient records. The Board of Chiropractic Examiners will also benefit from the proposed rule in that the Board will be better able to fulfill its statutory duty to protect the public health, safety and welfare.

Economic Impact

The economic impact for licensees includes the expenditure of time required to include certain minimum information on all treatment records, bills, and claim forms. The Board anticipates that this recordkeeping will require only a small percentage of the chiropractor's time. Therefore, the economic impact of the rule upon licensees should be minimal. In any event, these recordkeeping requirements are no greater than those of the Medical Board, which previously had jurisdiction over the chiropractic profession. A licensee whose practice is unattended either because the licensee ceases to practice or he or she remains out of the practice for more than three months, will incur the expense of publishing a newspaper notice of the procedure for record retrieval. The notice must be published at least once each month for the first three months the practice is unattended.

The only expense the rule may create for the chiropractic patient is a possible charge for photocopying the patient record. The Board does not expect any increase in medical costs because of the proposed rule.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., chiropractors are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The proposed new rule will apply to the approximately 2,800 licensees of the Board of Chiropractic Examiners. Compliance requirements relate to the creation, maintenance, disclosure and transfer of patient records as well as the proper response to requests for information regarding a patient's medical history. Since the intent of the rule is to create uniformity in the profession with regard to recordkeeping and to ensure the preparation of clear and complete records for the benefit of the patient, the rule must be uniformly applicable to all licensees without differentiation as to size of practice. In any case, under Medical Board rules chiropractors have been required for many years to create and maintain clear and complete patient records; the proposed rule requires no greater amount of recordkeeping. The requirement of a newspaper announcement when a licensee ceases to practice imposes minor costs. Except for the professional services required to place that advertisement, no additional services beyond those of the licensee's regular office staff will be needed in order to comply with the new rule.

Full text of the proposed new rule follows:

13:44E-2.2 Patient records

(a) A contemporaneous, permanent patient record shall be prepared and maintained by a licensee for each person seeking chiropractic services, regardless of whether any treatment is actually rendered or whether any fee is charged. Licensees also shall maintain records relating to billings made to patients and third party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment or services rendered. Such records shall include, as a minimum:

1. The name, address, and date of birth of the patient and, if a minor, the name of the parent or guardian;
2. The patient complaint/reason for visit;
3. A pertinent case history;
4. Findings on appropriate examination;
5. Diagnosis/analysis;
6. A treatment plan;
7. Any orders for tests or consultations and the results thereof;
8. The dates of each patient visit;
9. A description of treatment or services rendered at each visit together with the name of the licensee or other person rendering the treatment;
10. Notation of significant changes in patient's condition and/or significant changes in treatment plan;
11. Periodic notation of patient status regardless of whether significant changes have occurred; and
12. The amount billed and received on patient's account.

(b) Patient records, including all radiographs and other diagnostic findings, shall be maintained for at least seven years from the date of the last entry.

(c) All radiographs shall be labeled, as a minimum, with the following identifying information:

1. The name of patient;
2. The date of radiograph;
3. The age of patient and/or date of birth;
4. The name of facility; and
5. Right or left identity.

(d) Licensees shall provide access to patient records to the patient or the patient's authorized representative in accordance with the following:

1. Upon receipt of a written request from a patient or an authorized representative and within 30 days thereof, legible copies of the patient record including, if requested, copies of radiographs, shall be furnished to the patient or another designated health care provider.

2. The licensee may elect to provide a summary of the record, as long as that summary adequately reflects the patient's history and treatment, where the written request comes from an insurance carrier or its agent with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement.

3. A licensee shall provide copies of records in a timely manner to a patient or another designated health care provider where the patient's continued care is contingent upon their receipt. The licensee shall not refuse to provide a patient record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

4. If, in the exercise of professional judgment, a licensee has reason to believe that the patient may be harmed by release of the subjective information contained in the patient record or a summary thereof, the licensee may refuse to provide such information. That record or the summary, with an accompanying notice setting forth the reasons for the original refusal, shall nevertheless be provided upon request of and directly to:

i. The patient's attorney;
ii. Another licensed health care professional; or
iii. The patient's health insurance carrier.

5. The licensee may charge a reasonable fee for the reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the cost of copying or transcription.

(e) Licensees shall maintain the confidentiality of patient records except that:

1. The licensee shall release patient records as directed by a subpoena issued by the Board of Chiropractic Examiners or the Office of the Attorney General, or by a Demand for Statement in Writing under Oath, pursuant to N.J.S.A. 45:1-18. Such records shall be originals, unless otherwise specified, and shall be unedited, with full patient names. To the extent that the record is illegible, the licensee upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the licensee shall also provide a translation. All radiographs and reports maintained by the licensee, including those prepared by other health care professionals also shall be provided.

2. The licensee, in the exercise of professional judgment and in the best interests of the patient (even absent the patient's request), may release pertinent information about the patient's treatment to another licensed health care professional who is providing or who has been asked to provide treatment to the patient, or whose expertise may assist the licensee in his or her rendition of professional services.

3. The licensee, in the exercise of professional judgment, who has a good faith belief that the patient because of a mental or physical condition may pose an imminent danger to himself or herself or to others, may release pertinent information to a law enforcement agency or other health care professional in order to minimize the threat of danger.

(f) Where a third party or entity has requested examination or an evaluation of a person for a purpose unrelated to treatment and where a report of the examination is to be supplied to the third party the licensee rendering those services shall prepare appropriate records and maintain their confidentiality, except to the extent provided by this section. The licensee's report to the third party relating to the patient shall be made part of the record. The licensee shall:

1. Assure that the scope of the report is consistent with the request to avoid the unnecessary disclosure of diagnoses or personal information which is not pertinent;

2. Forward the report to the individual entity making the request and in accordance with the terms of the patient's authorization; if no specific individual is identified, the report should be marked "Confidential"; and

3. Should the examination disclose abnormalities or conditions not known to the patient, the licensee shall advise the patient to consult another health care professional for treatment.

(g) If a licensee ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than three months the licensee or a designee shall:

1. Establish a procedure by which patients can obtain treatment records or acquiesce in the transfer of those records to another licensee or health care professional who is assuming the responsibilities of that practice;

2. If the practice is unattended by another licensee, publish a notice of the cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the licensee's practice, at least once each month for the first three months after the cessation; and

3. File a notice of the established procedure for the retrieval of records with the Board of Chiropractic Examiners.

(a)

DIVISION OF MOTOR VEHICLES BOAT REGULATION COMMISSION

Boating Regulations

Proposed Repeal and New Rule: N.J.A.C. 7:6-1.31
Proposed Amendments: N.J.A.C. 7:6-1.37, 1.42, 6.2, 6.3, 6.4

Authorized By: The Boat Regulation Commission, Robert J. Del Tufo, Attorney General, Department of Law and Public Safety.

.uthority: N.J.S.A. 12:7-23.1 et seq. and 12:7-34.36 et seq., particularly, 12:7-34.40, 12:7-34.49, and 12:7A-29.
roposal Number: PRN 1991-109.

Submit written comments by March 21, 1991 to:
Captain James W. Momm
New Jersey State Police
Marine Law Enforcement Bureau
P.O. Box 7068
Trenton, New Jersey 08628-0068

he Agency proposal follows:

Summary

The New Jersey Boat Regulation Commission ("Commission") and the)epartment of Law and Public Safety ("Department") propose to amend ıeir rules regarding the operation of boats on tidal and nontidal waters f the State. Specifically, the agencies propose to amend the rules regard-ıg speed of power vessels, waterskiing, diving and swimming, and noise 'om power vessels.

The proposed repeal and new rule at N.J.A.C. 7:6-1.31 regarding speed f power vessels requires that power vessels be operated at such a speed ; to avoid injury not only to property but also to life or limb. The roposed new rule also specifically identifies those situations where power essel operators are to reduce their speed to slow so as to avoid the ossibility of damage to docks, piers, other moored vessels and the like ıused by vessel wake. The proposed new rule will apply uniformly ıroughout the State even in those areas where individual signs or mark-ıgs requiring slow speed are not posted. In addition, the amendment :ts forth the speed at which power vessels must operate when passing ırough "Slow Speed/No Wake" areas that are so marked.

The proposed amendment of N.J.A.C. 7:6-1.37, Waterskiing, reduces ıe minimum allowable length of waterskiing tow ropes from 50 feet to 5 feet for increased safety. In addition, the proposed amendment ex-ands the definition of "waterskiing" to include the use of training booms ı recognition of the current allowable use of these devices on the water-'ays of the State. A new subsection is also being proposed which requires ıat a permit be obtained from the Marine Law Enforcement Bureau 'Bureau") for the use of a training boom for instruction in barefoot 'aterskiing. This permit will allow for such waterskiing only between ınrise and sunset and may be denied or cancelled by the Bureau for ood cause shown.

The proposed amendment of N.J.A.C. 7:6-1.42 requires that buoyed ags approved by the Commission which must be used by all divers to ıark their position in the water are to be visible "all round the horizon." 'he intent of this amendment is to ensure that buoyed flags are not bscured by any object or obstruction such as a boat or any part of the oatation support for the flag itself.

Several amendments to the Watercraft Noise Control subchapter at J.J.A.C. 7:6-6 are being proposed. First, the proposed amendments emove the distinction for allowable vessel noise levels based upon year f manufacture of the particular vessel's engine, and instead, establish uniform maximum noise level of 90 dba for the operation in or upon ıe waters of this State of any vessel or watercraft capable of emitting oise totalling in excess of that new level. In addition, the agencies ropose to delete the existing test method used for establishing noise level iolations by use of a sound level meter on a prescribed test course on he open water. Instead, a noise emissions test which facilitates at-the-ock testing is being proposed. The new test will be administered by use f a sound level meter which, among other things, is certified by the)epartment of Environmental Protection, Office of Noise Control with eference to standards of the New Jersey Office of Weights and Measures r National Bureau of Standards or both, or competent authority desig-ated by the Office of Noise Control. The test measurements will be made ith the above-described meter at a distance of four feet above the water t a point where the transom gunwale and port or starboard gunwale ıtersect.

The proposed amendments also allow any marine police officer or other ıw enforcement officer certified by the Office of Noise Control, including hose on the local level, who suspects that a vessel is exceeding the egulatory noise limitation to require the vessel operator to submit to noise emissions test as described in the rule. Any failure to comply with directive to submit to a noise emissions test shall now be considered distinct offense and shall subject that person to prosecution under J.J.A.C. 7:6-6.4. In addition, the offending vessel operator shall be rdered to immediately return the vessel to its mooring and cease oper-tions. The amendment removes the discretion formerly vested in law enforcement officers to simply order the operator of a vessel suspected of exceeding the noise level limits to cease operations and return the vessel to its mooring without prosecution under N.J.A.C. 7:6-6.4.

The proposed amendment also changes the time within which authorized race tests shall be conducted by limiting tests to the hours between 10:00 A.M. and sunset as opposed to a set hour of 6:00 P.M. This change is being made so that race tests will only be permissible during daylight hours for increased safety. The time distinction currently found in the rule for race tests conducted on the Navesink and Shrewsbury Rivers in Monmouth County is being deleted so that sunset, and the onset of darkness, will be the uniform end time for race tests throughout the State.

The proposed amendments to subchapter 6 also make numerous spelling and other technical changes in the text of the rules. Specifically, the definition of Department is changed from the Department of Environmental Protection to the Department of Law and Public Safety to reflect the transfer of responsibilities called for by the Legislature in N.J.S.A. 12:7A-29. Also, whenever in that subchapter reference is made to the N.J. Marine Police, the correct term—N.J. State Police Marine Bureau—has been substituted.

Social Impact

The proposed new rule and amendments will have a positive social impact on the people of the State by continuing and refining the State's regulation of boating activities and the enforcement of the regulations regarding those activities. In this way, boating on the waterways of New Jersey will be conducted in a safe manner, increasing the enjoyment of boating for all vessel operators while also protecting the health and property of all persons.

Economic Impact

The proposed new rule and majority of the proposed amendments will have little or no economic effect on the approximately 200,000 water vessels in the State since they require compliance with standards of operation that involve no additional equipment or other costs. However, the proposed changes to the rules regarding watercraft noise control may have a negative economic impact on vessels which presently operate with a minimum of noise abatement equipment because of the year of manufacture of the vessel's engine. In those cases, the operator may incur costs in order to check the vessel for compliance with the new noise emission limitation and may need to retrofit the vessel in order to achieve compliance with that limit.

Regulatory Flexibility Analysis

The proposed new rule and amendments will apply to water vessels in New Jersey. It is estimated that of the approximately 200,000 water vessels impacted by the rule, 5,000 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As described in the Economic Impact statement, above, some of these small businesses may incur costs associated with compliance with the proposed noise emissions limitation in the form of testing vessel engines for noise level production and possibly, retrofitting equipment so that the noise limit is not exceeded. It is unlikely that small businesses will need professional services such as accountants and attorneys to comply with these rules, but they may need the professional services of noise testing specialists and mechanics.

In developing the proposed new rule and amendments, the Commission and the Department have balanced the need to protect the public health and safety against the economic impact of the proposed new rule and amendments and have determined that to minimize the impact of the proposed new rule and amendments would endanger the public health and safety. Therefore, no exemption from coverage is provided.

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

7:6-1.31 Speed

[The speed of power vessels shall at all times be regulated so as to avoid danger of injury to all manner of craft whether floating, moored, anchored or underway, or to piers, wharfs, bulkheads, draw spans or other waterfront construction, either directly or by the effect of the wash or wave raised by such power vessel through its speed or otherwise.]

(a) No person shall operate a power vessel or allow a power vessel to be operated in a manner where the speed of the power vessel may cause danger of injury to life or limb or damage to property. The speed

of every power vessel shall be regulated so as to avoid the risk of damage or injury by any means, from the power vessel's wake.

(b) All power vessels shall reduce their speed to a slow speed when passing:

1. Any marina, pier, dock or wharf at a distance of 200 feet or less, except on Lake Hopatcong which shall be in accordance with N.J.A.C. 7:6-4.5;

2. Work barges or work floats while actually engaged in construction;

3. Through bridge spans;

4. Through lagoons, canals and confined areas of less than 200 feet in width;

5. Vessels not under command; or

6. Emergency vessels displaying sequential flashing or rotating blue lights.

(c) "Slow speed" as used in this section is defined as the speed at which a power vessel moves through the water and is able to maintain minimum headway in relation to the vessel or structure being passed.

(d) All power vessels, when moving through an area that has been marked a "Slow Speed/No Wake" area either by buoys or by signs with those words, shall move only at a no-wake speed. No vessel may be operated on plane or at other than minimum headway speed while in a "Slow Speed/No Wake" area. "No wake speed" as used in this subsection shall mean the speed at which a power vessel moves through the water while maintaining minimum headway and producing the minimum wake possible.

7:6-1.37 Water skiing

(a) All [operations] **operators** of power vessels towing ski or aquaplane riders while underway, must at all times keep at least 100 feet **distant** from any shore, wharf, pier, bridge structure, abutment or persons in the water. In passing another boat, the operator thereof must keep at least 100 feet [distance] distant from any other craft.

(b) and (c) (No change.)

(d) Tow lines shall not be less than [50] **35** feet nor more than 75 feet in length.

(e) Waterskiing [or], aquaplaning or towing of skiers or aquaplanes will be permitted only during the hours between sunrise and sunset.

(f) The ski boat shall contain at least one throwable personal flotation device [(PFD's)] **(PFD)**.

(g) (No change.)

(h) The term "waterskiing" shall be defined as anything with a rider, being towed [behind] by a power vessel by means of a tow rope [or], **tow** line, **or training boom** except **that** another vessel **being towed shall not be considered to be waterskiing.**

(i) The use of a training boom for instruction in barefoot waterskiing may be allowed only by permit issued by the Marine Law Enforcement Bureau. The permit for the use of a barefoot waterskiing training boom shall only be issued for the time period between sunrise and sunset. Permits may be denied or cancelled by the Marine Law Enforcement Bureau for good cause.

[(i)](j) The Commission may, upon application, waive any one or more of the above [subjections] **subsections** for events of public entertainment on any wholly owned private lake, provided that it finds the event to be consistent with the interests of boating safety.

7:6-1.42 Diving and swimming

(a) General provisions with respect to diving and swimming are as follows:

1. (No change.)

2. Any person while diving shall mark his or her position with a buoyed flag approved by the New Jersey Boat Regulation Commission:

i. Such flag shall be displayed **so that it is visible all round the horizon** from a buoy, float, boat or other floating object;

ii. (No change.)

3.-6. (No change.)

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

7:6-6.2 Definitions

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

"Department" means the Department of [Environmental Protection] **Law and Public Safety, Division of State Police.**

. . .

7:6-6.3 Noise limitation provisions

(a) [No vessel or watercraft capable of emitting noise totaling in excess of 86 dba measured at a distance of 50 feet from the vesse shall be operated upon the waters of this State. For vessels with engines manufactured on or after January 1, 1979, and before January 1, 1982, the noise level shall not exceed 84 dba measured at a distance of 50 feet from the vessel. For vessels with engines manufactured on or after January 1, 1982, the noise level shall not exceed 82 dba measured at a distance of 50 feet from the vessel.] **No person shall operate or give permission for the operation of any vessel or watercraft capable of emitting noise totalling in excess of 90 dba in or upon the waters of this State.**

(b) Measurements shall be made by a sound level meter which satisifies ANSI-S 1.4, type 2, or equivalent, and is certified by the Department of Environmental Protection, Office of Noise Control with reference, as applicable, to standards of the New Jersey Office of Weights and Measures or the National Bureau of Standards or both, **or by other competent authority designated by the Office of Noise Control.**

(c) [Measurements shall be made with the sound level meter at a distance of not less than 50 feet from the closest point of the boat's hull amidships. Any marine policeman or other law enforcement officer certified by the Office of Noise Control with a reason to suspect that a boat is exceeding the noise limitation may require the vessel operator to traverse a noise emission test course as set forth herein.] **The noise emission test measurement shall be made with the sound level meter at a distance of not less than four feet above the water at a point where the transom gunwale and port or starboard gunwale intersects. The vessel being tested shall operate its engine at the lowest throttle setting in neutral gear. In the case of a vessel with multiple engines, said engines shall operate together at the lowest throttle settings in neutral gear. Personal watercraft, jet boats and all other vessels which have no neutral gear shall operate at the lowest throttle setting with minimum or no headway motion.**

(d) Any marine police officer or other law enforcement officer certified by the Office of Noise Control with a reason to suspect that a vessel is exceeding the noise limitation may require the operator to submit to a noise emissions test as described in (b) and (c) above.

[(d)](e) Any person who fails to comply with the directive to [traverse the test course] **submit to a noise emissions test** shall be subject to prosecution [or, at the discretion of the law enforcement officer, such vessel or engine] **under N.J.A.C. 7:6-6.4 and** shall be ordered to immediately return **the vessel** to its mooring and cease operations.

[(e) The noise emission test course shall consist of a straight course of approximately 100 yards long through which the vessel shall be operated at full throttle. The sound level meter shall be located a a perpendicular distance of not less than the specified 50 feet from the approximate midpoint of the course. The ambient noise level shall be a factor in positioning the test course.

1. Any person operating any vessel or other watercraft found in violation of the established noise levels may be subject to prosecution by the Department.]

(f) The noise limitation provisions of this section shall not apply to vessels registered and actually participating in racing events or tune-up periods for such racing events, when authorized by the Department or by any other public authority with the Department's approval. Tune-up periods approved pursuant to this section shall be limited as follows:

1. Before any race boat is tested, the driver shall secure a Race Test Permit from the N.J. [Marine Police] **State Police Marine Bureau**.

2. Before the permit is issued, the [Marine Police] **N.J. State Police Iarine Bureau** shall obtain a statement from the applicant which ıall include the following:

i.-v. (No change.)

vi. Any other information deemed necessary by the [Marine olice] **N.J. State Police Marine Bureau** Station Commander.

3. (No change.)

4. All race tests[, with the exception of those held on the Navesink nd Shrewsbury Rivers in Monmouth County,] shall be conducted etween the hours of 10:00 A.M. and [6:00 P.M. local time] **sunset** [Tests may be conducted on the Navesink and Shrewsbury Rivers etween the hours of 10:00 A.M. and 8:00 PM.]

5.-8. (No change.)

9. The provisions of [paragraphs] (f)3, 6, 7, and 8 [of this subsecon] **above** shall not apply on a body of water in the three day period nmediately preceding a race on that body of water. Subject to such :strictions as may be imposed by the U.S. Coast Guard or the N.J. Marine Police] **State Police Marine Bureau,** testing on days of sanconed races may begin two hours before the start of the first race.

10. The Station Commander, N.J. **State Police** Marine [Police] **ureau,** is authorized to deny or cancel any permit for the reasons f boat traffic, poor weather, confined area, or other valid reason.

:6-6.4 [Test Course] **Failure to comply with the noise emission test**

No person shall fail to [traverse] **submit to** a noise emission test :ourse] when so ordered by a duly authorized law enforcement fficer.

TRANSPORTATION

(a)

IVISION OF TRAFFIC ENGINEERING AND LOCAL AID

lureau of Traffic Engineering and Safety Programs Rules

roposed Readoption: N.J.A.C. 16:27

.uthorized By: Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

.uthority: N.J.S.A. 27:1A-5 and 27:1A-6.

roposal Number: PRN 1991-86.

Submit comments by March 21, 1991 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

he agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive rder No. 66(1978), the Department of Transportation is required to :view its existing rules periodically, to determine that they are current, seful and necessary for the purposes for which they were promulgated. ccordingly, such a review was conducted by the staff of the Bureau of raffic Engineering and Safety Programs of N.J.A.C. 16:27, Bureau of raffic Engineering and Safety Programs, which revealed that the rules ere necessary, adequate, reasonable, understandable and responsive to ıe purpose for which they were promulgated.

These rules were originally filed and became effective prior to Septemer 1, 1969. Subsequent amendments were filed and became effective on larch 21, 1978, June 2, 1986 and September 8, 1986. Under Executive rder No. 66(1978), the chapter expires on September 8, 1991. Chapter 7 is proposed for readoption, without change in text, as currently found ı the New Jersey Administrative Code at N.J.A.C. 16:27.

These rules provide the basic principles and outline procedures concernıg the design, installation, erection, standards and usage of traffic control evices, and are governed by the current "Manual on Uniform Traffic Control Devices for Streets and Highways" issued by the United States Department of Transportation, Federal Highway Administration, Washington, D.C.

The proposed readoption will continue the enhancement of safety along the highway system.

The chapter is summarized as follows:

N.J.A.C. 16:27-1 outlines the requirements, method of notification and speed reductions in the adoption of traffic regulations.

N.J.A.C. 16:27-2 prescribes the procedures to be followed in the erection and placement of highway signs.

N.J.A.C. 16:27-3 outlines the standards and the requirements for the installation of traffic signals.

N.J.A.C. 16:27-4 depicts the procedures for the approval of traffic signals and/or channelization on county and municipal roads and streets.

N.J.A.C. 16:27-5 outlines the method for obtaining certification of traffic control devices.

N.J.A.C. 16:27 was amended once during the past five years, to incorporate changes resulting from the reorganization of the Department and to add a new rule, N.J.A.C. 16:27-5.1, regulating the fee for the release of information regarding certification of traffic control devices.

Social Impact

The proposed readoption will continue the procedure to be followed in the controlling of traffic along the State's highway system. The continuation of these rules will insure that the requirements for and the control of public safety along the highway system are maintained. There will be no significant additional impact since the current procedures are not changed and there are no proposed amendments.

Economic Impact

The proposed readoption will continue the effect of the rules, which is to provide direction to municipalities regarding the submission of requests for changes in traffic rules, and for construction of traffic signs, channelization and control devices. The costs for traffic signs and signals along State roads are borne by the Department, as are all costs of construction. Municipalities are responsible for the passage of a resolution by the local governing body, which generally involves a small legal cost, and for the electricity used by any traffic control devices located within that municipality. Bus stop signs are paid for by the municipality or by NJ TRANSIT, as appropriate. The costs to the municipalities and NJ TRANSIT are minimal.

Regulatory Flexibility Statement

N.J.A.C. 16:27 does not regulate businesses, but provides direction to municipalities regarding the submission of requests for changes in traffic rules, and the methods of construction of traffic signs, channelization and control devices. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:27.

TREASURY-GENERAL

(b)

DIVISION OF BUILDING AND CONSTRUCTION COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

DIVISION OF DEVELOPMENT FOR SMALL BUSINESSES, AND WOMEN AND MINORITY BUSINESSES

Subcontracting Targets

Joint Proposed Amendment: N.J.A.C. 17:14-1.9 and 12A:10-2.9

Authorized By: Nathan Scovronick, Executive Director, Department of the Treasury, and George R. Zoffinger, Commissioner, Department of Commerce, Energy, and Economic Development.

Authority: N.J.S.A. 18A-30(d), 52:27H-6f, 52:32-1, 52:32-2 and 10:5-36K.

Proposal Number: PRN 1991-83.

Submit comments by March 21, 1991 to:
Lana T. Sims, Senior Executive
Department of Treasury
State House, 1st Fl.
CN 002
Trenton, New Jersey 08625

Leland McGee, Director
Division of Development for Small Businesses
and Women and Minority Businesses
20 West State Street, 4th Fl.
CN 835
Trenton, New Jersey 08625

The joint agency proposal follows:

Summary

On October 13, 1989, the Department of the Treasury (Treasury) and the Department of Commerce, Energy and Economic Development (DOC) adopted new rules governing minority and female subcontractor participation in State construction contracts to establish a procedure to guarantee that State construction contractors engage in market outreach efforts and do not presently discriminate against minority and female businesses in the awarding of construction subcontracts. The rules provide that each construction contract will be reviewed and target levels set for female and minority utilization. The Departments of Treasury and Commerce are proposing to amend those rules to make more explicit the methodology to be used in setting target levels for minority and female subcontracts.

Social Impact

The amendments proposed at N.J.A.C. 17:14-1.9 and 12A:10-2.9 recognizes the State's interest in eliminating unlawful discrimination based on race and gender and encouraging affirmative action in construction contracting. By making the target setting methodology more explicit, the State's contractors will have a greater understanding of the process, and contracting officials can achieve greater consistency in setting targets. The reduction of discrimination and the more systematic approach to setting targets are expected to have a positive social impact.

Economic Impact

The proposed amendments will help ensure equal opportunity for minority and female subcontractors in securing construction contracts. This will improve the growth potential of such firms thereby creating job opportunities and generating additional tax revenue.

Regulatory Flexibility Analysis

The proposed amendments do not impose any additional requirements on small businesses, but do delineate the method to be used by the Division of Building and Construction project architects, within the Department of the Treasury, in setting target levels to be satisfied by bidders. Requirements are currently set on an individual basis by the project architects. The proposed amendments will make the requirements more explicit and consistent and will identify for the contractors, whether small or large businesses, the basis of computation of their required target level for minority and female owned business subcontracting.

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

17:14-1.9 (12A:10-2.9) Subcontracting targets

(a) The Division of Building and Construction or other State contracting agency, consistent with its statutory authority, in consultation with the Department of Commerce, shall set target levels for the participation of minority businesses and female businesses as subcontractors for each construction contract awarded through the public bidding process. These target levels shall be set on an individual basis for each construction contract and shall be based upon the number of registered minority and female businesses qualified to participate as subcontractors on such contracts.

1. To compute the target levels, the project architect shall identify all subcontractable segments of the contract.

2. The availability of registered minority and female businesses qualified to perform each subcontractable segment shall then be determined.

i. Availability is to be characterized as either "high" or "low" based on an evaluation of the availability of qualified registered minority and female businesses to perform each subcontractable segment in relation to all other segments. Availability will be considered "high" only if there are at least three female and minority businesses. In making the availability determination, any geographical or capacity restrictions of the subcontractor and all other relevant factors may be considered.

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

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Sales and Use Tax
Coin-Operated Vending Machines
Proposed Amendments: N.J.A.C. 18:24-16.6, 16.7, 16.9 and 17.1 through 17.4

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-24.

Proposal Number: PRN 1991-87.

Submit comments by March 21, 1991 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendments implement statutory changes in the New Jersey Sales and Use Tax Act, N.J.S.A. 54:32B-1 et seq. brought about by the enactment of P.L. 1990, c.40, effective July 1, 1990. P.L. 1990 c.40, in part, increased the sales tax rate to seven percent and deleted the sales tax exemption under N.J.S.A. 54:32B-8.24 for sales of cigarettes subject to tax under the Cigarette Tax Act, N.J.S.A. 54:40A-1 et seq.

The proposal amends the vending machine rules in order to reflect the current tax rate (seven percent) and the substantive statutory change which includes sales of cigarettes as taxable transactions. The rule text including examples, has been changed to delete the prior cigarette sale exemption and amend the tax rate.

Social Impact

The specific group affected by the proposed amendments is operators of vending machines in New Jersey. The amendments will provide vendors with an explanation of the taxability of vending machines sales and provide guidelines for computing and remitting the applicable tax. The projected reaction to amendments will be positive, since the rule changes are merely an embodiment of the legislative change made by P.L. 1990 c.40. The Division of Taxation does not anticipate any negative consequences from these rule amendments, if adopted.

Economic Impact

The proposed amendments reflect legislative changes (P.L. 1990, c.40 in the tax rate (from six percent to seven percent) and the taxability of a specific product (cigarettes). Thus, the amendments will affect consumers, as well as retailers who own and operating vending machines dispensing cigarettes and other taxable products. Projected sales tax revenue from all sales of cigarettes in this State is estimated to be $87 million for the 1991 fiscal year. Since cigarettes are widely sold through vending machines, there is a clear economic effect on the consumer, and tax revenue generated by vendor compliance with the rules will be significant. In addition, the one percent sales tax increase on all taxable transactions will significantly affect both the taxpayer and the tax collector.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments to the vending machine rules merely incorporate some of the legislative changes set forth in P.L. 1990, c.40. This act, in part, increased the sales tax rate and removed the sales tax exemption on cigarette sales.

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

:24-16.6 Tax on gross receipts
(a) Vendors operating vending machines which dispense tangible rsonal property, other than food and drink, must report and pay the State the tax upon the gross receipts from all sales of such ms made through such machines, subject to the exemptions set rth in the [sales] **Sales** and Use Tax Act such as [cigarettes (exempt der N.J.S.A. 54:32B-8(y)) and] items sold through vending maines for $0.10 or less (exempt under N.J.S.A. 54:32B[-8(i)]-**8.9** and ubchapter 17 of this chapter] **N.J.A.C. 18:24-17**).
(b) Effective January 3, 1980 (P.L. 1979, c.274; **N.J.S.A. :32B-3(c)(4)**), vendors operating vending machines which dispense od and beverage must report and pay to the State the tax upon nding machine sales as defined in [subsection] (c) below from all les of such items made through such machines subject to the exemptns set forth in N.J.A.C. 18:24-16.7(b) and (c).
(c)-(d) (No change.)

:) Example: Total receipt from all vending ma-

ine sales		$10,000
ss deductions:		
garettes	$1,000	2,000
ilk	1,000	$8,000
percent of receipts from food d beverage sales (30 percent × ,000		2,400
eceipts subject to tax		$5,600
ax Due (at 5 percent)		$ 280]

) **Example:**

eceipts from sales of taxable tangible personal property	**$1,000**	
eceipts from sales of milk	**1,000**	
eceipts from sales of food and beverages (other than milk)	**8,000**	
otal receipts from all vending machine sales		**$10,000**
ss deductions:		
ilk	**$1,000**	
percent of receipts from food and beverage sales (30 percent × $8,000)	**2,400**	
otal deductions		**3,400**
eceipts subject to tax		**$6,600**
ax due (at 7 percent)		**$ 462**

:24-16.7 Tax exemptions
(a) Receipts from sales of food or drink exempted from the tax subsection [8(b)] **8.2 of the Sales and Use Tax Act,** are not allowle deductions from gross receipts derived from sales through vendg machines.
(b)-(c) (No change.)

:24-16.9 Responsibility for tax payment
(a) (No change.)
(b) The tax to be remitted to the State of New Jersey[,] by the ndor is the amount of the actual tax collected from all taxable sales, [five] **seven** percent of the taxable sales, whichever amount is eater.

:24-17.1 Statutory basis
N.J.S.A. **54:32B-8.9** provides that the following receipts shall be empt from the sales tax:
"Tangible personal property sold through coin-operated vending achines at $0.10 or less, provided the retailer is primarily engaged making such sales and maintains records satisfactory to the irector".

:24-17.2 Definition
The phrase "primarily engaged in making such sales", as used in .J.S.A. 54:32B-[8(i)]**8.9**, refers to vendors engaged in making sales through coin-operated vending machines, and for this subsection to be applicable the vendor must show that more than half of the total receipts [form] **from** his business are derived from sales through coin-operated vending machines.

18:24-17.3 Reports qualifying exemption; contents
(a) In addition to the filing of Form ST-50 (Quarterly Return) and/or Form ST-51 (monthly remittance statement), a vendor who seeks to exempt a portion of his gross receipts pursuant to N.J.S.A. 54:32B-[8(i)]**8.9** shall report quarterly to the [Sales Tax Bureau] **Division of Taxation** on Form ST-3229 the following information:
1.-2. (No change.)
3. The total receipts from exempt sales, including:
i. Receipts from sales of [cigarettes] **milk**;
ii.-iii. (No change.)
4. The total taxable receipts, calculated by subtracting the exempt sales [set forth in subsection (c) of this Section] from total receipts of the vending machine company [set forth in subsection (a) of this Section].

18:24-17.4 Tax amount payable
The amount of New Jersey Sales Tax payable is the net taxable receipts [(Section 15.12(d) of this Chapter)] multiplied by [.05] **.07** to effectuate application of the [five] **seven** percent tax rate, or the actual tax collected, whichever is the greater.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedure for Exchange of Checks Submitted by Gaming Patrons
Slot Booths
Proposed Amendments: N.J.A.C. 19:45-1.25 and 1.34

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c) and 69(c).
Proposal Number: PRN 1991-89.

Submit comments by March 21, 1991 to:
Barbara A. Mattie, Chief Analyst
Casino Control Commission
CitiCenter Building, 4th Floor
1300 Atlantic Avenue
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 19:45-1.25(i) and 19:45-1.34 would permit a person to obtain cash to be used for gaming purposes by presenting a recognized credit card to a slot cashier at a slot booth. Presently, the rules permit this type of transaction only at the cashiers' cage. Since slot booths are designed and constructed to provide maximum security for the transactions performed therein, these proposed amendments would permit patrons to also obtain cash advances at slot booths on the casino floor in addition to the cashiers' cage.

Social Impact

The proposed amendments would make it more convenient for slot patrons by providing additional locations in which they can present their recognized credit cards. In addition, these proposed amendments would have the potential to provide more efficiency to casino operations by alleviating some of the lines at the cashiers' cage.

Economic Impact

The proposed amendments merely offer additional locations for obtaining cash for gaming purposes by presenting a recognized credit card and may have an economic benefit to the casinos by making it more convenient for slot patrons to obtain funds. However, any economic impact would not be significant.

Regulatory Flexibility Statement

The proposed amendments only affect the operations of casino licensees, and therefore, do not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

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

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

(i) A person may obtain cash at the cashiers' cage **or slot booth** to be used for gaming purposes by presenting a recognized credit card to a general cashier **or slot cashier**. Prior to the issuance of cash to a person, the general cashier **or slot cashier** shall verify through the recognized credit card company the validity of the person's credit card or shall verify through a recognized electronic funds transfer company which, in turn, verifies through the credit card company the validity of the person's credit card and shall obtain approval for the amount of cash the person has requested. The general cashier **or slot cashier** shall then prepare such documentation as required by the casino licensee to evidence such transactions and to balance the imprest fund prior to the issuance of the cash.

(j)-(p) (No change.)

19:45-1.34 Slot booths

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

1.-7. (No change.)

8. The issuance of Payouts in conformity with N.J.A.C 19:45-1.40; [and]

9. The issuance of cash to patrons upon the presentation of a re cognized credit card in accordance with N.J.A.C. 19:45-1.25(i); an

[9.] **10.** The exchange with the cashiers' cage of any coin, currenc slot tokens, chips, plaques and documentation and the related prep aration of a Slot Booth Exchange Slip, which shall be a two-par serially prenumbered form signed by the cage cashier, slot cashie and the security department member responsible for transporting th funds. Except for the exchanging of change with changepersons th slot booth shall not be allowed to obtain coin, from other tha patrons, through exchange or otherwise, from any source other tha the cashiers' cage. Exchanges with the cashiers' cage must be accon panied by the Slot Booth Exchange Slip or by a Fill Slip authorizin the distribution of coins or slot tokens to the slot booths.

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

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Rules for Agency Rulemaking

Readoption with Amendments: N.J.A.C. 1:30

Proposed: November 5, 1990 at 22 N.J.R. 3281(a).

Adopted: January 23, 1991 by Jaynee LaVecchia, Director, Office of Administrative Law.

Filed: January 25, 1991 as R.1991 d.85, **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. 52:14B-4, 52:14B-7 and 52:14F-5(f), (h) and (i).

Effective Date: January 25, 1991, Readoption; February 19, 1991, Amendments.

Expiration Date: January 25, 1996.

Summary of Public Comments and Agency Responses:

Economic Impact

COMMENT: The Division of Economic Assistance, Department of Human Services (DEA), believes that the proposed amendments are a significant departure from the current rulemaking rules, and will require augmentation of staff or increased staff activity beyond the level currently required.

RESPONSE: The proposed amendments do impose some requirements different from those currently imposed, and clarify other existing requirements. While a need for increased staff activity may result, this will vary substantially depending upon the nature of each proposed rulemaking. The Office of Administrative Law (OAL) does not anticipate that the proposed amendments will necessitate additional staff.

N.J.A.C. 1:30-1.2 Definitions

COMMENT: The Department of Environmental Protection (DEP) commented that the proposed definition of "regulatory material" uses the conjunction "and" to indicate that regulatory material exists only if all six factors are present. The *Metromedia* decision upon which the definition is based [*Metromedia v. Director, Division of Taxation,* 97 N.J. 313 (1984)] does not require that all six criteria be met.

RESPONSE: The relevant language from the *Metromedia* decision states, "These relevant factors can, either singly or in combination, determine in a given case whether the essential agency action must be rendered through rulemaking or adjudication." OAL had hoped to reflect this in the proposed definition by requiring that the criteria be "substantially" met. Upon due consideration, OAL has decided not to adopt the proposed definition of "regulatory material," and to consider further the issue.

N.J.A.C. 1:30-1.9 Copies of documents; fees

COMMENT: The Division of Water Resources, DEP, stated that N.J.A.C. 1:30-1.9(a) should be clarified to reflect that document copies may be obtained from OAL or other agencies.

RESPONSE: As the rule is intended to relate only to obtaining copies from OAL, no change is required. However, the rule has been clarified to specifically refer to "Division of Administrative Rules and Publication" rather than OAL.

N.J.A.C. 1:30-2.2 Incorporation by reference

COMMENT: DEP commented that N.J.A.C. 1:30-2.2(f) prohibits the incorporation by reference of agency produced regulatory documents. Is the intention to prohibit the incorporation by reference of documents which contain "regulatory material" as defined in N.J.A.C. 1:30-1.2?

RESPONSE: In light of OAL's decision not to adopt the proposed definition of "regulatory material," this subsection (f) is not adopted. The issue raised by DEP in this comment, and the issues raised by other commenters on this subsection as set forth below, will be considered by OAL in contemplating future rulemakings.

COMMENT: The Water Supply Element, Division of Water Rsources, DEP, asked whether proposed subsection (f) would prohibit the incorporation by reference of Federal regulations.

RESPONSE: See previous response to DEP's comment.

COMMENT: The Division of Water Resources, DEP, requested that an exception to the subsection (f) prohibition should be made for agency produced documents that are adopted pursuant to express statutory provisions that have independent regulatory force, such as the Statewide Sludge Management Plan.

RESPONSE: OAL agrees, given such documents express statutory authority, and will consider incorporation of such an exception in any subsequent reproposal.

COMMENT: The Division of Medical Asistance and Health Services, Department of Human Services (DMAHS), questioned whether the subsection (f) prohibition of incorporation by reference included newsletters and other informational bulletins.

RESPONSE: See previous response to DEP's comment.

COMMENT: The Central Office Contract and Policy Unit, Department of Human Services (Central Office CPU), asked whether, if the same information is referenced in several rules, full inclusion of the reference material is mandatory at each reference.

RESPONSE: See previous response to DEP's comment.

COMMENT: Central Office CPU stated that it is not always possible to have the material necessary for cross-referencing published as a rulemaking prior to the necessary cross-referencing.

RESPONSE: See previous response to DEP's comment.

COMMENT: The Division of Executive Services, Department of Education (DES/DOE), commented, "There may be some instances where an agency produced document such as the Department of Education Chart of Accounts for Bookkeeping should be allowed for incorporation by reference. A document of this kind is a **standard** for all school districts to use and should not have to be printed in code. This makes code too cumbersome. Inclusion in code of a "desk guide" type of document is not practical."

RESPONSE: See previous response to DEP's comment.

N.J.A.C. 1:30-2.7 Administration corrections and changes

COMMENT: DEA requested the OAL devise a form to be used by agencies in submitting administrative changes and corrections to OAL. The Division also suggests that OAL accept a designated agency liaison's signature authorizing the change or correction, rather than the agency head's signature.

RESPONSE: Because of the many types of changes and corrections that might arise, no form can be produced to cover all circumstances. A memorandum specifically describing the corrections or changes to be made, and the reasons therefor, signed by the agency Administrative Practice Officer, would be acceptable.

COMMENT: DEA requested that the current practice of allowing corrections and changes to be telephonically communicated to OAL be retained. The written communication requirement should be reserved for "substantial changes."

RESPONSE: While, in some instances, minor correction requests have been accepted by OAL over the telephone, the written communication requirement for all changes and corrections is necessary to ensure the accuracy of the corrections or changes, and to provide a written record of the reason for the correction or change. Miscommunication by telephone may result in a compounding of errors in the Code.

COMMENT: The Division of Youth and Family Services, Department of Human Services (DYFS), requested that OAL reinstate the requirement that an originating agency's concurrence is required before an OAL-initiated correction is made.

RESPONSE: Before an OAL-initiated notice of administration correction is filed, all pertinent documentation on file with OAL is examined to confirm the existence of an error. The agency will be consulted if a question of the accuracy of the research materials or other questions arise. Also, N.J.A.C. 1:30-2.7(a) is revised upon adoption to provide the OAL will provide notice to the appropriate agency of an OAL-initiated administrative correction.

COMMENT: DYFS welcomed the increased flexibility of allowing administrative changes and recodification by administrative correction.

RESPONSE: DYFS' comment is appreciated.

COMMENT: DEP asked when an administrative correction or change initiated by OAL is effective.

RESPONSE: As with those which are agency-initiated, such corrections or changes are effective upon the filing of a notice for publication in the New Jersey Register.

N.J.A.C. 1:30-2.8 Appendices

COMMENT: DEP commented that N.J.A.C. 1:30-2.8(c) requires that an amendment to regulatory material in an appendix be done through rulemaking. The rule should also provide that an amendment to non-regulatory material be done without rulemaking.

RESPONSE: OAL agrees, and will consider proposal of such a change in the near future in conjunction with any reproposal of the oral comments, regulatory material and incorporation by reference amendments proposed, but not adopted, in this rulemaking.

N.J.A.C. 1:30-3.1 Notice of proposed rule
N.J.A.C. 1:30-3.3 Opportunity to be heard

COMMENT: N.J.S.A. 52:14B-4[(a)(3)] requires that agencies afford the public opportunity to comment "orally or in writing." DEP contends that providing a public hearing and allowing written comment satisfies this requirement. In opposition to the proposed requirement that oral comments outside of hearings be accepted, DEP cites the difficulty in assuring receipt of oral comments, their accuracy and agency response capability outside of a hearing context, the potential for large numbers of oral comments, and confusion from the possible application of an oral comment to numerous outstanding proposals.

RESPONSE: In light of the numerous potential difficulties concerning receipt of oral comments mentioned by DEP and other commenters (as set forth below) and upon further consideration, OAL has decided not to adopt the proposed amendments to N.J.A.C. 1:30-3.1(e)1 through 3, 3.2(c)4iv and 3.3(a). OAL will reexamine the oral comments issue and consider proposing amendments to its rules in the near future. The concerns raised by the commenters will be addressed in any such future proposal.

COMMENT: The Division of Water Resources, DEP, stated that, due to the difficulty of ensuring the accuracy of oral comment recording, oral comments should be submitted only at public hearings.

RESPONSE: Please refer to the previous response. OAL will consider this hearing alternative as part of its oral comments reconsideration.

COMMENT: All divisions of the Department of Human Services expressed opposition to the amendments concerning acceptance of oral comments. Specific division comments follow.

COMMENT: The Division of Developmental Disabilities (DDD) questioned how a person is to make oral comments; whether the agency has to identify a staff member to meet with interested persons; whether oral comments can be given over the telephone; whether oral comments are to be transcribed or recorded; and how is an oral comment record to be retained.

RESPONSE: See previous response to DEP's comment.

COMMENT: DEA believes that the accuracy of an oral comment would be a problem. Any oral commenter could indicate that what the agency reported as the comment was not what the commenter said. Individuals may be reluctant to have their conversations taped. Taking comments over the telephone is time-consuming and not a cost effective use of limited staff resources.

RESPONSE: See previous response to DEP's comment.

COMMENT: DMAHS believes that oral comments lend themselves to abusive practices, such as filibusters and call-in campaigns. Allowing oral comments will require additional staff and the installation of additional telephone equipment. With 30 days in which to comment, it should be no problem for timely [written] comments to be submitted, especially utilzing FAX machines and inexpensive overnight delivery services. Individuals may be reluctant to have their telephone conversations taped. The acceptance of oral comments should be made optional, since they could be a serious problem for agencies with a high volume of rule proposals, many of which are controversial.

RESPONSE: See previous response to DEP's comment.

COMMENT: DYFS submitted a detailed comment which acknowledged, "that a fair reading of the statute [N.J.S.A. 52:14B-4(a)(3)] does seem to say that comments must be received and considered whether orally or in writing," and detailed numerous difficulties that might arise due to oral comments, which are otherwise set forth in comments from other agencies and divisions.

RESPONSE: See previous response to DEP's comment.

COMMENT: DES/DOE asked how an agency could take oral comments **during** a 30-day period, and requested the rule be revised to state that a specific date and time for the receipt of oral comments could be specified. The Division felt the proposed amendments change the meaning of the Administrative Procedure Act, which says "oral or written" comments, and deprives the State Board of Education needed flexibility in taking "public testimony."

RESPONSE: See previous response to DEP's comment.

COMMENT: The New Jersey Real Estate Commission opposes allowing oral comments due to the following: a lack of adequate staff; security concerns, that is, knowledge that the commenting person or representative group is authentic; use of "high tech" capabilities or staff to flood an agency on opposed proposals; oral comments are to informal to be a part of the formal, deliberative rulemaking process; and difficulty in assuring the accuracy of transmission of and comments.

RESPONSE: See previous response to DEP's comment.

COMMENT: The Casino Control Commission opposes the oral comments requirement. The use of "or" in the phrase "orally or in writing" in the Administrative Procedure Act should be interpreted as leaving "reasonable opportunity" for comment up to the proposing agency. The Legislature manifested this statutory intent by also providing for public hearings. Legal challenges to rulemakings could arise based upon comment transmission problems. How can accuracy of oral comments be ensured, with many opportunities for miscommunication between the commenter, the comment recipient/transmitter and the agency decision maker? Is the agency required to return telephone calls when the designated agency comment recipient is unavailable?

RESPONSE: See previous response to DEP's comment.

COMMENT: The Department of Personnel stated that all of its proposals have public hearings. Can the oral comments requirement be satisfied by directing, in the New Jersey Register proposal notice, that all oral comments be addressed to the hearing officer at the public hearing?

RESPONSE: See previous response to DEP's comment. OAL will consider this hearing alternative as part of its oral comments reconsideration.

COMMENT: The Department of Banking objects to the requirements to receive both oral and written comments, to designate a person to receive oral comments and to maintain records of both types of comments. The Department considers that requiring only written comments avoids frivolous comments and miscommunication of the comment's substance. The Department considers written comments together at the end of the comment period, and believes considering comments as they come in would be less effective. The costs of staff necessary to receive calls also was a basis for objection.

RESPONSE: See previous response to DEP's comment.

N.J.A.C. 1:30-3.1 Notice of proposed rule

COMMENT: DEP commented that proposed N.J.A.C. 1:30-3.1(h)4ii requires secondary notice be provided no later than Register publication. The current rule says notice must be provided at least 30 days prior to the public comment deadline. DEP believes the new provision would not allow them to correct a flaw in provding secondary notice by extending the comment period.

RESPONSE: Because of practical difficulties in compliance with this proposed amendment mentioned by DEP and DES/DOE, in its comment below, OAL is not adopting the the subparagraph as proposed, and will retain the current requirement.

COMMENT: Central Office CPU questioned how long the additional notice was valid. If the notice was published before the proposal, and the proposal is delayed, will the additional notice have to be repeated? If so, this could be costly.

RESPONSE: A yes-or-no response to the commenter's concern can only be made on a case-by-case basis. Whether additional notice would have to be repeated depends both on the content of the additional notice and the notice of proposal as finally published. If the additional notice published or otherwise distributed differs in some substantial manner from the published notice of proposal, the additional notice may have to be revised and republished or redistributed.

COMMENT: DES/DOE advised that it provides additional notice by taking actual copies of proposal notices from the Register and distributing them to the State's school districts and other interested parties. The Division objects to the proposed requirement that additional notice be provided no later than the proposal's Register publication date as costly and unnecessary, since their present system has given rise to no problems.

RESPONSE: As stated in the previous response to DEP, OAL is not adopting the proposed subparagraph, and will retain the current requirement.

N.J.A.C. 1:30-3.2 Informal public input; notice of pre-proposal for a rule

COMMENT: Concerning proposed subsection (a), the Water Supply Element, Division of Water Resources, DEP, asked for clarification of "reasonable informal procedures and means." Does this include councils established by statute and informal committees set up by the Department to review existing rules and solicit potential changes?

RESPONSE: "Reasonable informal procedures and means" includes those entities mentioned by the Water Supply Element. OAL does not believe clarification of the proposed text is necessary.

COMMENT: DYFS supports the informal procedures in proposed subsection (a), which is similar to a process the Division is now using regarding its operational policies, oriented towards the group process favored by the social services community.

RESPONSE: OAL appreciates the Division's support.

COMMENT: The Division of Water Resources, DEP, requests clarification that action under proposed subsection (a) does not constitute a pre-proposal. The Division also requests that the cross-reference to this rule in the N.J.A.C. 1:30-1.2 definition of pre-proposal be clarified.

RESPONSE: Agency action under proposed subsection (a) does not constitute a pre-proposal. OAL does not consider it necessary to change the subsection's language to make this more clear. Upon adoption, the definition of pre-proposal in N.J.A.C. 1:30-1.2 is revised to include "pursuant to N.J.A.C. 1:30-3.2(b)" at the end of the first sentence, to remove a subection (a) procedure from the definition's parameters.

COMMENT: DES/DOE states that proposed subsection (a) is an excellent addition to the rules for encouragement of public input prior to actual rulemaking. In the long run, it should cut down on long debate and interplay period with constituencies.

RESPONSE: OAL appreciates the Division's support.

N.J.A.C. 1:30-3.3 Opportunity to be heard

COMMENT: DEP commented that the reference in N.J.A.C. 1:30-3.3(a) to pre-proposal under N.J.A.C. 1:30-3.2 should be limited to N.J.A.C. 1:30-3.2(b) and (c).

RESPONSE: Because of the addition of the informal input process at N.J.A.C. 1:30-3.2(a), the cross-reference in N.J.A.C. 1:30-3.3(a) is changed upon adoption to N.J.A.C. 1:30-3.2(b) and (c).

COMMENT: DYFS supports the clarifying provision added in N.J.A.C. 1:30-3.3(c) concerning extending the comment period where a public hearing is scheduled after the comment period ends. This codifies past helpful OAL advice and provides future guidance.

RESPONSE: OAL appreciates the Division's support.

N.J.A.C. 1:30-3.3A Public hearings

COMMENT: DYFS supports Register notice publication of pre-proposal public hearings, but believes other options should be available, due to Register processing and publishing time constraints. The following are offered as alternatives to Register notice publication: public notices in newspapers or journals to inform constituents; inform constituents by letter or telephone; and announce public hearings at regularly scheduled meetings of constituents.

RESPONSE: The alternative forms of hearing notice mentioned by DYFS are permissible in the circumstances specified under N.J.A.C. 1:30-3.3A(b)2, where a hearing is scheduled after a proposal or pre-proposal notice has been published in the Register, or, at the agency's discretion, in addition to timely notice in the New Jersey Register. In all other circumstances, notice of a hearing on a proposal or pre-proposal must be provided as part of the Register proposal or pre-proposal notice, at least 15 days in advance of the hearing date. This requirement, representing a change from hearing notice requirements under former N.J.A.C. 1:30-3.3(b), is imposed to ensure that the statutory 15 days notice of a public hearing on a proposal or pre-proposal, is provided in the official Register rulemaking notice, in circumstances where such hearing ntoice can be so provided.

COMMENT: DDD states that N.J.A.C. 1:30-3.3A(a) should require that hearing requests be **received** within 15 days after publication of the proposal.

RESPONSE: The Administrative Procedure Act, at N.J.S.A. 52:14B-4(a)(3), states that the hearing request must be made within 15 days. The rule's requirement for submitting the request means that the proposing agency must receive the request within 15 days.

COMMENT: Concerning N.J.A.C. 1:30-3.3A(d), DDD asked if a summary of public hearing comments and agency responses needs to be published even if the proposal is withdrawn or not adopted?

RESPONSE: If a proposal is withdrawn or not adopted, a summary of public comments and agency responses from the public hearing need not be published. However, the summary of the hearing officer's recommendations and agency's responses thereto, which must be published in the situations described by DDD, may contain a summary of public hearing comments and the hearing officer's responses.

COMMENT: Concerning N.J.A.C. 1:30-3.3A(e), DEA stated that, because of the cost of having a new hearing transcript made from the original for each request, the rule should be changed to give the requesting party the option to pay for the transcript, arrange to listen to an electronic recording of the hearing (if available), review the written summary of hearing comments or obtain a copy of the summary at reproduction cost.

RESPONSE: If a transcript has been produced, it must be kept on file by the agency, is considered a public record and a copy must be made available for the cost of reproduction. If a transcript is not produced, the requester can pay for transcript production or listen to the electronic hearing recording, if one was made.

COMMENT: DES/DOE inquired whether a previously scheduled public hearing would satisfy a hearing request made pursuant to N.J.A.C 1:30-3.3A(a).

RESPONSE: A rulemaking public hearing in accordance with the Administrative Procedure Act and N.J.A.C. 1:30-3.3A already scheduled to occur after the Register publication of the proposal would satisfy a hearing request made under N.J.A.C. 1:30-3.3A(a).

COMMENT: The Division of Water Resources, DEP, asked several questions concerning hearing officers.

1. N.J.A.C. 1:30-3.3A(d) should provide that, if for reasons of death, disability, termination of employment, etc., the hearing officer who conducted the public hearing is unable to prepare recommendations, another person may serve as hearing officer and prepare recommendations.

RESPONSE: OAL agrees. If a hearing officer, for whatever reason, cannot prepare the recommendations, another person may review the hearing transcript and record and prepare the recommendations.

2. Must the hearing officer consider all public comments, or just those from the public hearing?

RESPONSE: At a minimum, only those comments from the public hearing, but a hearing officer's ultimate responsibilities are determined by the proposing agency.

3. Must the hearing officer summarize and respond to the hearing comments as part of his or her recommendations?

RESPONSE: It is up to the hearing officer and his or her agency to determine what the format is for recommendations.

4. Can the hearing officer consult with agency personnel, the Office of Administrative Law or the Attorney General's Office in preparing his or her recommendations?

RESPONSE: Yes. Because the rulemaking public hearing is a quasi-legislative proceeding, the hearing officer should be allowed to make suitable recommendations taking into account the agency's position and concerns on the rulemaking and the comments received at the public hearing.

5. On legal issues, can the hearing officer refrain from making recommendations because he or she is not licensed to practice law or due to Governor Florio's Executive Order No. 6(1990)?

RESPONSE: Although the OAL believes the person assigned as a hearing officer should be capable of addressing legal questions, the OAL recommends that the Attorney General's Office be consulted on this question within the context of a particular public hearing.

6. Can a hearing officer refrain from making recommendations on technical issues, based upon lack of expertise?

RESPONSE: Because the purpose of a public hearing is to gather information in the form of public comments, a hearing officer's lack of technical expertise should not affect his or her ability to consider comments received. In order to make educated recommendations, a hearing officer should be able to obtain assistance in understanding issues beyond his or her areas of knowledge. If the public presents technical comments, a hearing officer should be capable of dealing intelligently with those comments. Because of the concern expressed about the role of the hearing officer, the OAL will be considering further amendment of the rule to clarify the hearing officer's responsibilities.

COMMENT: The Division of Water Resources, DEP, stated that it is standard Department practice to obtain a transcript of all public hearings and not to retain the stenographic tapes. Under N.J.A.C. 1:30-3.3A(e), is it necessary to retain the hearing tapes if a transcript has been produced, available from the agency.

RESPONSE: Once a hearing transcript is produced and is available from the proposing agency, the hearing tapes need not be retained. However, the purpose of the rule change is to clarify that transcripts are

not required in all cases. Perhaps the Department should reconsider its practice in view of the rule change.

N.J.A.C. 1:30-3.4 Rulemaking record

COMMENT: DYFS stated that more emphasis should be placed on including a statement of an agency's reasons for accepting or rejecting a comment.

RESPONSE: OAL appreciates the Division's support of this existing requirement.

COMMENT: DEP asked whether a record of pre-proposal proceedings needs to be maintained.

RESPONSE: A pre-proposal record does not need to be maintained, unless an agency wishes to do so. However, the pre-proposal must be discussed in the Summary of any resulting rule proposal.

N.J.A.C. 1:30-3.6 Notice of petition for a rule

COMMENT: The Division of Water Resources, DEP, questioned the rationale for the six-month maximum limit for further deliberations on a petition for rulemaking. The six-month limit may be too short for petitions raising numerous complex legal, technical or policy issues.

RESPONSE: OAL is not adopting that portion of the proposed amendment to N.J.A.C. 1:30-3.6(c)3 concerning the limits on further deliberation, and will reconsider the issue for a future proposal. All that will now be required is for further deliberations to conclude "upon a specified date."

COMMENT: DES/DOE questioned the necessity for public notice of further agency deliberation on a petition, viewing such notice as an unnecessary additional paper process.

RESPONSE: The purpose for the notice of further deliberation is to keep the public informed of agency action on a petition, including the agency's attempts to resolve issues raised by the petitioner. N.J.S.A. 52:14B-4(f) establishes the legislative intent that the public be notified of receipt of and action on petitions for rulemaking. Deferring action on a petition for further deliberation is itself an agency action on a petition, albeit an intermediate step. In keeping with this legislative intent, the rule's notice requirement is appropriate.

COMMENT: Legal Services of New Jersey stated that the requirements of N.J.A.C. 1:30-3.6(c) should be mandatory, revised to state, "Agency action on a petition shall include one of the following." This change would clarify a potential source of ambiguity.

RESPONSE: In light of Legal Services' comment, OAL will consider the mandatory nature of the subsection's language for a possible future proposal.

COMMENT: DEP stated that an agency should be able to obtain informal public input on a petition for rulemaking, as an agency response option.

RESPONSE: N.J.A.C. 1:30-3.6(c) does not preclude an agency from seeking informal public input on a petition. A call for such input could be considered an aspect of further agency deliberations.

N.J.A.C. 1:30-4.1 Notice of adopted rule

COMMENT: DEP questioned whether the form referenced as "OAL/ARP-1" in N.J.A.C. 1:30-4.1(b) is the same as OAL form APF-1, the Certificate of Proposal, Adoption and Promulgation.

RESPONSE: The reference in the proposal is incorrect. The correct designation of the form is "OAL/APF-1." This will be corrected upon adoption.

COMMENT: DMAHS questioned the rationale for publishing a list of commenters in the adoption notice, and expressed concern over violating the confidentiality of Division clients who comment.

RESPONSE: N.J.S.A. 52:14B-4(a)(4) requires that a "listing of all parties offering written or oral submissions concerning a rule" be prepared for public distribution. OAL has interpreted this requirement to provide for publication of the commenters' list in the notice of adoption. If protection of commenter confidentiality is indeed required, such commenters need not be included on the list. However, in such circumstances, OAL recommends that the list or comment/response summary include a statement that (a specified number of) individuals whose identities are confidential pursuant to (authority) also made comments. N.J.A.C. 1:30-4.1(c) 8 is revised to begin, "Except for commenters requesting confidentiality or commenters whose confidentiality is protected by law, . . ."

COMMENT: DEA questioned whether the commenters' list had to include commenters who request that their names not be listed.

RESPONSE: The names of such commenters do not have to be included. However, OAL recommends that a statement that (a specified number of) individuals who requested their names not be listed also commented be included in the list or comment/response summary.

COMMENT: DEA asked what, exactly, is required in the commenters list? Just names, or titles and agencies represented also?

RESPONSE: The recitation of commenters must include the name of the commenter and his or her affiliation, if any. Titles need not be included.

N.J.A.C. 1:30-4.2 Time for filing adopted rule

COMMENT: The Division of Water Resources, DEP, requested that the "one year from the date of proposal publication" deadline for filing a rule adoption be changed to "one year from the date of the close of the comment period." This change would allow an agency more time to work on massive, technical proposals generating substantial comment.

RESPONSE: OAL believes that the current requirement provides ample time for adoption of a proposed rulemaking. Since the overwhelming majority of proposed rulemakings are adopted within this timeframe, OAL considers the current limitation to be reasonable.

Summary of Agency-Initiated Changes:

At N.J.A.C. 1:30-1.2, the definitions of "administrative correction or change" and "Executive Order No. 66(1978)" are revised for clarity. The "intra-agency statement" definition is moved to the correct alphabetical location.

At N.J.A.C. 1:30-2.7(b), the first sentence phrase "may be to correct" is corrected to read, "may be made to correct."

At N.J.A.C. 1:30-3.4(a)1, two erroneous cross-references are corrected.

At N.J.A.C. 1:30-4.1(c)8, the "list" requirement is replaced by the requirement that "the names and affiliations, if any," of all persons commenting be included in the notice of adopted rule. This change will afford agencies greater flexibility in presenting the names of commenters such as integrating the name of the commenter into a comment summary or using a list format.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 1:30.

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]*).

1:30-1.2 Definitions

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

. . .

"Administrative correction or change" means *[to correct]* ***a correction*** or change ***to*** the text of a rule without formally promulgating the amendment (see N.J.A.C. 1:30-2.7).

. . .

"Emergency adoption" means the promulgation of an amendment, repeal or new rule without public comment in response to an imminent peril to the public health, safety and welfare (see N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30-4.5).

"Executive Order No. 66(1978)" means the 66th executive order issued by Governor Byrne in 1978*[, which requires the expiration of a promulgated rule within five years of its effective date]*. Commonly referred to as the "Sunset" ***provision, the*** executive order ***requires the establishment of an expiration date for a promulgated rule which is not later than five years from the rule's effective date***.

. . .

["Intra-agency statement" means a communication between members of a single agency that does not substantially impact upon the rights or legitimate interests of the regulated public.]

"Intra-agency statement" means a communication between members of a single agency that does not substantially impact upon the rights or legitimate interests of the regulated public.

"Inter-agency statement" means a communication between separate agencies that does not substantially impact upon the rights or legitimate interests of the regulated public.

. . .

"Organizational rule" means a rule promulgated pursuant to N.J.S.A. 52:14B-3(1), including a description of the structure of the agency; the persons from whom and places from which information, applications and other forms may be obtained; and the persons to

whom and places to which applications, requests and other submissions may be made.

"Pre-proposal" means a preliminary proceeding for the purpose of eliciting ideas, views and comments of interested persons on a contemplated rulemaking proceeding*, **pursuant to N.J.A.C. 1:30-3.2(b)***. This preliminary proceeding precedes the filing of a formal rule proposal.

...

"Public hearing" means a legislative type proceeding conducted either as part of a rulemaking or to consider a possible rulemaking which affords the public an opportunity to present to the promulgating agency oral and written comments, arguments, data and views on the rulemaking or the contemplated rulemaking.

...

*["Regulatory material" means an agency document which substantially meets the following features:

1. Is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group;

2. Is intended to be applied generally and uniformly to all similarly situated persons;

3. Is designed to operate only in future cases, that is prospectively;

4. Prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization;

5. Reflects an administrative policy that:

i. Was not previously expressed in any official and explicit agency determination, adjudication, or rule; or

ii. Constitutes a material and significant change from a clear, past agency position on the identical subject matter; and

6. Reflects a decision on administrative policy in the nature of the interpretation of law or general policy.]*

...

1:30-1.3 Offices

(a) Division of Administrative Rules and Publications, Office of Administrative Law, is located at Quakerbridge Plaza, Building No. 9, CN-049, Quakerbridge Road, Trenton, New Jersey 08625.

(b) Hours during which documents may be submitted or reviewed are from 9:00 A.M. to 4:00 P.M., Monday through Friday, holidays excepted.

(c) Information may be obtained by telephoning the following for:

1. Rule inquiries (609) 588-6543;

2. Customer services (609) 588-6606; and

3. Billing inquiries (609) 588-6517.

1:30-1.8 Access to documents

(a) (No change.)

(b) Any person shall, upon request, be afforded an opportunity to examine any document maintained by the Division of Administrative Rules and Publications during business hours 9:00 A.M. to 4:00 P.M., Monday through Friday, holidays excepted.

1:30-1.9 Copies of documents; fees

(a) Any person may obtain copies of filed documents ***from the Division of Administrative Rules and Publications*** pursuant to the provisions of N.J.S.A. 47:1A-2 upon payment of a fee as follows:

1. First page to 10th page: $.50 per page;

2. Eleventh page to 20th page: $.25 per page;

3. All pages over 20: $.10 per page.

(b) Original filed documents shall not be released from the custody of the Office of Administrative Law.

1:30-1.13 Invalidation of rule

In the event that a proposed or adopted rule is suspended or otherwise rendered inoperative or ineffective by Court rule or ruling, by legislative action or by Executive Order, the Office of Administrative Law shall, upon receipt of notice of the event prepare and publish a notice in the Register and the Code, as appropriate.

1:30-1.14 Filing of a document

(a) Upon receipt of a document for filing, there shall be stamped on its face the following:

1. The hour and date of receipt; and

2. The word "received".

(b) Upon acceptance for publication, the document shall be stamped filed and is deemed filed as of the date of receipt.

(c) All proposals shall be assigned a proposed rule number (PRN) by Administrative Rules and Publications. All adoptions shall be assigned a rule document number (R.d.) by Administrative Rules and Publications.

1:30-2.2 Incorporation by reference

(a)-(e) (No change.)

[(f) Agency produced documents which are regulatory may not be incorporated by reference.]

1:30-2.7 Administrative corrections and changes

(a) Upon being advised in writing by an agency or upon its own initiative, ***with notice to the appropriate agency,*** the OAL may make an administrative correction or change to any rule published in the New Jersey Register or New Jersey Administrative Code. An administrative correction or change shall be effective upon filing with the OAL.

(b) An administrative correction may be ***made*** to correct an error which is obvious, easily recognizable, or apparent to the promulgating agency and the regulated public. An administrative correction may be made to conform a proposed or adopted rule to the intent of the agency as expressed in the proposal or adoption statements. Administrative corrections may be made to correct any part of a rule including, but not limited to, its text, spelling, grammar, punctuation, codification, and cross-references.

(c) An administrative change may be made to recodify a rule. Administrative changes may also be made to amend a rule to provide the public with notice of nonregulatory changes that have occurred since the rule was adopted. Administrative changes may include, but are not limited to, changes in:

1. Names of departments, agencies, divisions and bureaus;

2. Titles of specific individuals; and

3. Addresses, phone numbers and business hours.

(d) An administrative correction or change shall not be used to adjust the text of a rule to subsequent changes in circumstance or policy decisions.

(e) Notice of administrative correction or change shall be published in the New Jersey Register. The administrative correction or change with appropriate annotation shall be included in a subsequent supplement to the New Jersey Administrative Code.

1:30-3.1 Notice of proposed rule

(a) (No change.)

(b) The notice of proposed rule shall include a suggested N.J.A.C. citation for any proposed new rule and shall include the existing citation for any amendment, repeal or readoption.

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

(e) The notice of proposed rule shall include an announcement of the public's opportunity to be heard regarding the proposed rule, which shall include:

1. When, where, and how persons may present their views orally *[and]* ***or*** in writing;

2. When and where persons may attend any formal rule adoption proceeding; and

3. The name, address and telephone number of the person(s) to receive written *[and]* ***or*** oral comments.

(f)-(g) (No change.)

(h) Upon receipt of the proposal notice which conforms to these requirements:

1.-3. (No change.)

4. The agency shall undertake an additional method of publicity other than publication in the Register, reasonably calculated to inform those persons most likely to be affected by or interested in the proposed rule:

i.-ii. (No change.)

iii. The additional method of publicity shall be provided *[no later than the Register publication date for the notice of proposal]* ***at least 30 days prior to the close of the public comment period***.

(i) (No change.)

1:30-3.2 Informal public input; notice of pre-proposal for a rule

(a) Where, prior to the initiation of a formal rulemaking proceeding, an agency seeks assistance in formulating a rule or wishes comments on a preliminary rule draft, it may solicit public input regarding the rulemaking. An agency may use any reasonable informal procedures and means of notice to solicit participation from the regulated or interested public.

(b) Where, pursuant to N.J.S.A. 52:14B-4(e), an agency determines to conduct a deliberative proceeding with respect to a contemplated rulemaking, the agency shall submit a "notice of pre-proposal for a rule" to the OAL for publication in the New Jersey Register at least 30 days prior to submission of any formal notice of proposed rule on the same subject.

(c) The notice of pre-proposal for a rule shall include:

1.-3. (No change.)

4. An announcement of the public's opportunity to be heard regarding the contemplated action, which shall include:

i. Where, when and how persons may present their comments orally *[and]* ***or*** in writing (see N.J.A.C. 1:30-3.3, Opportunity to be heard); and

ii. When and where persons may attend an informal conference or consultation.

5. (No change.)

(d) (No change in text.)

1:30-3.3 Opportunity to be heard

(a) As part of any proceeding for a pre-proposal under N.J.A.C. 1:30-3.2***(b)** **and (c)***, or for a proposed rule under N.J.A.C. 1:30-3.1, the agency shall accept written *[and]* ***or*** oral comments, arguments, data and views for at least 30 days following publication in the Register of the notice of pre-proposal or proposed rule.

(b) Where an agency permits any other method of public comment on a pre-proposal or a proposed rule, the agency shall provide timely notice of that opportunity in a manner reasonably calculated to reach the interested public.

(c) When a public hearing on a pre-proposal or on a proposed rule is scheduled for a time after the 30-day public comment period, the comment period shall be extended in the public hearing notice until the close of the public hearing proceedings. The hearing officer may recommend to the agency head that the comment period be further extended to foster receipt of comments by persons attending the public hearing.

(d) The agency shall consider fully all written and oral submissions concerning the pre-proposal or proposed rule.

1:30-3.3A Public hearings

(a) A Legislative Committee, a State agency, or a county, local or municipal governmental entity may request that an agency conduct a public hearing on a proposed rulemaking. The party requesting the public hearing shall submit the request to the agency within 15 days following publication of the proposed rule in the Register. The party requesting the public hearing shall also submit a copy of the request to the Office of Administrative Law.

(b) If a public hearing is to be held as part of a proceeding for a pre-proposal or a proposed rule, the agency shall provide at least 15 days notice of the public hearing.

1. When a public hearing is scheduled as part of a proceeding for a pre-proposal or a proposed rule, notice of the public hearing shall be contained in the notice of pre-proposal or proposed rule published in the New Jersey Register.

2. When a public hearing is scheduled after the notice of pre-proposal or proposed rule has been published, notice of the public hearing shall be published in the New Jersey Register, if such publication provides 15 days notice of the hearing. If timely Register publication is not feasible, notice of the public hearing may be published in the Register with less than 15 days notice as long as 15 days notice of the public hearing is given in another manner reasonably calculated to reach the interested public. A copy of such notice shall be filed with OAL.

(c) Any public hearing held pursuant to this section shall be conducted according to the procedures outlined in N.J.S.A. 52:14B-4(g).

(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 published in the New Jersey Register as set out in (e)1 through 4 below. The notice shall also state where a copy of the public hearing record may be reviewed or obtained.

1. When no proposed rulemaking results from the public hearing, the summary shall be published as a public notice.

2. When a proposed rulemaking results from the public hearing, the summary shall be published as part of the proposal notice.

3. When a public hearing is held as part of a proposed rulemaking and the proposed rule is adopted, the summary shall be published in the notice of adoption.

4. When a public hearing is held as part of a proposed rulemaking, but the proposed rule is withdrawn or not adopted, the summary shall be published as a notice of agency action.

(e) The public hearing shall be recorded electronically or stenographically, and audio tapes, stenographic tapes or other untranscribed record of the proceeding shall be maintained by the agency. If a transcript is requested by any interested person, the agency shall arrange for the production of the transcript and one copy. After the requester pays for the transcript and copy, the original shall be delivered to the requester and the transcript copy filed with the agency.

1:30-3.4 Rulemaking record

(a) The agency shall retain a record of any oral and written comments or other material received in response to a proposal (N.J.A.C. 1:30-3.1) or a public hearing (N.J.A.C. 1:30-3.3A) for a period of one year following the date of publication. The rulemaking record shall include the following:

1. The date, the method of issuance and a copy of any notice concerning the rule activity, including any notice mailed to interested persons pursuant to N.J.A.C. 1:30-3.1*[(b)3]****(h)3*** and any additional publicity pursuant to N.J.A.C. 1:30-***[4.1(b)4]****3.1(h)4***.

2. A description of the public comments on the notice of proposed rule;

i. The names of the persons commenting on the notice of proposed rule;

ii. The name of any trade, craft or professional organization or association making written or oral submissions;

iii. A copy or summary of each written submission and a summary of each oral submission of any person made in response to the notice of proposed rule, and any written answer of the agency;

iv. The certificate of the adopting officer attesting that all submissions were examined and that due consideration was given their merits prior to adoption of the proposed rule;

v. A description of the principal points of controversy revealed during the proceeding; and

vi. A statement of the reasons for accepting and rejecting the public comments.

3. A description of any public hearing or other proceeding which was held as a result of the proposed rule (see N.J.A.C. 1:30-3.3A) including:

i. The date, time and place;

ii. The name and title or position of the presiding person;

iii. The nature of the proceeding; and

iv. The recommendations of the hearing officer, in the case of a public hearing conducted pursuant to N.J.S.A. 52:14B-4(g).

(b) An agency may, but is not required to, maintain a record of any proceedings conducted pursuant to N.J.A.C. 1:30-3.2. If, however, any preliminary proceedings conducted pursuant to N.J.A.C. 1:30-3.2 result in a formal proposed rulemaking, the agency shall discuss in the proposal summary such preliminary proceedings and the public's participation therein.

(c) If the proposed rule is adopted, the agency shall retain the rulemaking record for a period of not less than three years from the effective date of the adopted rule.

(d) The rulemaking record constitutes an official document of the administrative agency, is evidence of its compliance with the legislative mandate to provide opportunity for public comment, and shall be available for public inspection at the agency.

1:30-3.6 Notice of petition for a rule

(a) When a person petitions an agency to begin a rulemaking proceeding pursuant to N.J.S.A. 52:14B-4(f), the agency shall, within 15 days of receipt of the petition, file with the Office of Administrative Law for publication in the Register a notice of the petition's receipt. The notice of petition shall include:

1. The name of the petitioner;

2. The substance or nature of the rulemaking action which is requested;

3. The problem or purpose which is the subject of the request; and

4. The date the petition was received.

(b) (No change.)

(c) Agency action on a petition may include:

1. Denying the petition, in which case the agency shall provide a written statement of its reasons to the petitioner, and include such reasons in its notice of action;

2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or

3. Referring the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude *[within three months from the initial receipt of the petition. If the matter is not concluded within three months and further deliberations are necessary, the agency may extend the deliberation time an additional three months and shall mail to the petitioner and file with the Office of Administrative Law for publication in the Register a notice of such extension]* ***upon a specified date***. The results of these further deliberations shall be mailed to the petitioner and submitted to the OAL for publication in the Register.

(d) Each agency shall prescribe by rule the form of a petition and the procedures for its submission, consideration and disposition.

1:30-4.1 Notice of adopted rule

(a) When an agency adopts a proposed rule, the agency shall prepare a "notice of adopted rule" and submit the notice to the OAL. The notice of adopted rule shall comply with the requirements of this section.

(b) The agency shall complete and submit to the OAL a Certificate of Proposal, Adoption and Promulgation (form *[OAL/ARP-1]* ***OAL/APF-1***) signed by the adopting agency head, or other person authorized by statute to adopt rules, that the rule was duly adopted according to law and in compliance with the requirements of the Administrative Procedure Act, P.L. 1968, c.410, as amended by P.L. 1978, c.67 and P.L. 1981, c.21, and of this chapter.

(c) The notice of adopted rule shall also contain:

1. The publication date of the notice of proposed rule;

2. The date of adoption, the name of the agency and the name and signature of the adopting agency head or any other person authorized by statute to adopt agency rules;

3. The date the notice of adopted rule is filed with the OAL;

4. The effective date of the rule;

5. The operative date of the rule if later than the date of Register promulgation;

6. The expiration date of the rule pursuant to Executive Order No. 66(1978) or an exemption from the Order with reasons for the exemption;

7. A summary of any changes between the rule as proposed and adopted, and the reasons for the changes;

8. *[A list]* ***Except for commenters requesting confidentiality or commenters whose confidentiality is protected by law, the names and affiliations, if any,*** of all persons who submitted oral or written comments, arguments, data and views concerning the proposed rule;

9. A summary of the comments, arguments, data and views received and points of controversy developed during the rulemaking proceeding; the reasons for adopting the public comments accepted; and the reasons for rejecting the public comments rejected; ***and***

10. The text of any changes between the rule as proposed and as adopted, specifically indicating additions and deletions.

COMMUNITY AFFAIRS

(a)

DIVISON OF HOUSING AND DEVELOPMENT

Maintenance of Hotels and Multiple Dwellings
Ceiling Heights in Multiple Dwellings
Adopted Amendment: N.J.A.C. 5:10-22.5

Proposed: November 19, 1990 at 22 N.J.R. 3430(a).
Adopted: January 10, 1991, by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: January 16, 1991, as R.1991 d.59, **without change.**

Authority: N.J.S.A. 55:13A-7.

Effective Date: . February 19, 1991.
Expiration Date: November 17, 1993.

Summary of Public Comments and Agency Responses:
A comment supporting the proposed amendment was submitted by a legislator representing a district that includes shore area municipalities.

Full text of the adoption follows.

5:10-22.5 Required ceiling height

(a) Except as otherwise provided in (a)1 and 2 below, no room or space or portion of a room or space shall be considered habitable unless that room or space or portion of a room or space has a clear ceiling height of at least seven feet, zero inches.

1. (No change.)

2. Dwelling units and portions of dwelling units in multiple dwellings located in municipalities bordering on the Atlantic Ocean shall be deemed to be habitable with a ceiling height of less than seven feet, zero inches provided that the dwelling unit was occupied prior to the effective date of this amendment and is in conformity with any applicable mercantile license requirement prior to May 27, 1991 and:

i. The ceiling height is less than seven feet, zero inches but at least six feet, four inches and there is no clear and present danger to the health or safety of the occupants;

ii. If the ceiling height is less than six feet, four inches but at least five feet, 10 inches, there is no clear and present danger to the health or safety of the occupants and the volume of the unit, as measured in cubic feet, is at least seven times the minimum square footage required for the number of occupants in the unit; or

iii. If the ceiling height is less than five feet, 10 inches, an exception is granted by the Bureau in accordance with N.J.S.A. 55:13A-11 and N.J.A.C. 5:10-1.15.

(b) (No change.)

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Gas Utility Meters
Adopted Amendment: N.J.A.C. 5:23-2.14

Proposed: December 3, 1990 at 22 N.J.R. 3609(b).
Adopted: January 10, 1991 by Melvin R. Primas, Jr. Commissoner, Department of Community Affairs.
Filed: January 16, 1991 as R.1991, d.60, **without change.**

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

Effective Date: February 19, 1991.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:23-2.14 Construction permits—when required

(a) (No change.)

(b) The following are exceptions from (a) above:

1.-4. (No change.)

5. Gas utility company shall not be required to obtain a permit or give notice to the enforcing agency for replacement of interior gas utility company-owned metering (meter and related appurtenances) by exterior gas utility company owned-metering if the work is performed by qualified employees of the gas utility company.

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

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Interpretation: Casino Stools
Adopted Amendment: N.J.A.C. 5:23-9.6

Proposed: December 3, 1990 at 22 N.J.R. 3610(a).

Adopted: January 10, 1991, by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: January 16, 1991, as R.1991 d.61, **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. 52:27D-124.

Effective Date: February 19, 1991.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: The Casino Association of New Jersey requested that the following clarifications and changes be made to the proposed rule:

1. It should be made clear that stools are permitted in major aisles as well as in cross aisles;

2. The eight-inch minimum clearance between the gaming machine and the stool should be measured from the face of the machine base at knee height to the adjacent stool;

3. The minimum clearance between stools should be measured from seat edge to seat edge; and

4. The requirement for minimum clearance between stools should be reduced from 12 inches to 10 inches in order to permit up to 16-inch wide stools for 26-inch base machines.

RESPONSE: The Department has evaluated the above requests by the regulated group for changes in the rules and has found that public safety would not be compromised by implementation of the changes regarding placement of stools in major aisles. Additionally, the changes regarding measurement are beneficial to the regulated group and to the general public, since the clearance standards have been made more explicit.

Full text of the adopted rule follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

5:23-9.6 Fixed central pedestal seating (stools) in casinos

(a) Fixed central pedestal seating (stools) shall be allowed within ***major aisles and*** cross-aisles in casinos for gaming patrons who use standard size slot machines or other similar machines, within these *[cross-]*aisles, provided the following requirements are met:

1. Schematic drawings shall be submitted to the Department for review and approval which indicate the dimensions and locations of the stools, and the distances from adjacent fixtures, walls or other fixed objects;

2. Stool placement shall not result in any reduction of the required aisle accessway width when measured from the stool and any other adjacent obstacle, including, without limitation, other stools in back-to-back seating arrangements;

3. Stools that swivel and have a back rest shall be restricted so as to rotate in only one direction, operate in series, and be self-centering; and

4. A minimum clearance of eight inches***, measured from the face of the gaming machine base at knee height,*** shall be provided between the gaming machine and the stool and a minimum ***clearance*** of *[12]* ***10*** inches***, measured from seat edge to seat edge,*** shall be provided between adjacent stools***,*** in order to ensure discharge clearances.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF COASTAL RESOURCES

Notice of Rule Invalidation
Waterfront Development
N.J.A.C. 7:7-2.3(a)2

Take notice that N.J.A.C. 7:7-2.3(a)2, as amended effective September 14, 1990 (see 22 N.J.R. 2361(a) and 3222(a)), has been held invalid by the Superior Court of New Jersey, Appellate Division, in *Long Beach Township Oceanfront Property Owners Association v. New Jersey Department of Environmental Protection, et al.*, ___ N.J. Super. ___, Dkt. Nos. A-6697-89T2 and A-783-90T2 (App. Div. December 26, 1990).

Please contact the Department of Environmental Protection regarding any further action on the case.

This notice is provided by the Office of Administrative Law pursuant to N.J.A.C. 1:30-1.13.

(c)

DIVISION OF WATER RESOURCES

Water Pollution Control
Readoption: N.J.A.C. 7:9

Proposed: November 5, 1990 at 22 N.J.R. 3297(a)

Adopted: January 17, 1991 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: January 18, 1991 as R.1991 d.68, **without change.**

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 58:4A-4.1 et seq., 58:10A-1 et seq., 58:11A-1 et seq.

DEP Docket Number: 034-90-10.

Effective Date: January 18, 1991.

Expiration Date: January 18, 1996.

Summary of Public Comments and Agency Responses:

I. General Comments

COMMENT: Several commenters stated that the discussion contained in the public notice is not in accordance with the State Administrative Procedure Act as it fails to address or analyze the substantial issues that have been previously raised regarding, in particular, N.J.A.C. 7:9-4 and 7:9-5. The statement that the requirements of these rules are necessary "to restore, maintain and enhance the . . . integrity of the state waters" is an overstatement and is not supported by substantial evidence. Procedures outlined in EPA's "Technical Support Document for Water Quality-Based Toxics Control" verify that the current State procedures for developing effluent limitations are more stringent than necessary to protect the environment. In addition the United States Environmental Protection Agency (USEPA) Gold Book criteria verify that many water quality standards (WQS) are overly stringent. As such, these procedures exceed DEP authority and should be amended.

RESPONSE: The New Jersey Department of Environmental Protection (Department or DEP) considers the discussions contained in the public notice to be in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. N.J.A.C. 7:9 contains rules, such as the surface water quality standards and the ground water quality standards, that are necessary to maintain and enhance the integrity of the State waters. The Department also recognizes its responsibility to amend certain material contained in this chapter to include the most recent and accepted technology/methodology. The Department will be proposing amendments to N.J.A.C. 7:9 in order to address the substantial issues which have been raised with respect to this chapter.

COMMENT: Several commenters stated that a positive environmental or social impact does not occur when excessive treatment is required as (1) limited local resources are wasted, (2) increased chemical and electrical usage occurs causing air pollution, and (3) additional sludge is generated, wasting the limited sludge disposal capacity of the State. The economic impact analysis underestimates the cost of complying with these outdated rules and must be revised. For example, the stringent enforcement of four hour BOD_5 and percent removal requirements in N.J.A.C. 7:9-5.8 has

recently occurred due to a reinterpretation of this rule. Previously municipalities were not required to construct facilities to meet this requirement as verified by the Department's construction grant records. This reinterpretation will cost municipalities several billion dollars to comply unless the rule is properly interpreted or deleted. Also the Department's erroneous interpretation of chronic WQS to require daily maximum limitations will also cause millions in additional treatment and inappropriate sewer bans.

RESPONSE: The Department agrees that in general positive environmental and social impacts may not occur when permittees and other persons affected are required to comply with rules that are in need of substantial modification; however, due to the expiration of N.J.A.C. 7:9, the Department was unable to propose amendments during the readoption process. Since the Department will be proposing to amend the outdated section of this chapter during the first half of 1991, those affected by the rules will not be subject any detrimental social or economic impact.

COMMENT: Several commenters requested that the Department cease further action on this rule until the public is provided an adequate basis for its continued need. Additional time (45 days) is requested to provide a detailed review and analysis of this extensive readoption package and to review the information relied upon by the Department to support the continued need for these rules. At a minimum, issues raised in the "White Paper" submitted by the Association of Environmental Authorities (AEA) should be addressed. It is also requested that a series of public hearings be held throughout the State to discuss the need to substantially modify this rule and to solicit input regarding revisions. The rule is seriously flawed and inconsistent with accepted engineering practice. All concerned parties would be better served if the DEP would invest its resources to undertake a serious and comprehensive review and modification of this rule, as opposed to expending its resources in litigation efforts, which will surely increase if this rule is adopted without significant amendments.

RESPONSE: As previously stated in the proposed readoption of N.J.A.C. 7:9, the Department will be proposing substantial amendments to N.J.A.C. 7:9. Pursuant to the Executive Order No. 66 (1978), N.J.A.C. 7:9 expires on January 21, 1991. Since the comment period expired on January 10, 1991, the Department is unable to extend the comment period any further or hold public hearings on the proposed readoption of N.J.A.C. 7:9. The Department will be holding public hearings to solicit public comments on proposed amendments to N.J.A.C. 7:9.

II. Substantive Comments

The following comments express issues of concern to most of the commenters. Fourteen of the 17 comments received by the Department incorporated by reference the "white paper" entitled, "REVIEW OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION NPDES PERMITTING RULES AND PRACTICES", prepared by Zorc, Rissetto, Weaver & Rosen for the Authorities Association of New Jersey, now known as the Association of Environmental Authorities. One commenter also submitted a petition for rulemaking as a comment and as a separate request for rulemaking action pursuant to the Administrative Procedure Act. Both the petition and "white paper" address the same issues, pertaining to N.J.A.C. 7:9, N.J.A.C. 7:14A and N.J.A.C. 7:14. The comments pertaining to N.J.A.C. 7:9 are set forth below.

COMMENT A: The minimum treatment requirement section of N.J.A.C. 7:9-5.8 should be revised immediately to reflect current effluent limits associated with the federal NPDES PROGRAM and the New Jersey Water Pollution Control Act, specifically; the footnotes to N.J.A.C. 7:9-5.8 provide:

1. "Minimum percent reduction of BODs at all times including any four-hour period of a day when the strength of the wastes to be treated might be expected to, or actually exceed average conditions."

2. "Average over any four-hour period of the day, including periods when the strength of the wastes to be treated might be expected to actually exceed average conditions."

The referenced four-hour period of the day is out of date in the Federal/State regulatory scheme where the applicable period for averaging results is 30 day or seven day averages for biological oxygen demand (BOD). The provisions in the rule which is up for adoption are far more stringent in that the applicable average period is any four-hour period.

It is suggested that the footnotes be revised to include 30 day and seven day averages as the relevant basis for review. All references to four-hour averages should be deleted from the rules. As a matter of fundamental fairness, the existing language should be replaced with the suggested language during the readoption process. Its continued presence in the rule is a threat to all permittees under the Clean Water Enforcement Act (CWEA).

One commenter states that unless footnote number 2 is revised as suggested, their $18 million plant upgrade will increase by $2 million.

COMMENT B: Percent removal and minimum technology-based requirements vary widely from permit to permit. The requirements range anywhere from 85 percent removal on a 30-day average to greater than 90 percent removal on a four-hour average. BOD concentrations are often established on a four-hour compliance basis. It appears that the basis for applying percent removal and minimum technology based requirements is not well known nor understood within the Department or by permittees. Many of the State minimum technology-based requirements appear to be premised on (1) outdated requirements that do not reflect the latest Federal guidelines on appropriate use of percent removal, (2) based on misapplications of the existing law, or 3) used solely as an enforcement tool for penalizing permittees. All references to BOD are meant to include CBOD (carbonaceous biochemical oxygen demand).

Minimum Federal secondary treatment requirements state that 85 percent removal of BOD TSS (total suspended solids) should be achieved by all facilities. These limitations may be made less stringent where influent wastewater strength is less than 200 mg/l BOD. (40 C.F.R. 133.103). Under the Federal secondary treatment rule, the percent removal limitation is always established as a 30 day average value.

In the early 1970s, the State established more stringent requirements as preliminary effluent limitation targets due to a lack of available data on the actual instream impacts of municipal dischargers. State requirements reflect the Federal percent removal limitations and also establish, for certain discharges, that a more stringent percent removal and BOD_5 concentration limitation be met on a four-hour basis (see N.J.A.C. 7:5-5.8). The more stringent State regulations expressly specify that where the permittee or the State has conducted wasteload allocation analyses to demonstrate the site-specific effluent limitations, the more stringent requirements (that is, the four-hour percent BOD removal and concentration limitations) are no longer applicable.

Despite being notified by numerous permittees that the four-hour requirements are not applicable once the wastewater allocation has been established, State permitting personnel have not removed the condition from the permit as required by the applicable rules. The stated rationale for maintaining the four-hour requirement is to serve as an enforcement tool against municipalities. This needlessly exposes facilities to potential civil and criminal enforcement actions as well as citizen suits. Such exposure is unsupportable where there is no valid environmental basis for the four-hour limitation and the only known reason for it is administrative convenience.

There is no merit in maintaining the four-hour BOD 90 percent removal and concentration requirements, and their apparent use for penalizing facilities which are otherwise properly operated and maintained is highly objectionable. If fully implemented, the four-hour requirement would dramatically increase the cost of pollutant reduction within the State of New Jersey without commensurate environmental improvement. Utilizing a four-hour time frame instead of the 30-day average period would easily result in tripling or quadrupling the size of a facility in order to improve its efficiency and reliability. Moreover, a four-hour limitation period is inconsistent with monitoring schedules. Because the State does not properly enforce or implement this requirement, engineers do not effectively design for this requirement and the requirement appears to serve no useful purpose other than a punitive function. Thus, the requirement should be deleted.

Absent a demonstration of need for more stringent limitations, BOD and TSS limitations should only be subject to Federal minimum technology-based requirements (that is, 85 percent removal and BOD_5 concentration limitations on a 30-day average basis). The same rules should be established for ocean discharges unless otherwise justified.

The regulation at N.J.A.C. 7:9-5.8 should be repealed. As allowed by Federal law, the State should grant variances to the 85 percent removal requirement where appropriate due to weak influent wastewater which condition is prevalent throughout the northeastern part of the United States. This waiver would bring the State rules in line with the applicable Federal rules on the subject which have been updated as a result of further scientific review and evaluation regarding the definition of secondary treatment.

COMMENT C: Most NJDEP permits utilize the BOD_5 test procedure as the basic requirement for determining the discharge of organic (carbonaceous) oxygen pollutant loadings, although the test is widely recognized as an unreliable procedure for assessing carbonaceous pol-

lutant discharges from municipal facilities. Use of the more reliable $CBOD_5$ test has been recognized in some permits. Some permits not only include BOD5 or CBOD5, but also establish CBODu limitations. There does not appear to be any technical basis for the use and interchange of these various requirements or an explanation for why certain facilities, in addition to having BOD_5 or $CBOD_5$ limits, also have CBODu limits.

Water-quality based permits should utilize the $CBOD_5$ test, not the BOD test to determine compliance, due to the inherent errors that can occur when the BOD_5 test is run.

In 1984 EPA published its final position on use of the CBOD test and noted that, for water-quality-based permits, the BOD_5 test should not be utilized because there is no technically correct way of establishing an appropriate limitation in the permit:

If the permit would include BOD_5 rather than $CBOD_5$ term, no technically correct method exists to account for the NOD_5 component of BOD_5 in translating the wasteload allocation result for CBODu to BOD_5. This situation occurs primarily because the wasteload allocation must represent critical conditions, generally including low stream flows and warm receiving water temperatures. During such warm weather periods, wastewater effluent, particularly advanced treatment effluents, are at least partially nitrified (ammonia oxidized to nitrate) and nitrifiers are present in the effluents. As explained previously, such effluents will produce erratic and unpredictable BOD_5 test results because they include widely varying NOD_5 components. Thus, an across-the-board numerical adjustment (such as the 5 mg/l adjustment for secondary treatment during cool weather) cannot be reliably applied to translate either CBODu or $CBOD_5$ values for warm weather to BOD_5 results (49 Fed. Reg. 36986, 37001 (September 30, 1984)).

The State should utilize the CBOD test for all water quality based permits. This test provides a more accurate measure of the carbonaceous pollutant loadings to a receiving stream and avoids the potential for interference by nitrifying bacteria which can result in significantly higher and erroneous BOD_5 measurement for well-opeated treatment facilities. When nitrification in the BOD_5 test occurs, permit exceedances may be erroneously reported for acceptable discharges.

Use of carbonaceous ultimate (CBODu) requirements in the permit, in addition to $CBOD_5$ requirements, is inappropriate because the requirement is pointlessly duplicative. As noted by EPA, CBODu is merely another way of expressing the limitations for $CBOD_5$:

The wasteload allocation determines the allowable value of the CBODu term for a given DO criterion for the receiving water. In turn, the permit writer translates the CBODu term into the $CBOD_5$ term included in the permit by applying the appropriate CBODu: $CBOD_5$ ratio (the Agency's wasteload allocation guidance explains these ratios). Accordingly, advanced treatment effluent limitations for $CBOD_5$ are simply and directly derived from the wasteload allocation process (49 Fed. Reg. 37001 (1984)).

The problem with establishing both five-day and ultimate requirements in the permit is that the violation of a five-day requirement would automatically result in the violation of the ultimate requirement, subjecting the facility to duplicative violations for precisely the same discharge. Because CBOD is already adequately regulated under the five-day procedure, there is no technical basis or need to establish the ultimate limitation.

$CBOD_5$ test procedures should replace BOD_5 test procedure in all situations involving water-quality-based permits. CBOD ultimate limitations are unnecessary and should be eliminated as a duplicative requirement for facilities which have $CBOD_5$ limitations. The regulatory definitions should be changed to eliminate all references to BOD and substitute $CBOD_5$.

COMMENT D: TSS requirements vary substantially from permit to permit without apparent technical or regulatory bases. TSS limitations appear to be established at the same level as BOD_5 limitations, even though TSS are only subject to the minimum Federal technology-based requirements (40 C.F.R. Part 133) in the vast majority of cases. By law, more stringent limitations for TSS may only be established where necessary to meet water quality standard (33 U.S.C. 1311(b)1(c)).

Suspended solids are discharged by all municipal wastewater facilities due to particulate matter placed into the sanitary system. TSS requirements are generally established by the Federal secondary treatment regulation (40 C.F.R. Part 133) which imposes the following limitations:

— 7 day average TSS, 45 mg/l;
—30 day average TSS, 30 mg/l; and,
—85 percent removal of TSS

In specific instances, technology-based percent removal limitations may be less stringent (such as weak influent wastewater allowing a relaxation of the 85 percent removal requirement). However, TSS limitations can only be made more stringent than the above technology-based standards if there are overriding water quality concerns. State water quality standards for TSS are as follows:

25 mg/l—Trout Streams
40 mg/l—Non-Trout Streams

A review of the current water quality limitations for TSS demonstrates that the establishment of suspended solids limitations more stringent than Federal secondary treatment requirements would rarely, if ever, be necessary. For all non-trout streams (which are the majority of the streams in the State), the 30 mg/l Federal requirement is more stringent than the applicable standard of 40 mg/l. Nonetheless, permit writers, as a matter of course, appear to be in the habit of establishing more stringent suspended solids limitations whenever they establish CBOD or BOD limitations which are more stringent than secondary treatment standards. For example, if the CBOD limitation is established at 15 mg/l, permit writers will normally establish TSS limitations at 15 mg/l, although there is no commensurate technical or regulatory justification for establishing the more stringent TSS limitation. Because suspended solids levels are virtually always greater than the commensurate $CBOD_5$ pollutant level for municipal discharges, this may require the facility to provide additional treatment to acheive the more stringent (and controlling) suspended solids limitation. As one can see, this may not only cause an unnecessary increase in pollution control costs, but more importantly, can also subject the facility to effluent limitation violations (exposing the facility to possible civil or criminal enforcement) even though there is no legal or regulatory basis for the stringent limitation.

Suspended solids regulatory requirements should not be established more stringent than the Federal technology based requirement unless there is a demonstrated water-quality basis for a more stringent requirement.

COMMENT E: Permit averaging periods are established in each NJPDES permit typically from instantaneous to a 30-day average for various pollutants. The establishment of more stringent averaging periods (for example, daily of instantaneous) does not appear to be based on any reasonable need to protect water quality or to prevent instream use impacts, nor is it always consistent with monitoring schedules. Permit averaging periods vary significantly from community to community even though the situations and the parameters being regulated are similar, if not identical. Consistency must be brought to the establishment of permit averaging periods to avoid unnecessary expenditure for increased facility reliability and to avoid penalizing dischargers for effluent discharges that are acceptable to meet standards and projected stream uses.

Effluent limitations established in water quality based permits usually have two components. One is the numerical limitation for the parameter (either in concentration or mass) and the other is the averaging period over which the permittee must achieve the numerical limitation. Depending on the type of parameter and its effects on the aquatic environment, the averaging period may be instantaneous (that is, no sample may ever exceed the numerical value) or it may be up to a 30-day average, whereby the permittee is allowed to average the samples taken over the month to meet the specific numerical limitation. Obviously, it is more difficult to achieve an instantaneous limitation than it is to achieve a 30-day average limitation.

EPA studies of the efffects of permit averaging period changes on municipal construction needs have indicated that to achieve limitations on a one-day or instantaneous basis rather than a 30-day average basis requires the facility's size to be doubled, if not tripled. For this reason the selection of the permit averaging period is a critical parameter. It is well accepted in Federal guidance issued on the subject that the permit averaging period should reflect the type of water quality impact that is being analyzed. For example, acute impacts (for example, where exceeding a limitation could result in fishkills or other immediate deleterious aquatic impact) should generally be regulated on a short term basis. This time frame is usually established as a 1 day average.

Chronic impacts, such as those that only occur over a longer period of exposure, are generally met through compliance with longer term averaging periods, such as 30-day averages. The vast majority of State water quality standards are based on EPA issued chronic criteria. Few, if any, acute standards have been established by the State. Therefore, the appropriate averaging period in almost all instances for municipal discharges will be the 30-day averaging period.

Recently, the Department has begun to establish limitations for chronic parameters based on a one-day or instantaneous maximum limitations. This is inconsistent with the purpose of the water quality standard to protect against chronic impacts and the applicable State regulations which specify that municipal waste allocations should be established at either 30-day or seven-day averages. No technical justification found or scientific support for the premise that ammonia limitations need to be established on a daily maximum basis and in fact, such a position has been repeatedly rejected by the USEPA. Limitations for other pollutants, such as phosphorus, have also been set as instantaneous maximums for certain communities although there can be no possible technical justification for this requirement. Permit limits for municipalities should be based on 30-day average requirements for water quality standards based on chronic water quality criteria.

COMMENT F: Both Federal and State law allow the use of seasonal permit limits and flow-variable limits whenever seasonal conditions affect the degree of treatment. State permits vary dramatically in their use and allowance of flow based and seasonal limits. Many facilities have year-round limitations, while others have two-season limitations. Where seasonal limits are established, the State appears to be utilizing a two-season approach without consideration of the actual instream conditions. The State should allow approprate seasonal limitations to be established instead of adhering to a rule of thumb it follows under the current informal procedures.

Water quality standards (WQS) based permits are developed by considering the critical period in the receiving water and determining the amount of pollutants that may be discharged into the receiving water during that period so as to maintain compliance with WQS. Most critical periods only occur in a particular season and for a short period of time, when the temperature is hot and the flow is low. During other seasons when temperatures are cooler and/or when flows are higher, allowable discharges may be significantly greater without any threat to the environment for all pollutants including $CBOD_5$, ammonia, phosphorous and effluent toxicity. Nonetheless, permit limitations are often established on a year-round basis even though the actual requirements for the receiving water do not justify year-round treatment to stringent levels.

Failure to conduct an appropriate seasonal analysis results in an unnecessary increase in operation and maintenance and capital costs and increases the likelihood that the facility may find itself in violation of its stringent permit conditions. EPA has published several guidance documents on the establishment of seasonal and flow based effluent limitations. Use and incorporation of these well-recognized procedures for establishing appropriate limitations should occur.

Currently, the Department will not establish flow-based limits unless they are based on an assumed critical flow. That is, for these years where the instream flows are much higher than the critical drought flow that is used for modeling purposes, the State does not allow for less stringent limitations even though the law would allow it and no adverse environmental impact would occur. Bias against flow variable permits should be corrected to allow their use where appropriate in order to limit the potential civil, criminal and economic liability of discharges.

Where flow variable permits are used as a means for reducing liability, this does not mean that increased waste load discharges should necessarily occur. General provisions requiring the operation of necessary treatment works during the higher flow years would insure that continued pollutant removal capabilities would be maintained. However, if those performance capabilities decrease during the higher flow periods, the discharger should not be penalized for such discharge because it does not result in a violation of water quality standard which is the basic purpose of the effluent limitation and applicable State and Federal law.

Seasonal and flow-variable permits should be allowed whenever seasonal or flow conditions influence the degree of protection required. The number of seasons utilized should depend upon the individual and fact specific circumstances of the discharge. In some instances two seasons may be appropriate whereas quarterly or monthly limits may be appropriate in other instances. Use of flow-variable permits allow for increased pollutant discharge loadings during wetter years or wetter periods of a given year should be recognized as a basis to avoid being penalized for acceptable discharges when greater dilution exists. Specifically, NJDEP should clarify its policy regarding the application of seasonal limitations with NJPDES water quality based permits (See N.J.A.C. 7:9-4.5(e)3). Additionally, NJDEP should establish regulatory provisions providing for the use of low variable permits which allow for increased pollutant discharges during wetter years or wetter periods of a given year (see N.J.A.C. 7:9-4.6).

COMMENT G: The State utilized a series of modeling techniques for determining the appropriate effluent limitations that are based on technical procedures developed decades ago. Since that time, newer procedures have been developed and approved by the EPA which allow for more precise determination of effluent limitation needs based on the particular conditions of the receiving waters. State regulators are reluctant to utilize the new procedures due to the existing regulatory framework and lack of familiarity with the new procedures.

Since the early 1980s, EPA has issued a series of technical guidance documents for the development of wasteload allocations and effluent limitations for municipal and industrial sources. Those documents represent EPA's statement of the best available scientific information for the assessment of treatment needs. Chief among those documents are EPA's "Handbook of Permit Averaging Periods" and the "Technical Support Document for Water-Quality-Based Toxics Controls." These new procedures allow for the calculation of appropriate wasteload allocations independent of the selection of a critical instream low flow, as is currently used by the State of New Jersey. The new procedures allow the analyst to more accurately determine the water quality needs and to insure that the effluent limitations established are neither under nor over protective.

State procedures currently specify that water quality standards must be met for all flows greater than the MA7CD10 (the seven-day once-in-10 year low flow). State regulators have taken this to mean that they must utilize this MA7CD10 flow in modeling or evaluating waste allocation needs. EPA has recognized that the use of such fixed flows for wasteload allocation determination can lead to under or over protection depending upon the circumstances. Moreover, utilizing the MA7CD10 to calculate allowable discharge limits values results in the imposition of enforceable effluent limits which are applicable at all times but which are necessary only 0.2 percent of the time to protect the receiving stream. The new techniques published by EPA, while more technically demanding, result in the most accurate evaluation of cost-effective treatment requirements.

The steady state modeling procedures currently used may serve as a valuable tool in instances which do not warrant the use of more extensive and complicated evaluation techniques. Therefore, it may not be necessary to abandon the old techniques entirely. It would appear more appropriate, as implemented by the State of Utah, to allow the use of either the statistical modeling procedure or the steady state procedure using a fixed low-flow in assessing effluent limitations. The choice of procedure may be at the discretion of either the regulator or the permittee, and should be guided by the particular circumstances in each case.

Permit limitations should be developed by using the best scientific information available. NJDEP should revise its regulations to allow for the use of statistical modeling in lieu of the steady state, low flow modeling presently utilized by State permit writers. Where water quality based limitations are established, permit writers should carefully identify the technical basis used to establish all permit effluent limitations and specify the types of procedures used for evaluating the discharge requirements. In addition the Department has failed to allow for statistical modeling.

COMMENT H: Establishment of ammonia limitations in municipal permits appears subject to significant variation and confusion. Some limitations are established on seasonal bases and others are not. Some limitations are established as instantaneous maximums, whereas 30-day average limitations are allowed in most cases. At three facilities, the State proposed pH and alkalinity limitations alleging that they were necessary to prevent exceedance of the ammonia toxicity standard. These additional requirements are inconsistent with hundreds of previously issued permits and are not considered necessary by any other State in the country or EPA. The Department needs to develop a uniform procedure for establishing appropriate ammonia limitations for municipal discharges to avoid unnecessary expenditures and establishment of inconsistent limitations.

Water quality based limitations for ammonia are typically established for two reasons: (1) to achieve instream dissolved oxygen requirements and (2) to meet ammonia toxicity requirements based on the applicable ammonia toxicity criteria. Generally, ammonia removal for dissolved oxygen purposes is only necessary during the warmer weather months when ammonia may be oxidized instream and create an oxygen demand, thereby lowering the instream dissolved oxygen concentration.

Nitrifying bacteria are very temperature-sensitive; nitrification, and therefore ammonia oxidation, does not occur in the natural environment below 10°C and occurs at very diminished rates between 15-10°C. For this reason, there is rarely a need to remove ammonia for dissolved oxygen purposes during the cooler weather period.

Similarly, ammonia toxicity is generally less of a poblem when ambient temperatures decrease. The unionized faction of ammonia (which is the toxic fraction) is diminished during cooler weather periods. As a result, ammonia discharges generally, may be increased during cooler weather periods without any adverse impact on aquatic biota of the reduced amount of the toxic unionized fraction of ammonia under those conditions.

In addition to temperature effects, the adverse impacts of ammonia are diminished where greater stream flow is available for dilution, therefore reducing the overall instream concentration of the parameter. Most analyses for ammonia toxicity are conducted for the seven-day, one-in-ten-year (MA7CD10) low flow which is by definition a rare event which occuring only 0.19 percent of the time. For all flows greater than this MA7CD10 flow, the amount of ammonia that can be tolerated for either DO or ammonia toxicity purposes is typically greater because of the increased instream dilution. For waters that are classified as warm water fisheries, ammonia removal is generally not required where there is greater than a 10:1 dilution of stream to treatment plant flow.

The Federal government has recognized in a series of guidance documents that is appropriate to establish effluent limitations on flow and temperature bases. This more refined basis for determining treatment needs results in achievement of existing water quality standards but does not require the discharger to achieve high levels of ammonia reduction on a year-round basis because such levels are not required to protect the environment. EPA has demonstrated that major cost savings can occur where seasonal limitations are established. In general, the sizing of a facility is increased by a factor of two where year-round nitrification is required as opposed to requiring nitrification only during the warmer weather periods.

Flow-based limitations provide an added advantage to municipal dischargers in that the facility will not be penalized for a violation of an effluent limitation during higher flows periods when no water quality standard violation can actually occur. Under such circumstances where stream flows are above the critical cutoff for requiring nitrification, the facility should be allowed to discharge a concentration or loading above the requirement established under the MA7CD10 low flow condition. This Federally approved approach recognizes that it is not appropriate to demand that dischargers achieve stringent requirements under circumstances that do not require such stringent requirements. It would also avoid the need to initiate enforcement action against a discharger when no adverse impact to the environment has occurred. Given that achievement of water quality standards is the basis for establishing effluent limitations, it is not appropriate to penalize the facility for circumstances that clearly do not cause exceedance of water quality standards.

Alkalinity and pH are important parameters for determining the amount of unionized ammonia that will be present in a receiving water. Municipal facilities are not designed to regulate these parameters, and within the ranges found in domestic systems no environmental threat is created by pH and alkalinity in municipal effluent.

No State water quality standard has been adopted for alkalinity; therefore, no water quality standard based permit limitation for this parameter may be established. For pH, the State standard allows the pH to vary between six to nine. There is no legal or technical basis to demand that the effluent pH be further restricted within this range. Despite the clear requirements for establishing effluent limitations, the Department has recently sought to propose both pH and alkalinity limitations by contending that such limitations are needed to regulate ammonia toxicity.

Putting aside the questionable technical basis for establishing pH or alkalinity limitations, the DEP has never provided for public notice or comment on the establishment of alkalinity limitations or more restrictive pH limitations in general; therefore, the ad hoc establishment of such a requirement is not appropriate. The DEP has historically issued permits addressing ammonia toxicity limitations without additional requirements on alkalinity or pH. This is consistent with accepted practice throughout the country.

It appears that the Department's permit writers may be confused over the use of expected conditions under the low flow event in the model and the need to establish those assumptions as effluent limitations in a permit. Not all model assumptions are effluent requirements. In the extreme, such an approach would require the discharger to refrigerate its discharge and the stream in the winter and heat both in the summer to maintain the temperature assumptions used in the model. Standard modeling practice is to use conditions expected to occur during the critical flow event for those parameters which are not regulated by the facility (for example, pH, alkalinity, temperature). These uncontrolled parameters are then used to establish limitations on the pollutant parameter which the facility is designed to control. Only where a discharger propose to operate its facility in an unusual mode to reduce instream pH o intentionally alter instream alkalinity to a designated level should s special limitations on alkalinity or pH be required.

The State should establish a standard operating procedure for settin ammonia limitations which considers all variable effects when developin such limitations. Such determinations should objectively consider th impact of the wastewater flow on the instream pH under the expecte conditions in addition to the variability of flow and temperature tha occurs in the environment. Seasonal limitations with meaningful date relating to the expected flows and temperatures should be established Where appropriate, flow-based limitations should also be used to avoic the imposition of stringent treatment requirements under flow condition that do not require such stringent performance. Additional pH an alkalinity requirements should only be established where a discharger's effluent causes an adverse impact on instream pH or alkalinity.

COMMENT 1: Phosphorus limitations are established in many NJDEP municipal permits based on assumed instream impacts of the discharge, although no actual instream data are identified to verify those impacts. Most phosphorus limitations have been established usually as 30-day averages but, at times, as instantaneous or daily maximum requirements. Consistency among phosphorus limitations is poor and the technical basis for requiring phosphorus removal is often not stated.

Phosphorus limitations are generally established to prevent excessive algal growth in receiving waters which can cause adverse fishery impacts, change the structure of the biological community and, under severe circumstances, cause fishkills because of the depletion of oxygen in the water column. Phosphorus impacts, by their nature, are long term water quality impacts. Algal or macrophytic growth is generally a slow process requiring weeks to months to occur, and in many situations phosphorus buildup takes months to years prior to reaching an equilibrium condition in a receiving water. This is particularly true for bays, estuaries and large lakes. Phosphorus itself is not a problem, but is regulated because it may cause unacceptable secondary impacts (for example, growth of nuisance aquatic organisms). Thus modeling of phosphorus and its impacts in receiving waters is complicated and time consuming.

Due to the complexities of algal modeling, the State had adopted stringent water quality criteria for phosphorus—0.55 mg/l TP for lakes, 0.10 mg/l for streams (N.J.A.C. 7:9-4.14). The criteria allow the discharger to demonstrate that less stringent requirements are appropriate; however a presumption that phosphorus removal is needed is contained in the criteria. As a result, the State has opted to utilize a rule of thumb which would generally require phosphorus limitations to at least a one mg/l for discharges entering receiving waters that flow into lakes. This approach should only be utilized as a preliminary decision tool. Subsequent studies should be used to allow more or less stringent limitations, as the situation dictates.

Where basin wide standards are established, limitations should be reasonably achievable through use of inexpensive biological uptake designs which do not result in substantial increases in constructional and operational costs of a facility. Generally such designs can achieve two mg/l phosphorus removal with a high degree of reliability. Absent a more precise instream analysis demonstrating that phosphorus discharges are a problem which can be effectively abated by the discharger, effluent limitations should not be established on a basin-wide area more stingent than this amount.

Contrary to the presumption contained in the State phosphorus criteria, phosphorus is not typically a limiting nutrient in flowing-water habitats, and phosphorus limitations are generally not appropriate for discharges to free-flowing streams that have low detention times unless one can demonstrate actual impacts from the phosphorus discharge. In many situations, this can be directly measured either through instream algal monitoring or through a review of instream dissolved oxygen concentration variability. Absent verification that a problem exist, phosphorus limitations should not be established for discharges to free-flowing streams.

Because the phosphorus criteria are written as "never to be exceeded" values, confusion over appropriate permit conditions has occurred. Clearly the establishment of instantaneous or even weekly phosphorus limitations is not consistent with the nature of the problem and cannot be justified based on any known modeling or ecological impacts procedure. Use of 30-day average permit limitations or seasonal limitations over somewhat longer period may be more appropriate depending upon the characteristics of the receiving water (particularly the detention time).

This is consistent with the nature of the problem and the timing of the effects that may occur in the receiving water.

The State should establish a standard operating procedure for setting phosphorus limitations. Phosphorus limits should not be established for any time frame shorter than 30 days due to the nature of the impacts and the lack of any direct, acute toxic impact of phosphorus. A presumption that a one mg/l phosphorus limitation is necessary is reasonable for discharges to lakes. For free-flowing streams, however, water quality modeling or instream sampling verifying that a problem exists and that it can be corrected through point source controls should be required to justify any phosphorus limitation on discharges to this type of receiving water. Where limitations are based on assumed rather than verified conditions, discharge limits should be based on utilization of low cost designs that may be readily incorporated into existing treatment works (see N.J.A.C. 7:9-4.14(c)6).

COMMENT J: Whole effluent toxicity testing requirements are being established for municipal dischargers throughout the State. On a nationwide basis, questions have arisen regarding the ability of the toxicity testing procedure to reflect instream use impacts and regarding inconsistencies with the application of the test. In many instances, the Department has been establishing toxicity testing requirements without consideration of dilution or other receiving water characteristics which is contrary to the basis for utilizing the procedure (for example, to protect instream uses).

As described by EPA guidance documents, whole effluent toxicity testing can be used to estimate the overall toxicity of complex effluent discharges. Such procedures are useful because the synergistic and additive effects of pollutants are not well understood and may change significantly depending upon the characteristics of the wastewater. EPA specifies that establishment of the toxicity testing requirements should be based on the same factors considered in setting any water-quality-based permit limitations: effluent variability, receiving stream flow, and species sensitivity (54 Fed. Reg. 1303, January 12, 1989).

Whole effluent toxicity testing requirements are still in their infancy and substantial scientific uncertainty exists regarding whether or not the test reflects the actual instream use impacts. Exceedance of toxicity testing requirements (often established as a 96-hour LC50) does not necessarily reflect unacceptable toxic impacts to the receiving water; however, as established in existing permits, exceedance would constitute a violation of effluent limitation requirements. In particular, it should be noted that the acute test procedure is based on a continuous four-day (96-hour) exposure of aquatic organisms to a particular level of pollutant even though such conditions may not occur in the stream. Based on this continuous exposure, adverse impacts (death, growth or spawning impacts) may be noted which would not actually occur in the stream.

State requirements establish acute toxic requirements as instantaneous limitations, without regard to the available dilution and other conditions occurring in the receiving water or the time frame necessary to cause an acute effect. While all parties would agree that acute effects should be strictly proscribed, failure to consider the time frame and the conditions required to produce an acute effect or whether the acute concentration can physically occur instream renders use of the test inappropriate as currently applied. Rather than serving as a water quality standard surrogate, whole effluent toxicity limitations are improperly used as discharge prohibitions, regardless of actual impacts.

EPA guidelines on use of whole effluent toxicity indicate that whole effluent toxicity should be considered no differently than any other water quality standard requirement and, therefore, should be based on actual instream conditions. A particular problem arises for municipal dischargers which are allowed increased ammonia discharges in the wintertime due to the reduced toxic effect of ammonia in cooler temperatures. When the toxicity testing procedures are run, the wastewater temperature is brought up to 20°C regardless of the time of year or actual instream conditions. This could cause an adverse response in the tested aquatic organisms that could erroneously suggest that excessive toxicity is occurring due to the wastewater discharge. This, however, would not actually be reflected in the environment because the toxicity of ammonia is reduced in the wintertime. This problem occurs because the test procedure is not designed to be reflective of the site-specific conditions.

Use of whole effluent toxicity testing as an effluent limitation also raises concerns for municipal dischargers which may be subject to illegal discharge into their systems by "midnight dumpers" or other persons who improperly dispose of toxic substances into the system without prior notice. Exceedance of a toxicity limitation under these circumstances places the municipality in the position of being fined unfairly for a criminal act of a third party. This is inappropriate in that both the Federal Clean Water Act and the Superfund law do allow defenses for criminal acts of third parties (see 33 U.S.C. 1321 and 42 U.S.C. 9607(b)). It is uncertain whether the State rules would allow such a defense even though there would be no negligence or fault on the part of the municipal discharger.

Given the uncertainties and inconsistencies of whole effluent toxicity testing, it would be more appropriate to utilize whole effluent toxicity testing in conjunction with the pretreatment program as a tool for investigating and reducing toxicity that may be either interfering with plant operations or passing through the facility untreated. Use of toxicity testing in this fashion has been approved by several states, including Colorado, whereby whole effluent toxicity has not been established as a water quality standard or effluent limitation but as a requirement in the pretreatment program. Where unacceptable toxicity occurs, the party must use due diligence to investigate the causes of the toxicity and to limit its further impacts where appropriate. This approach has the advantage of not penalizing the discharger for intermittent or uncontrollable inputs into the system to avoid any continuous or recurrent acute toxicity conditions.

Toxicity testing should only be used as an investigatory tool in conjunction with the pretreatment program and not as an effluent limitation requirement. The whole effluent toxicity (WET) parameter should be utilized as an indicator required under the pretreatment program to identify high levels of toxics within industrial user dischargers rather than a limitation or water quality standard. Where necessary, toxicity reduction evaluations (TREs) could be performed to identify the cause or source of a toxic discharge and require the municipality to use due diligence in investigating the matter. Municipal permittees should not be held liable for fines or penalties due to an intermittent exceedance of a toxicity requirement, particularly where it may be the result of an illegal act of a third party.

COMMENT K: The majority of chlorine limits established in NJPDES permits are below the level of detection of the analytical test. As a result, the measurement of a single positive chlorine reading will often place the discharger not only in violation of daily maximum limitations in the permit but also any 30 day average permit limitation. This subjects the discharger to potential fines or penalties of up to $1.5 million for the single positive reading. Chlorine limitations as presently expressed by the Department are not technically achievable without the elimination of chlorine from the municipal system. While such a goal may be sought, full discussion by interested State agencies including public health officials who have long required the use of chlorine to reduce pathogen levels should occur prior to any adoption of State permitting policies and effluent requirements that would lead to wholesale elimination of use of this chemical.

Chlorine water quality standards were established by the State of New Jersey in 1985. Since this time, the State has sought to incorporate chlorine limitations in all municipal discharge permits because chlorine is used by almost all municipal facilities as a disinfectant to control bacteria discharges. In almost all instances, chlorine limitations established in the permits were set below detection levels and therefore reliable compliance cannot be determined. In addition, many permit limitations establish the chlorine limitations as never to exceed or instantaneous maximum conditions requiring that the discharger insure that the plant be in full compliance 100 percent of the time, day in and day out, 365 days per year. Such reliability and assurance is impossible to achieve and therefore occasional chlorine violations are likely to occur at every facility that utilized this chemical to obtain effective disinfection of its wastewater. In addition, given the low detection limit and statistical variance associated with that detection limit, a facility with a reading only slightly above the detection limit but within the range of standard deviation could be deceived to be in violation when, in fact, no exceedance had actually occurred.

Establishment of a chlorine limitation as an instantaneous maximum condition, never to be exceeded, is inconsistent with the applicable information on chlorine limitations. Under low dosages, acute impacts only occur over several day exposure. Under such circumstances, requiring the discharger to insure instantaneously that the limitation is never exceeded to avoid potential acute impacts is not techically justified.

In other states, such as the Commonwealth of Virginia, a more reasonable approach is taken to regulating chlorine because of its understood dual role in disinfection and associated problems in causing impacts in the aquatic environment. The State of Virginia rules allow for "fine tuning" the dechlorination system to obtain a zero chlorine residual which

insures adequate protection of aquatic wildlife but does not require continual 100 percent elimination of chlorine. This condition allows the permittee to increase the dechlorination rate whenever a chlorine residual is found in a single sample and requires that the discharger show diligence in increasing the dechlorination rate over a several hour period of the day to insure that zero residual is eventually obtained. This approach avoids unnecessary penalizing the discharger for chlorine discharges that will not result in an impact on the aquatic environment.

The Department should consider whether or not the stringent chlorine limitations currently established are reasonable and should take a more moderate approach on insuring that adequate dechlorination occurs. Approaches which do not require 100 percent compliance, day in and day out, should be utilized. The State should establish a reasonable basis for developing chlorine limits considering technical capabilities of treatment works and actual instream impacts. NJDEP should revise its regulations to allow for chlorine to be monitored as an indicator which would trigger a requirement to adjust discharge activities during an established time frame rather than exposing a permittee to substantial fines or penalties for violations which are unavoidable (see N.J.A.C. 7:9-4.14(c)14viii).

COMMENT L: Flow should not be regulated in the permit as an effluent limitation, unless the Department can establish that other pollutant restrictions are insufficient to assure attainment of water quality standards.

COMMENT M: Use of concentration limits in addition to mass limitations can result in over-regulation when the discharger is not at the maximum design flow.

COMMENT N: The setting of permit averaging periods lacks consistency. Permit limits for municipalities should be based on 30-day average requirements for water quality standards based on chronic water quality criteria.

COMMENT O: The DEP has failed to allow for site-specific water quality standards as allowed under 40 C.F.R. Part 131.

COMMENT P: The DEP has failed to update WQS to reflect appropriate application methodologies and new scientific information on water quality impacts.

COMMENT Q: The DEP has not justified the need for N.J.A.C. 7:9-5.7, particularly for situations involving substantial dilution, such as ocean dischargers.

COMMENT R: The Department has failed to adopt formal procedures for assessment of mixing zones.

COMMENT S: The Department has failed to address technical information provided, that chronic toxicity limitations do not reflect actual instream impacts.

COMMENT T: The DEP has failed to publish appropriate methodologies for conducting chronic bioassays.

COMMENT U: The DEP has failed to disclose reinterpretations of rules that substantially affect the proper development of effluent limitations.

COMMENT V: From an historical perspective, the DEP's methods of rulemaking as in the surface water quality standards have been inconsistent when arriving at the NJPDES permit drafting process.

RESPONSE: As set forth in the proposed readoption notice at 22 N.J.R. 3297(a), the Department proposed to readopt N.J.A.C. 7:9 without change in order to meet the chapter's expiration date of January 21, 1991. The Department also stated that it is developing major revisions to N.J.A.C. 7:9; however, these amendments were not finalized at the time the rule needed to be proposed for readoption. The Department does recognize the need to amend N.J.A.C. 7:9. It is anticipated that major amendments to N.J.A.C. 7:9-4 and 5, which is the focus of most of the above comments, will be proposed in the spring or summer of 1991. During the process of proposing amendments to N.J.A.C. 7:9, the Department will consider each of the above comments and act on each as appropriate.

Due to the fact that one commenter incorporated a rulemaking petition by reference, many of the comments received were associated with the rules at N.J.A.C. 7:14A. The Department cannot consider these comments at this time. The Department is presently responding to the petition for rulemaking in accordance with N.J.A.C. 1:30-3.6.

III. Other Comments

COMMENT: The summary states that N.J.A.C. 7:9-2 was previously reserved by the Department. One commenter asked for a clarification of the meaning of "reserved." One commenter references previously submitted concerns regarding individual subsurface disposal systems.

RESPONSE: N.J.A.C. 7:9-2 was the previous citation for the Standards for Individual Subsurface Sewage Disposal Systems. N.J.A.C. 7:9-2 was repealed and the new standards were adopted on July 28, 1989 and were placed in a new chapter, N.J.A.C. 7:9A.

N.J.A.C. 7:9-2 is a vacant subchapter, containing no information. It is therefore labeled as "reserved" for future use if necessary.

COMMENT: One commenter requested that the Department modify the definition of "qualified applicant" in N.J.A.C. 7:9-15 so as to include non-profit organizations.

RESPONSE: This is a unique situation which would not necessarily be best resolved by revising the definition of "qualified applicant." Revising this definition for a unique situation would cause foreseeable confusion and complications in future projects. Alternatives to this comment were previously presented to the commenter directly and initially met with approval.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:9.

HEALTH

(a)

FACILITIES RATE SETTING

Residential Alcoholism Treatment Facilities Cost Accounting and Rate Evaluation Guidelines

Adopted Repeal and New Rule: N.J.A.C. 8:31C-1.15
Adopted Amendment: N.J.A.C. 8:31C-1.18

Proposed: November 19, 1990 at 22 N.J.R. 3468(a).
Adopted: January 24, 1991 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: January 25, 1991 as R.1991 d.88, **without change.**

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-18(c).

Effective Date: February 19, 1991.
Expiration Date: January 20, 1992.

Summary of Public Comments and Agency Responses:

COMMENTER: Center for Addictive Illnesses

COMMENT: Center for Addictive Illnesses questions the use of the DRI-McGraw Hill Health Care Costs as a valid index. The facility states that the BLS Non-Hospital Working Proxy would be more appropriate in assisting them in the recruitment for staff.

RESPONSE: The Department of Health's proposal to establish the DRI-McGraw Hill Health Care costs as a proxy for labor is consistent with the SHARE and Chapter 83 reimbursement systems. The Department has not received any information from the alcoholism facilities that would indicate that the proposed proxy would be inequitable when applied consistently to all facilities.

Full text of the adoption follows.

8:31C-1.15 Economic factor

(a) The industry-wide economic factor for services rendered after January 1, 1991 shall be comprised of the percentage changes in the following proxies for their relevant cost components weighted by their percentage of reported costs on Residential Alcohol Treatment Facilities Report forms for all facilities combined. The factor is determined exclusive of depreciation, interest, rental and lease, property insurance (land), and property insurance (building) costs.

1. Labor:

i. Cost Component: Total Inpatient Salaries plus fringe benefits;

ii. RATF Cost Center: All cost centers for which employee salaries are reported;

iii. Proxy: DRI—McGraw Hill Health Care Costs average hourly earnings, Production workers, General Medical and Surgical hospitals—Northeast Region;

2. Other 1:

i. Cost Component: Raw Food/Dietary (Total Inpatient Costs);

ii. RATF Cost Centers: Raw Food, Dietary;

iii. Proxies:

(1) Consumer Price Index (CPI):

Food at home (50 percent);

(2) Producer Price Index (PPI):

Processed food (50 percent);

3. Other 2:
i. Cost Component: Housekeeping (Total Inpatient Costs);
ii. RATF Cost Center: Housekeeping;
iii. Proxies:
(1) PPI: 0915-01 Sanitary Paper and Health Products (30 percent);
(2) PPI: 0722 Unsupported Film and Sheeting (30 percent);
(3) PPI: 0671 Soap and Synthetic Detergent (40 percent);
4. Other 3:
i. Cost Component: Laundry and Linen (Total Inpatient Costs);
ii. RATF Cost Center: Laundry and Linen;
iii. Proxies:
(1) PPI: 0671 Soap and Synthetic Detergent (60 percent);
(2) CPI: Textile House Furnishings (40 percent);
5. Other 4:
i. Cost Component: Pharmacy (Total Inpatient Costs);
ii. RATF Cost Center: Pharmacy;
iii. Proxies:
(1) PPI: 0635 Ethical (Prescription) Drugs (70 percent);
(2) PPI: 0636 Proprietary (over the counter) Drugs (30 percent);
6. Other 5:
i. Cost Component: Laboratory (Total Inpatient Costs);
ii. RATF Cost Center: Laboratory;
iii. Proxies:
(1) PPI: 138 Glass Containers (40 percent);
(2) PPI: 061 Industrial Chemicals (60 percent);
7. Other 6:
i. Cost Component: Repairs and Maintenance/Other General Services (Total Inpatient Supplies);
ii. Cost Center: Repairs and Maintenance/Other General Services;
iii. Proxies:
(1) CPI: Maintenance and Repairs, Commodities;
iv. Source: BLS: Consumer Price Index.

8:31C-1.18 Final Payment Rate

(a) The Final Payment Rate will be based upon a certified audit performed by Blue Cross. The facility will be reimbursed at the lower of the approved rate or the Blue Cross certified rate. The Blue Cross certified rate will be subject to adjustments based upon major audit findings.

(b) The Final Payment Rate calculation for rates effective July 1, 1989 through December 31, 1990 will include an adjustment to the economic factor based upon the methodology applied to the reimbursement rates for services rendered January 1, 1991.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Auxiliary Corporations
Organizational Personnel; Purchasing
Adopted Amendment: N.J.A.C. 9:2-13.11

Proposed: June 4, 1990 at 22 N.J.R. 1656(a).
Adopted: January 24, 1991 by the Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.
Filed: January 24, 1991 as R.1991 d.72, **without change** as to N.J.A.C. 9:2-13.11, but with the proposed amendment to N.J.A.C. 9:2-13.9 **not adopted at this time.**

Authority: N.J.S.A. 18A:64-26 et seq.

Effective Date: . February 19, 1991.
Expiration Date: May 4, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: The Department of Personnel commented that the proposed amendment to N.J.A.C. 9:2-13.9 is inconsistent with the language of N.J.S.A. 18A:64-38 which places employees of auxiliary corporations into the "unclassified service of the Civil Service."

RESPONSE: The Board believes that the State College Autonomy Legislation, P.L. 1986, c.42, as a subsequent statute, supersedes the language of N.J.S.A. 18A:64-38 and that therefore, the Board of Higher Education may adopt the proposed amendment to N.J.A.C. 9:2-13.9. However, in deference to the views of the Department of Personnel, the Board determined that it will request an official Attorney General's opinion on the issue prior to the adoption of the proposed amendment to N.J.A.C. 9:2-13.9. Thus, the Board does not intend to adopt the proposed amendment to N.J.A.C. 9:2-13.9 at this time but will leave the language of that provision as it currently stands until it receives the Attorney General's opinion mentioned above.

COMMENT: IFPTE, Local 195, AFL-CIO, commented through their counsel stating that the removal of the employees from the unclassified service of the Civil Service would lead to non-uniform and arbitrary job titles and salaries for auxiliary employees at various State colleges and thus opposed the proposed amendment to N.J.A.C. 9:2-13.9.

RESPONSE: The Board does not see the necessity for uniformity for such employees at the various auxiliary corporations but determined not to adopt this proposed amendment for other reasons stated above.

COMMENT: The Communications Workers of America (CWA) AFL-CIO commented that the proposed amendment to N.J.A.C. 9:2-13.9 was "a bad idea" in that the "interests of employees to fair and equitable treatment are much better served by the current rule" and that the employees would be less protected from patronage.

RESPONSE: The Board does not agree that the proposed amendment would result in unfair or inequitable treatment of such employees or patronage; however, it determined not to adopt this proposed amendment for other reasons stated above.

COMMENT: CWA also commented that the proposed change to N.J.A.C. 9:2-13.11 would allow the auxiliary corporations to sidestep laws, regulations and standards created to protect the public.

RESPONSE: The Board disagrees. The language of N.J.A.C. 9:2-13.11 requires competitive bidding whenever possible and that the organizations follow the general guidelines for purchasing by State colleges. It is believed that these two standards will adequately ensure the interests of the public in this area.

Full text of the adoption follows.

9:2-13.11 Purchasing

An auxiliary organization shall make such purchases as are necessary for its operation. Such purchases shall be made through competitive bidding whenever possible. The standards of the college shall serve as general guidelines for competitive bidding.

PUBLIC UTILITIES

(b)

BOARD OF PUBLIC UTILITIES

Energy Conservation
Adopted New Rules: N.J.A.C. 14A:3 (recodified upon adoption as N.J.A.C. 14:30)

Proposed: November 5, 1990 at 22 N.J.R. 3315(b).
Adopted: January 16, 1991 by the Board of Public Utilities, Scott A. Weiner, President.
Filed: January 23, 1991 as R.1991 d.69, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27F-11(g).

Effective Date: February 19, 1991.
Expiration Date: February 19, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Since N.J.A.C. 14A:3 expired October 7, 1990, pursuant to Executive Order No. 66(1978), the proposed rules are adopted herein as new rules, in accordance with N.J.A.C. 1:30-4.4(f).

A public hearing in this matter was held on November 27, 1990, at which no member of the public or other interested party appeared.

In order to properly codify the rules of the former Department of Energy, the Board of Public Utilities is recodifying N.J.A.C. 14A:3 upon adoption as N.J.A.C. 14:30. References to these rules within the chapter are also corrected to reflect the recodification.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER *[3]**30*
ENERGY CONSERVATION

SUBCHAPTER 1. GENERAL PROVISIONS

*[14A:3]***14:30***-1.1 Purpose and scope

The purpose of these rules is to achieve substantial savings of one or more energy sources in compliance with the provisions of P.L. 1977, c.146, section 9g. These rules shall apply uniformly to each member of the segment of society within the State to whom such rule is directed unless otherwise specified in writing by the Board.

*[14A:3]***14:30***-1.2 Construction and amendment

(a) These rules shall be liberally construed to permit the Board to effectively carry out its statutory functions and to insure the maximum conservation of energy sources within the State.

(b) These rules may be amended by the Board in accordance with the provisions of N.J.S.A. 52:14B-1 et seq.

*[14A:3]***14:30***-1.3 Copies

Copies of all reports, correspondence, documents, data, analysis, and whatever other information, as required by the provisions of these rules, shall be filed in original plus three copies, and addressed to the Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102.

*[14A:3]***14:30***-1.4 Variances and exemptions

(a) The Board will consider requests for variances or exemptions from any of the provisions of this chapter. Any person requesting a variance should complete an "Application for a Variance or an Exemption", which may be obtained from the:

Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

(b) The completed form should be submitted to the Board. The Board shall review the request and notify the person of its determination and the basis for the determination within 90 days of receipt of the application. This determination should constitute final agency action on the application.

(c) The Board may grant a variance if the person demonstrates to the satisfaction of the Board that compliance with the provisions of this chapter would:

1. Create undue economic, environmental or technical hardship;
2. Increase the amount of energy consumed by a building; or
3. Be detrimental to the public health, safety or welfare.

SUBCHAPTER 2. LARGE BOILER COMBUSTION EFFICIENCY STANDARDS

*[14A:3]***14:30***-2.1 Scope

Unless otherwise indicated, the provisions of this subchapter shall apply to all fossil fuel-fired large boilers, operated within the State of New Jersey, as defined in N.J.A.C. *[14A:3-2.2]* ***14:30-2.2***, except those operated by electric and gas public utilities subject to the jurisdiction of the New Jersey Board of Public Utilities.

*[14A:3]***14:30***-2.2 Definitions

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

"Board" means the New Jersey Board of Public Utilities.

"BTU" or "British Thermal Unit" means the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit from the temperature 60 degrees Fahrenheit at standard pressure (14.7 psia) conditions.

"Combustion efficiency" (Ec) means the percentage ratio of heat available minus heat lost in the products of combustion and excess air to heat available, where heat available is the higher heating value of the fuel.

Ec = (heat available) – (heat lost in the products of combustion and excess air))/(heat available)

"High fire" means a condition at which the boiler is operating a its maximum firing rate within its normal operating range, when it service.

"In service" means a condition of the boiler when operating.

"Large boiler" means any fired steam boiler, steam generator, ho water boiler, or hot oil unit whose rated capacity exceeds either 49 square feet of heating surface or 100 boiler horsepower, or fou million BTU/hour input, regardless of temperature or pressure con ditions.

"Load" means the demand of the boiler in appropriate units pe hour at the operating temperature and pressure conditions.

"Low fire" means a condition at which the boiler is operating a its minimum firing rate when in service.

"Optimum percent oxygen" means the lowest percent oxygen con tent in the flue gas which can be achieved without:

1. Exceeding 220 ppm carbon monoxide for gas fired boilers or the air pollution levels specified by N.J.A.C. 7:27-3 for coal and oi fired boilers; or
2. Causing delayed ignition, visible flame instability, flame car ryover, flame impingement, pulsation noise.

"Optimum percent oxygen performance characteristic curve" means a relationship between the optimum percent oxygen in the flue gas and the load.

"Optimum temperature" means the temperature of the flue gas at the condition of optimum percent oxygen for that load condition.

"Optimum temperature performance characteristic curve" means a relationship between the optimum temperature of the flue gas and the load.

"Percent oxygen" means the ratio of the volume of oxygen contained in the sample of flue gas to the total volume of the sample. Percent oxygen may be determined directly from a device which measures oxygen content or equivalent percent oxygen content may be determined indirectly by conversion from devices which measure carbon dioxide.

"Responsible person" means the owner or operator, whoever has control, either directly or indirectly through an agent, over the large boiler.

"Performance characteristic curves" means optimum percent oxygen performance characteristic curve and optimum temperature performance characteristic curve.

"Steady state condition" means equilibrium condition as indicated by a variation in the flue gas temperature of not more than plus or minus 10 degrees Fahrenheit obtained in three consecutive readings taken 10 minutes apart.

*[14A:3]***14:30***-2.3 Standards

Responsible persons shall operate all large boilers at a combustion efficiency such that neither the percent oxygen shall be higher than 1.25 times the optimum percent oxygen value nor the temperature of the flue gases shall be higher than 1.15 times the optimum temperature value obtained from the performance characteristic curves for that load condition. However, where optimum percent oxygen is below 2.4 percent, the boilers may be operated at a combustion efficiency such that the percent oxygen is not higher than 3.0 percent.

*[14A:3]***14:30***-2.4 Performance characteristic curves

(a) Responsible persons shall obtain initial performance characteristic curves for every large boiler as soon as practicable following its next annual internal inspection required by N.J.A.C. 12:90-4.10. The initial performance characteristic curves shall be obtained for the type of fuel(s) in use.

(b) Points on the curves shall include low fire, the upper end of the normal operating range, and several intermediate points uniformly spaced. For nonmodulating burners, intermediate points are not required.

(c) Performance characteristic curves for each boiler shall be redetermined every five years, or when the fuel type, or any component of the boiler which could change its combustion efficiency, has changed, or at the request of the Board. Performance characteristic curves shall be redetermined only after the boiler is made ready in a state similar to that required for annual internal inspection cited in (a) above.

*[14A:3]**14:30*-2.5 Test requirements

Responsible persons shall test every large boiler in accordance with N.J.A.C. *[14A:3]**14:30*-2.6 not less than once during each calendar week when it is in service. Boilers used primarily for heating service shall be tested during the heating season.

*[14A:3]**14:30*-2.6 Test procedure

(a) The boiler test procedure is as follows:

1. When the boiler is in service, continue operation until a steady state condition is reached at any point within the user's operating range; and

2. Measure and record the percent oxygen present in the flue gases and the temperature of the flue gases utilizing test equipment designed for such purposes. The test equipment shall be used in accordance with the equipment manufacturer's operating instructions.

*[14A:3]**14:30*-2.7 Records and inspection

(a) Responsible persons shall maintain performance characteristic curves and weekly test results at the plant wherein the boiler is situated for a period of at least five years. Such reports shall be made available, upon request, for inspection by officials of the Board during normal business hours.

(b) Inspection by officials of the Board for the purpose of determining compliance with the provisions of this subchapter shall be made during normal business hours.

*[14A:3]**14:30*-2.8 Variance

If compliance with the provisions of this subchapter creates undue economic, environmental or technical hardship, a variance of the provisions of this subchapter may be requested from the Board.

*[14A:3]**14:30*-2.9 Failure to comply

Upon failure to comply with the provisions of this subchapter, the Board may seek an injunction against the user to prevent that user from operating a boiler in violation of this subchapter, pursuant to P.L. 1977, c.146, sec. 19.

*[14A:3]**14:30*-2.10 Certification of compliance

(a) The responsible person shall complete in accordance with instructions provided by the Board, and post in a prominent location near the boiler, a "Certificate of Boiler Compliance". The responsible person shall certify on the certificate that the boiler is in compliance with this subchapter. The certificate shall set forth all applicable variances and exemptions granted by the Board.

(b) The responsible person shall, within 30 days of the boiler's initial compliance and thereafter only upon request of the Board, submit to the Board in accordance with instructions provided by the Board a "Boiler Compliance Form."

(c) It shall be deemed a violation of this chapter for a responsible person to knowingly provide false, misleading or incomplete information on the "Certificate of Boiler Compliance" or "Boiler Compliance Form."

SUBCHAPTER 3. ANNUAL OIL FIRED HEATING UNIT MAINTENANCE STANDARDS

*[14A:3]**14:30*-3.1 Scope

The provisions of this subchapter shall apply to all oil-fired units on which maintenance is performed annually in residential premises, commercial premises and schools. Oil-fired units involving large boilers defined in and covered by N.J.A.C. *[14A:3]*(**14:30***-2 shall not be covered by this subchapter.

*[14A:3]**14:30*-3.2 Definitions

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

"Boiler" means a device designed to be the primary heating source for a structure which uses water or steam as the heat transfer medium.

"Flue gas analyzer" means a device used to extract a sample of flue gas and measure the percentage of carbon dioxide in the sample or the percentage of oxygen in the sample if the measuring device is do designed.

"Furnace" means a device designed to be the primary heating source for a structure which uses air as the heat transfer medium.

"Maintenance" means any inspection, cleaning, lubrication, adjustment, testing or replacement of parts of a unit or its controls. Maintenance shall not include emergency services.

"Responsible person" means any fuel oil supplier, heating contractor, or any person who provides maintenance on boilers or furnaces.

"Smoke scale" means a photometric scale to which the filter paper stained by the flue gas sample extracted by the smoke tester is compared to determine the smoke condition of the unit. A smoke scale shall be considered approved if it is constructed and operated in accordance with American Society for Testing Materials (ASTM) D 2156-80.

"Smoke tester" means a device used to extract a sample of flue gas. A smoke tester shall be considered approved if it is constructed and operated in accordance with ASTM D 2156-80.

"Steady-state condition" means equilibrium conditions as indicated by changes in the flue gas temperature of not more than plus or minus five degrees Fahrenheit obtained in two consecutive readings taken five minutes apart.

"Unit" means a boiler or furnace.

*[14A:3]**14:30*-3.3 Listing requirement

(a) The Board shall maintain a list of all responsible persons who offer maintenance service to customers.

(b) All responsible persons who offer maintenance shall furnish the following information to the Board annually by the 30th of June:

1. Name of corporation, partnership or individual and a primary contact;

2. Business address;

3. Business telephone number; and

4. Summary account information, as follows:

i. For fuel oil suppliers, the number of accounts by classification, that is, residential, industrial, and commercial (to include schools, hospitals and government building accounts), and the total number of accounts within each classification that receive maintenance from the fuel oil supplier; and

ii. For all others, the total number of service accounts by classification, that is, residential, industrial, and commercial (to include schools, hospitals and government building accounts).

*[14A:3]**14:30*-3.4 Standard

All responsible persons shall achieve a minimum permissible efficiency rating, as determined by N.J.A.C. *[14A:3]**14:30*-3.5, of 72 percent for all oil-fired units subject to the provisions of this subchapter.

*[14A:3]**14:30*-3.5 Test procedure

(a) The test procedure to determine compliance with N.J.A.C. *[14A:3]**14:30*-3.4 is as follows. The responsible person shall:

1. Initiate operation of unit and continue operation until unit reaches steady-state condition;

2. Upon attaining steady-state conditions, measure and record:

i. Unit intake air temperature (Ta), degree Fahrenheit;

ii. Stack gas temperature (Ts), degree Fahrenheit;

iii. Percentage of carbon dioxide or percentage of oxygen using a flue gas analyzer;

iv. Smoke number of the flue gas using an approved smoke scale; and

v. Draft measured in inches water gauge; and

3. Adjust the draft to meet manufacturer's specification, if required.

(b) The following calculations shall be used to determine the following efficiency rating:

1. Calculate the difference in temperature (T) between the stack gas temperature (Ts) obtained in (b)2 and the unit intake air temperature (Ta) obtained in (b) as T = (Ts–Ta);

2. Using a stack loss chart and the values obtained in (b)3, and (d)1, compute the stack loss percentage (% SL); and

3. Calculate the percent efficiency using the following: % efficiency = 100%–(%SL).

*[14A:3]**14:30*-3.6 Maintenance requirements

(a) All responsible persons shall maintain oil-fired units subject to the provisions of this subchapter annually to meet the requirement specified in N.J.A.C. *[14A:3]**14:30*-3.4.

1. All oil-fired units shall be adjusted to obtain optimum efficiency consistent with combustion characteristic indicated by a smoke number not in excess of number 1 smoke on an approved smoke scale;

2. Where the oil-fired unit cannot be maintained to meet the minimum efficiency rating as set forth in N.J.A.C. *[14A:3]**14:30* -3.4, the responsible person shall notify the owner of the premises that the unit cannot meet the efficiency rating recommended by the Board. A copy of the notice stating the efficiency rating achieved shall be kept on file at his or her place of business. Such notices shall be made available, upon request, for inspection by officials of the Board during normal business hours; and

3. The responsible person shall furnish the owner with conservation information pertaining to fuel savings of energy efficient units. Each responsible person, upon request, shall furnish the Board with a copy of the written material it provides the owner upon failure of the unit to meet the recommended efficiency rating.

*[14A:3]**14:30*-3.7 Failure to comply

Upon the failure of a responsible person to comply with the provisions of this subchapter, the Board may seek an injunction to prevent such party from offering maintenance service pursuant to P.L. 1977 c.146, sec. 19.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Routes U.S. 9 in Ocean County and N.J. 45 in Salem County

Adopted Amendments: N.J.A.C. 16:28-1.41 and 1.96

Proposed: December 3, 1990 at 22 N.J.R. 3617(a).
Adopted: January 3, 1991 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: January 24, 1991 as R.1991 d.77, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Effective Date: February 19, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.41 Route U.S. 9

(a) (No change.)

(b) The rate of speed designated for State highway Route U.S. 9, (excluding Garden State Parkway Authority sections) described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic.

1.-10. (No change.)

11. 45 miles per hour in Eagleswood Township, Ocean County to Route 72, Stafford Township (milepost 70.40); thence

i. 35 miles per hour school speed zone within the Eagleswood Township Elementary School zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours; thence

12.-32. (No change.)

16:28-1.96 Route 45

(a) The rate of speed designated for the certain parts of State highway Route 45 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-iii. (No change.)

iv. Zone four: 50 mph in Mannington Township, Salem County extending into Pilesgrove Township to Route U.S. 40 (milepost 8.8 thence

(1) 35 mph school speed zone within the Mannington Townshi School zone during recess when the presence of children is clearl visible from the roadway or while children are going to or leavin school, during opening or closing hours; thence

v.-xix. (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Routes N.J. 72 in Ocean County and U.S. 206 in Burlington County

Adopted Amendments: N.J.A.C. 16:28A-1.39 and 1.57

Proposed: December 3, 1990 at 22 N.J.R. 3617(b).
Adopted: January 3, 1991 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: January 24, 1991 as R.1991 d.76, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-138.1.

Effective Date: February 19, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.39 Route 72 and (Service Road, Old Route 72)

(a) The certain parts of State highway Route 72 and (Service Road, Old Route 72) described in the 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 in Stafford Township, Ocean County;

i. Along both sides:

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

3. For the entire length within the corporate limits of the Township of Stafford, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking areas.

ii. Along the northerly (westbound) side:

(1) (No change.)

16:28A-1.57 Route U.S. 206

(a) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as "no stopping or standing" zones.

1. (No change.)

2. No stopping or standing in Southampton Township, Burlington County:

i. Along both sides:

(1) From the junction of Route 70, at the traffic circle, to a point 1,200 feet north of, and a point 1,200 feet south of, the circle.

(2) Beginning 500 feet south of the southerly curb line of Retreat Road to a point 500 feet north of the northerly curb line of Vincetown-Buddtown Road.

(3) Beginning 200 feet south of the southerly curb line of Route N.J. 38 to a point 400 feet north of the northerly curb line of Route N.J. 38.

3. (No change.)

Recodify existing 7.-26. as 4.-23. (No change in text.)

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

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Public Employees' Retirement System
Retirement Credit; Back Pay Awards
Adopted Amendment: N.J.A.C. 17:2-6.6

Proposed: November 5, 1990, at 22 N.J.R. 3321(b).
Adopted: January 22, 1991 by the Public Employees' Retirement System, Janice Nelson, Secretary.
Filed: January 28, 1991 as R.1991 d.98, **without change.**

Authority: N.J.S.A. 43:15A-17 et seq.

Effective Date: February 19, 1991.
Expiration Date: November 8, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

17:2-6.6 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 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.

(b)

DIVISION OF PENSIONS

Police and Firemen's Retirement System
Retirement Credit: Back Pay Awards
Adopted Amendment: N.J.A.C. 17:4-6.6

Proposed: November 5, 1990, at 22 N.J.R. 3322(a).
Adopted: January 22, 1991 by the Police and Firemen's Retirement System, Janice Nelson, Secretary.
Filed: January 28, 1991 as R.1991 d.99, **without change.**

Authority: N.J.S.A. 43:16A-13(7).

Effective Date: . February 19, 1991.
Expiration Date: June 8, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

17:4-6.6 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.

TREASURY-TAXATION

(c)

DIVISION OF TAXATION

Insurance Premiums Surtax
Adopted New Rules: N.J.A.C. 18:21

Proposed: May 7, 1990 at 22 N.J.R. 1351(a).
Adopted: January 18, 1991 by Benjamin J. Redmond, Acting Director, Division of Taxation.
Filed: January 23, 1991 as R.1991 d.71, **with substantive and technical changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:33B-49a, 54:18A-1.2, 54:50-1.

Effective Date: February 19, 1991.
Expiration Date: February 19, 1996.

Summary of Public Comments and Agency Responses:
The Division received three comments on the proposal during the comment period.
COMMENT: The first commenter inquired initially whether or not the provisions of N.J.S.A. 54:18A-6 apply to the surtax.
RESPONSE: The Division's response was that, based upon the statutory language of N.J.S.A. 17:33B-49a, N.J.S.A. 54:18A-6 does not apply to the surtax.
COMMENT: Secondly, the commenter requested that the penalty and interest provisions of N.J.A.C. 18:21-1.5 respecting installments due June 1, 1990 and September 1, 1990 be deleted.
RESPONSE: The Division responded that it had little latitude to do so under the language of the statute. The statute itself imposed interest on the underpayments in question. N.J.S.A. 17:33B-49d. Further, the surtax is to be administered pursuant to the provisions of the State Tax Uniform Procedure Law. If a penalty were imposed in a particular instance under such law, abatement requests would be reviewed by Division auditors in accordance with established Division procedures.
COMMENT: A second commenter suggested that since many insurers may not be able to estimate a total year's premiums with 90 percent accuracy, a "safe haven" estimated payment should be established, and the letter suggested a 50 percent "safe haven" level.
RESPONSE: The Division explained that it is unable to follow this suggestion because it must deal within the parameters of the underlying statute. Section N.J.S.A. 54:33B-49c requires that each installment payment for 1990 be equal to 50 percent of the surtax due. In effect the 45 percent level contained in N.J.S.A. 54:33B-49d is the safe haven level set by the legislature, and the Division has no authority to change this level through regulations. It is important to note that N.J.A.C. 18:21-1.5(a) and (b) deal with installment payments due June 1, 1990 and September

1, 1990 only and that N.J.A.C. 18:21-1.5(c) deals with subsequent reports. For years 1991 and 1992 no safe haven is included or applicable in the statute or rules. This is because by March 1991 and thereafter the 50 percent payment may be made based upon the actual business done during the prior year, and the system in effect under the insurance premium tax law is utilized (see N.J.A.C. 18:21-1.2(b) and (c)).

COMMENT: Secondly, in conjunction with the safe haven proposal, the commenter proposes that special consideration be given to groups of affilated companies. Since premium writings may shift year to year among a group of affiliated insurers, in considering the penalty, the commenter stated that overpayment by one affiliated company could be allowed as an offset against underpayment of another affiliated company.

RESPONSE: The Division responded that the enabling legislation does not contain any provisions which would allow the netting of over and underpayments within an affiliated group and that since the rules are constrained by statutory language, the Division is not able to adopt the change proposed. For tax purposes each taxpayer is treated as an individual entity.

COMMENT: A third commenter objected to the adoption of rules because it claimed that the surtax is illegally and unconstitutionally imposed. It alleged a number of legal and constitutional defects in the surtax.

RESPONSE: The Division responded that the matters raised were for a court rather than an agency to decide and that without a final court order the Division was unable to recognize the validity of the objection.

COMMENT: Secondly, the commenter stated that the proposal should not be promulgated because the Social Impact statement was inaccurate. The statement provided that the law is intended to reduce insurance premiums, but the commenter claimed that since the Attorney General has avowed that the cost of the surtax may be included in the rate base, this would lead to rate increases.

RESPONSE: The Division responded that a social impact statement is an estimation of the agency making the statement, and the Division based its impact statement on the legislative intention and still believes the legislative intention is correct. Since there is as yet no final outcome to the litigation to which the commenter referred, the Division is constrained to adhere at this time to its expectation of the overall impact of the Fair Automobile Insurance Reform Act of 1990 and to adopt the rule in this light.

Summary of Changes Upon Adoption:

The rules as adopted contain one stylistic change and two clarifying changes not detrimental to the public. The clarification was believed helpful as the result of a comment from the public. Upon its own initiative subsequent to its response to the second commenter cited above, the Division codified N.J.A.C. 18:21-1.5(c) to 18:21-1.6 in order to highlight more clearly the applicable rule for subsequent periods.

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

CHAPTER 21
INSURANCE TAXES

SUBCHAPTER 1. PRIVATE PASSENGER AUTOMOBILE INSURANCE PREMIUM SURTAX

18:21-1.1 Insurance premium surtax

(a) Taxpayers under N.J.S.A. 54:18A-1 et seq. shall pay a surtax on all taxable private passenger automobile insurance premiums collected in New Jersey during calendar years 1990, 1991, 1992.

(b) Taxable private passenger automobile insurance premiums do not include premiums collected by the New Jersey Automobile Full Insurance Underwriting Association, N.J.S.A. 17:30E-4 and premiums collected by the Market Transition Facility created pursuant to N.J.S.A. 17:33B-11.

18:21-1.2 Installment payments

(a) Installment payments in 1990 shall be made as follows:

1. On or before June 1, 1990, taxpayers shall make an installment payment of the surtax and file a report prescribed by the Division of Taxation for that purpose. The payment shall be equal to one-half of the surtax estimated to be due for taxable premiums collected in New Jersey in 1990 calculated at a rate prescribed by the Director of the Division of Taxation for that payment.

2. On or before September 1, 1990, taxpayers shall make an installment payment of the surtax and file a report *[prepared] ***prescribed*** by the Division of Taxation for that purpose. The payment shall be equal to one-half of the surtax estimated to be due for taxable premiums collected in New Jersey in 1990 calculated at a rate prescribed by the Director of the Division of Taxation for that payment.

(b) Installment payments in 1991 shall be made as follows:

1. On or before March 1, 1991, taxpayers shall make a payment of surtax at a rate set by the Director in an amount of one-half of the surtax due and payable based on the taxpayer's business done during the preceding calendar year. Payment shall be shown on and accompany taxpayer's annual return for the preceding tax year or installment report, if any shall have been prescribed by the Director.

2. On or before June 1, 1991, taxpayers shall make a payment of surtax at a rate set by the Director in an amount of one-half of the surtax due and payable based on the taxpayer's business done during the preceding calendar year. Payment shall be shown on and accompany an installment report prescribed by the Director.

(c) Installment payments in 1992 shall be made as follows:

1. On or before March 1, 1992, taxpayers shall make a payment of surtax at a rate set by the Director in an amount of one-half of the surtax due and payable based on the taxpayer's business done during the preceding calendar year. Payment shall be shown on and accompany taxpayer's annual return for the preceding tax year or installment report, if any shall have been prescribed by the Director.

2. On or before June 1, 1992, taxpayers shall make a payment of surtax at a rate set by the Director in an amount of one-half of the surtax due and payable based on the taxpayer's business done during the preceding calendar year. Payment shall be shown on and accompany the installment report prescribed by the Director.

18:21-1.3 Annual returns filed

A tax return showing the surtax due shall be filed on or before March 1, 1991 showing the surtax due for 1990, March 1, 1992 showing the surtax due for 1991, and March 1, 1993 showing the surtax due for 1992.

18:21-1.4 Tax rate

The initial surtax rate for the installment payment due June 1, 1990 shall be five (5) percent. Thereafter, adjustments to the rate of the surtax may be made by the Director pursuant to N.J.S.A. 17:33B-50.

18:21-1.5 Penalty ***and interest*** for underpayment of installment payments due June 1, 1990 and September 1, 1990 *[and thereafter]*

(a) The amount of an underpayment ***for installment payments due June 1, 1990 and September 1, 1990*** shall be the excess of the amount of the installment payment which would be required to be paid if the installment payment were equal to 45 percent of the surtax which would be shown on the return for the year if the surtax rate at the time of the payment were imposed for the entire year or, if no return was filed, 45 percent of the surtax for that year over the amount, if any, of the installment payment paid on or before the last date prescribed for payment.

(b) Interest and penalty on ***such*** underpayments are calculated pursuant to the terms of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., including without limitation thereto N.J.S.A. 54:49-3 and 4.

[(c) For subsequent installment payments, reports, and annual returns and payments, the penalty and interest provisions in the State Tax Uniform Procedure Law shall apply.]

***18:21-1.6 Penalty and interest—general provision; subsequent years**

For installment payments, reports, and annual returns and payments due subsequent to those payments referred to in N.J.A.C. 18:21-1.5, the penalty and interest provisions in the State Tax Uniform Procedure Law shall apply.*

(a)

DIVISION OF TAXATION
Public Utility Corporations
Definitions
Adopted Amendment: N.J.A.C. 18:22-1.3

Proposed: August 6, 1991 at 22 N.J.R. 2249(a).
Adopted: January 22, 1991 by Benjamin J. Redmond, Acting Director, Division of Taxation.
Filed: January 23, 1991 as R.1991 d.70, **without change.**

Authority: N.J.S.A. 54:50-1.

Effective Date: February 19, 1991.
Expiration Date: February 24, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: The Division received several letters from public utilities and professional societies such as the New Jersey Society of CPA's and the New Jersey Utilities Association. The correspondents argued that the proposal misinterpreted the legislative intent of the statute by expanding the definition of public property for purposes of the calculation of the franchise tax paid by the State's utility industry to include areas such as access roads and cul-de-sacs.

RESPONSE: The Division responded that its interpretation was supported by the broad wording of the statute and the judicial interpretation in the case of *Cedar Glen Lakes Water Co. v. Taxation Div. Director,* 7 N.J. Tax 233 (1985), which held that an area could be considered "public" if the public had unrestricted access to it.

COMMENT: Several correspondents recommended the inclusion of an effective date in the rule to prevent retroactive application of the rule.

RESPONSE: The Division responded that to include an effective date in the rule itself was unnecessary.

COMMENT: The Division received a letter suggesting that the proposed change would represent a "taking" of property in violation of the Fifth Amendment to the U.S. Constitution.

RESPONSE: The Division replied that the proposal defined "public place" to clarify when utility lines are in public areas for purposes of calculating the tax on public utilities and therefore the proposal would not be seen as a "taking" in the sense contemplated by the Fifth Amendment.

COMMENT: Some correspondents argued either that the Division lacked authority to adopt the proposal or that the proposal was procedurally defective.

RESPONSE: The Division responded that the amendment was proposed in compliance with the procedures under the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and Rules for Agency Rulemaking, N.J.A.C. 1:30, as interpreted by the Office of Administrtative Law, that the proposal came within the guidelines for agency rulemaking authority expressed by the new Jersey Superior Court in *Metromedia, Inc. v. Director, Div. of Taxation,* 97 N.J. 313 (1984), and that the proposal fell within the Division's authority under N.J.S.A. 54:50-1.

COMMENT: A couple of correspondents suggested that the proposal discriminated against investor-owned utilities as opposed to government-owned systems.

RESPONSE: The Division's response pointed out that the statute itself only applied to public utilities, so that any rule promulgated under the statute would by definition only apply to such systems.

Full text of the adoption follows.

18:22-1.3 Definitions

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

. . .

"Public street, highway, road or other public place" means any street, highway, road or other public place which is open and used by the public, even though the same has not been formally accepted as a public street, highway, road or other public place and includes without limitation dead end streets, cul-de-sacs, alleys, water or riparian ways, and non-restricted roadways, such as extended residential, commercial or recreational facility driveways, or dead end streets, cul-de-sacs or alleys which are connected to public roadways and are for access to or the use of supermarkets, shopping malls, planned communities (such as apartment complexes and condominium developments), commercial enterprises, and recreation facilities (such as marinas, golf clubs, drag strips, etc.) and the connecting roads within or around the above facilities whether these roadways shall be located on public or on private property. The term "public street, highway, road or other public place" shall not include restricted residential communities that control, by way of a permanently manned gate, access to or through said community.

. . .

(b)

DIVISION OF TAXATION
Luxury Tax
Adopted New Rules: N.J.A.C. 18:25

Proposed: November 5, 1990, at 22 N.J.R. 3323(a).
Adopted: January 16, 1991 by Benjamin J. Redmond, Acting Director, Division of Taxation.
Filed: January 16, 1991 as R.1991, d.62, **without change.**

Authority: N.J.S.A. 54:32B-1, et seq., specifically 54:32B-24

Effective Date: February 19, 1991.
Expiration Date: February 19, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Because this chapter expired on January 6, 1991, pursuant to Executive Order No. 66(1978), the rules herein are adopted as new rules in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the rules proposed for readoption, adopted herein as new rules, can be found in the New Jersey Administrative Code at N.J.A.C. 18:25.

Full text of the amendments to the adopted new rules follows.

18:25-1.2 Definitions

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

. . .

"Purchaser" means any person purchasing or hiring property or services from another person, the receipts from which are taxable.

"Retail sale" or "sale at retail" means and includes:

1. Any sale in the ordinary course of business for consumption of whiskey, beer or other alcoholic beverages by the drink in restaurants, cafes, bars, hotels and other similar establishments;

2. Any cover charge, minimum charge, entertainment, or other similar charge made to any patron of any restaurant, cafe, bar, hotel or other similar establishment;

3. The hiring, with or without service, of any room in a hotel, inn, rooming or boarding house;

4. The hiring of any rolling chair, beach chair or cabana; and

5. The granting or sale of any ticket, license or permit for admission to any theatre, moving picture exhibition or show, pier, exhibition, or place of amusement, except charges for admission to boxing, wrestling, kick boxing or combative sports events, matches, or exhibitions, which charges are taxed pursuant to section 20 of P.L. 1985, c.83 (N.J.S.A. 5:2A-20).

. . .

"Vendor" means any person selling or hiring property or services to another person upon the receipts from which a tax is imposed.

18:25-1.4 Imposition of luxury tax

A luxury tax is imposed by Atlantic City upon retail sales, or sales at retail within the territorial limits of the City of Atlantic City.

18:25-1.5 Tax rates

(a) Luxury tax is imposed at a rate of nine percent except for sales of alcoholic beverages which are taxed at a rate of three percent.

(b) The combined rate for sales subject to both the Atlantic City luxury tax and New Jersey sales and use tax is 13 percent (luxury tax at nine percent and sales tax at four percent).

(c) Sales subject only to New Jersey sales and use tax are taxable at a rate of seven percent.

(d) Sales of alcoholic beverages by the drink in Atlantic City are taxable at the combined rate of 10 percent (luxury tax at three percent and sales tax at seven percent). Sales of package goods are subject only to New Jersey sales and use tax at the rate of seven percent.

18:25-2.3 Tax rates for room and apartment rentals

Luxury tax shall be imposed on the rental of a room or rooms and apartments at a rate of nine percent.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Legal Assistance for Medicare Patients (LAMP) Extension of Eligible Services

Adopted Amendment: N.J.A.C. 10:13-2.2

Proposed: August 6, 1990 at 22 N.J.R. 2216(a).

Adopted: January 25, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: January 25, 1991 as R.1991 d.86, **without change.**

Authority: N.J.S.A. 30:4H-1 et seq., specifically 30:4H-4.

Effective Date: February 19, 1991.

Expiration Date: July 18, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:13-2.2 Eligible services

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

(c) In the third contract year, LAMP program legal services will expand to cover all Medicare services, including, but not limited to, acute care hospital services, out-patient services, physician services, durable medical equipment, and some ambulance transportation services while continuing home health care, skilled nursing facility and rehabilitation hospital appeals.

(d) (No change.)

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Home Care Services Manual
General Provisions, Covered Services, Waivered Programs, Home Care Expansion Program (HCEP), HCPCS Procedure Coding System

Adopted Repeal and New Rules: N.J.A.C. 10:60

Proposed: October 1, 1990 at 22 N.J.R. 3116(a).

Adopted: January 16, 1991, by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: January 17, 1991, as R.1991 d.65, **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. 30:4D-6b(2), 7, 7a, b and c; 30:4D-12, 30:4E; 42 CFR 440.70, 170.

Agency Control Number: 90-A-14.

Effective Date: February 19, 1991.

Operative Date: March 1, 1991.

Expiration Date: February 19, 1996.

Summary of Public Comments and Agency Responses:

Comments have been received from four sources, of which two are home care agency associations and two are home care agencies.

Commenters noted two reimbursement issues.The first reimbursement related concern evoked a change in the Home Care Manual. This was a request for publication of the reimbursement methodology for home health services in the general Medicaid portion of the manual. Although eligibility and reimbursement provisions for the Community Care Program for the Elderly and Disabled (C.C.P.E.D.), the AIDS Community Care Alternatives Program (A.C.C.A.P.), and the other Waiver programs had been clearly set forth, the reimbursement methodology for the basic home health program had not been similarly described. Accordingly language is being added at N.J.A.C. 10:60-2.1(e) to reflect current reimbursement methodology, as based on the existing Title XIX State Plan. This methodology represents long-standing Medicaid policy which has been approved by the Federal Department of Health and Human Services as part of New Jersey's Title XIX (Medicaid) State Plan. The commenters requested publication of this methodology. This is a substantive change not requiring additional public notice and comment because the text does not enlarge or curtail the impact on providers governed by this reimbursement methodology.

The commenters' second concern about reimbursement pertained to the actual supervisory visit by registered professional nurses for personal care assistant services. The commenters requested that the Division establish a separate fee or payment for the nurse-supervisory visit that is required every 60 days. The agency's response is that supervisory visits are included in the home health agency's overall rate. There is no plan to change the reimbursement methodology for personal care assistant services at this time. It should be noted that nurse supervision is a federal requirement for personal care assistant services pursuant to 42 CFR 440.170(f)(2).

Among other concerns expressed by commenter was the frequency of nursing supervision visits for home health services which was redefined from 60 days to two months to conform to Federal Medicare regulations.

Several commenters wanted clarification of professional roles and responsibilities. In response, the Division is adding language to specify more clearly the Division requirements that agencies and staff must be qualified. In addition, certain responsibilities are defined as either nursing or homemaker/aide duties, and summarized below. No new requirements are added; for example, homemaker agencies are accredited by either the Commission on Accreditation for Home Care, Inc., or by the National HomeCaring Council. Language reinforcing this requirment was added upon request by the industry at adoption. There is no new burden upon providers, because it has been Division policy to require accreditation.

Summary of Changes Between Proposal and Adoption

Two commenters requested that the word "accredited" be added to "homemaker agency" to reinforce that this is a requirement for participation in the N.J. Medicaid Program. Accordingly, in N.J.A.C. 10:60-1.1(a), "accredited" is being added. An additional concern relating to credentials lies in the requirement that a copy of the aide's certificate be placed in the personnel file; N.J.A.C. 10:60-1.2 has been modified to permit "other documentation acceptable to the Division" to be retained in the personnel file.

In respect to definition of services, a commenter noted that the manual lacks a clear statement of eligibility: a citation to the definition of eligibility has been added at N.J.A.C. 10:60-1.1(b)1, "see N.J.A.C. 10:49-1 for definition of Medicaid recipient." In connection with acute home health care, a commenter requested that the eligible period be described as "two months" rather than "60 days"; the manual has been changed to reflect this request at N.J.A.C. 10:60-1.2. (Reference is made to the definition "level of care, Acute home health care.") The third concern relating to the definition of services was a commenter's request that the section of subchapter 5 describing the HCPCS procedure codes related to the ACCAP Program be clarified; expanded narratives which explain the types of providers qualified to render these services have been added to N.J.A.C. 10:60-5 for clarification purposes. The limitations for procedure codes Z1830 to Z1835 pertain specifically to services provided by narcotic and drug abuse treatment centers. The claim processing system does not accept these procedure codes unless they are billed by narcotic and drug treatment centers. This additional language does not enlarge or curtail the burden on either the recipient or the provider. There are other HCPCS codes that are used by independent clinics and/or individual practitioners when they treat Medicaid recipients.

In addition, procedure codes Z1850, Z1852, Z1853 apply to a specific situation in which a Medicaid recipient is treated in a specialized foster

are home under the supervision of DYFS. The recipients are children iagnosed as having AIDS (Acquired Immune Deficiency Syndrome), ARC (AIDS Related Complex), or are HIV-positive. The regimen for hildren with these diagnoses and the foster caregivers who render this are require this specific set of HCPCS procedure codes, which are related o reimbursement for specialized foster care services. These services are ot currently being provided by home health agencies and the additional anguage merely indicates current policy which allows only the specialized oster care homes to bill for these services. There is no enlargement or urtailment of either services to the recipients or payment to the providers nvolved.

A third area of commenter's concern lies in the area of regulating staff, rimarily in specifying whether certain responsibilities pertain to the rofessional nurse or to the home health aide. Emphasis on the responsiility of the physician and the nurse in directing the homemaker-home ealth aide has been added by inserting "professional" in connection with he plan of care. The word "professional" was inserted to clearly indicate hat it is the professional plan of care being implemented. A commenter equested clarification as to who was being supervised at N.J.A.C. 0:60-2.1(d)1ii. Accordingly, the insertion of "homemaker-home health ide" clarifies that it is the aide who is being supervised. Another comnenter asked that certain services be specified as professional nurse esponsibilities; the list of the four suggested services has been inserted t N.J.A.C. 10:60-2.1(d)5vi, with subsequent subsections renumbered acordingly: these services include the care of wounds and decubitus ulcers, nterostomal care and management, administration of parenteral medi:ation and care of indwelling catheters. The additional language re-ognizes nursing services currently being performed and does not curtail or enlarge the burden on the provider.

A commenter was concerned that a statement of standards of per'ormance which is intended to establish stability in the recipient's health :are might limit the agency in its assignments of the aides. However, the Division feels strongly that consistency in the assignment of aides is mportant to continuity of care. Exceptions to this can be documented 'or review by Medicaid staff. A commenter found a reference at N.J.A.C. 10:60-2.4(b)3iv for physical therapy to be unclear; the citation has been :orrected, and the phrase "in this manual" has been added. The Division, on its own initiative, added some clarifying language regarding occupaional therapy services indicating they include activities of daily living, adaptive equipment, and homemaking task-oriented therapeutic activities. (See N.J.A.C. 10:60-2.1(d)8ii(3)(E).

At the time of publishing these proposed new rules, the then-current billing subchapter was included as subchapter 6. References to prior authorization of Home Care services remained in the subchapter, although, for the most part, they are being eliminated from home care services. Accordingly, references to prior authorization are being deleted at N.J.A.C. 10:60-1(d)1,2,3, and 4. Similarly, at N.J.A.C. 10:60-6.1(d)2, the statement defining the applicability of Form FD-139 (Request for Prior Authorization) is being deleted, and subsequent paragraphs are renumbered accordingly. A further change to subchapter 6 at N.J.A.C. 10:60-6.1(a) replaces "Medicaid-eligible individual" by "Medicaid recipient." The term "recipient" reflects the statutory language in N.J.S.A. 30:4D-3. A recipient is someone who is a qualified applicant under one of the enumerated categories listed in N.J.S.A. 30:4D-3i. There is no change in the substantive qualifications in Medicaid eligibility.

At N.J.A.C. 10:60-6.1(b) and (c), "CCPED" and "HCEP" are being excerpted from subsection (b) and added to subsection (c) in order to group appropriately the instructions for submission of forms with the programs for which they are used. As revised at N.J.A.C. 10:60-6.1(b) and (c), the forms currently in use are correctly matched with appropriate programs.

Some commenters requested clarifying language at several locations. The following is a synopsis of the agency's technical changes made in response to these comments. At N.J.A.C. 10:60-2.3(b)4iv the word "when" was inserted (and other language deleted) in the specification of "A plan describing social services when provided by the social worker. . . .". The deletion, at N.J.A.C. 10:60-2.3(b)5, of the word "Federal," and replacement by "following", to read "The following requirements . . . ." to indicate that the requirements are contained in this rule, not in Federal regulations. The replacement at N.J.A.C. 10:60-2.3(b)5iii of "progress note" by "clinical note" to eliminate confusion, are being eliminated from home care services. Accordingly, references to prior authorization are being deleted at N.J.A.C. 10:60-6.1(d)1,2,3, and 4. Similarly, at N.J.A.C. 10:60-6.1(d)2, the statement defining the applicability of Form FD-139 (Request for Authorization) is being deleted, and subsequent paragraphs are renumbered accordingly. A further change to subchapter 6 at N.J.A.C. 10:60-6.1(a) replaces "Medicaid-eligible individual" by "Medicaid recipient," as a matter of usage rather than of substance. At N.J.A.C. 10:60-6.1(b) and (c), "CCPED" and "HCEP" are being excerpted from subsection (b) and added to subsection (c) in order to group appropriately the instructions for submission of forms with the programs for which they are used. As revised at N.J.A.C. 10:60-6.1(b) and (c), the forms currently in use are correctly matched with appropriate programs.

Other comments have shown a need for clarifying language at several locations, as noted. At N.J.A.C. 10:60-2.3(b)4iv, the word "when" was inserted (and other language deleted) in the specification of "A plan describing social services when provided by the social worker . . . .". The deletion, at N.J.A.C. 10:60-2.3(b)5, of the word "Federal," and replacement by "following," to read "The following requirements . . . ." to indicate that the requirements are contained in this rule, not in Federal regulations. The replacement at N.J.A.C. 10:60-2.3(b)5iii of "progress note" by "clinical note" to eliminate confusion, since the two terms are synonymous as used within this manual. The insertion of the word "and" at N.J.A.C. 10:60-2.4(b)1 modifies the statement to read "services and visits shall be based on a comprehensive assessment . . . and shall be provided as designated . . . ." In the definition of the Health Services Delivery Plan, HSDP, material had been inadvertently omitted from the proposal; the reinserted text since the two terms are synonymous as used within this manual. The insertion of the word "and" at N.J.A.C. 10:60-2.4(b)1 modifies the statement to read "services and visits shall be based on a comprehensive assessment . . . and shall be provided as designated . . . ." In the definition of the Health Services Delivery Plan, HSDP, material had been inadvertently omitted from the proposal; the reinserted text can be found at N.J.A.C. 10:60-1.2. This language that was inserted is basically the same as the definition in the Long Term Care Services Manual, N.J.A.C. 10:63, the text of which was adopted at 22 N.J.R. 2588(a), 2590, column 2, Definitions. In addition, the HSDP is a document completed by Medicaid, not the provider. These additions have been necessary to inform providers accurately in their rendering of Medicaid Home Care services.

The Division, on its own initiative, added the word "appropriateness" to N.J.A.C. 10:60-2.4(a)1. This term means that the Medicaid District Office professional staff reviews the services rendered to ensure that they meet the needs of the client.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 60
HOME CARE SERVICES MANUAL

SUBCHAPTER 1. GENERAL PROVISIONS

10:60-1.1 Scope

(a) The Home Care Services Manual includes home health care services provided by a certified licensed home health agency and personal care assistant services provided by both a certified licensed home health agency and *[a]* ***an accredited*** homemaker agency (proprietary and voluntary non-profit). The manual also describes the Medicaid Home and Community-based Services Programs and the State *[only]* ***funded*** Home Care Expansion Program (HCEP).

(b) Home health agencies (certified licensed) shall provide nursing services and homemaker-home health aide services. Certain medical supplies shall be provided by the agency. Medical equipment and appliances shall be arranged for by the agency. Additional services may include physical therapy, occupational therapy, speech-language pathology services, medical social services, nutritional services, personal care assistant services, and other health care related services.

1. Medicaid reimbursement is available for these services when provided to Medicaid recipients ***(see N.J.A.C. 10:49-1, Administration, for definition of Medicaid recipient)*** in their places of residence, such as a private home, residential hotel, residential health care facility, rooming house and boarding home, but not in a hospital or nursing facility.

i. In residential health care facilities, homemaker-home health aide or personal care assistant services are excluded from Medicaid coverage.

2. Home health services are provided or arranged by participating home health agencies based on the plan of care. All component services include instruction of the recipient, the family, and/or interested persons toward the recipient's ultimate degree of self-care and independence, supportive care and maintenance. Supplementation of home health care may be necessary from a variety of other available community services in order to maintain the recipient in the home environment.

3. The provision of home health services can range from a complex concentrated professional program (for acute care cases) which could require the services of a public health nurse, registered professional nurse, a licensed practical nurse, physical therapist, occupational therapist, speech-language pathologist, social worker, and homemaker-home health aide, to a less complex program (as in chronic care cases) involving a homemaker-home health aide, personal care assistant and/or therapist and minimal visits by a registered nurse. The types of services provided, the frequency and the duration of these services are determined by the needs of each recipient. Only medically necessary home health services are reimbursed by the Division.

(c) Homemaker (proprietary and voluntary non-profit) agencies shall be approved to provide personal care assistant services, the initial nursing assessment visit and the personal care assistant nursing reassessment visit only, as outlined in N.J.A.C. 10:60-2.2.

(d) Medicaid district office staff periodically and on an on-going basis shall perform case management and conduct post-payment quality assurance reviews to evaluate the appropriateness and quality of home care services provided by a homemaker and a home health agency by telephone contacts and home visits to recipients and their caregivers. The findings from these quality assurance contacts shall be communicated to the provider and may result in an increase, reduction or termination of services.

10:60-1.2 Definitions

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

"Case management" means the process as conducted by the Medicaid District Office staff for Medicaid recipients other than those under the "waiver" program. Case management is defined as the process of on-going monitoring by the Medicaid district office staff, of the delivery and quality of services as well as the recipient/caregiver's satisfaction with the services. Case management ensures timely and appropriate provider responses to changes in care needs and assures delivery of coordinated services which promote maximum restoration and prevent unncesssary deterioration.

"Dietitian" means a person who is a graduate of an accredited college or university with courses meeting the academic standards of the American Dietetic Association, plus a dietetic internship or dietetic traineeship or master's degree plus six months experience. A registered dietitian is one who has met current requirements for registration.

"Discharge planning" means that component part of a total individualized plan of care formulated by all members of the agency's health care team, together with the recipient and/or his or her family or interested person which anticipates the health care needs of the recipient in order to provide for continuity of care after the services of the home care agency have terminated. Such planning aims to provide humane and psychological preparation to enable the recipient to adjust to his changing needs and circumstances.

"Health services delivery plan (HSDP)" means an initial plan of care prepared by the Division's Regional Staff Nurse (RSN) during the preadmission screening (PAS) assessment process. The HSDP *[shall reflect]* ***reflects*** individual problems and required care needs. ***The HSDP is to be forwarded to the authorized care setting and is to be attached to the recipient's medical record upon admission to a nursing facility or when the recipient receives services from home care agencies. The HSDP may be updated as required to reflect changes in the recipient's condition.***

"Home health agency" means a public or private agency or organization, either proprietary or non-profit, or a subdivision of such an agency or organization, which qualifies as follows:

1. Is approved by the New Jersey State Department of Healt including requirements for Certificate of Need and licensure wh applicable;

2. Is certified as a home health agency under Title XVIII (Mec care) Program; and

3. Is approved for participation as a home health agency provid by the Division of Medical Assistance and Health Services.

"Homemaker agency" means a proprietary or voluntary no profit agency approved by the Department of Human Service Division of Medical Assistance and Health Services to provide Pe sonal Care Assistant Services, and homemaker services under t Community Care Program for the Elderly and Disabled (CCPEI and the Home Care Expansion Program (HCEP).

The following conditions shall be met:

1. The agency shall be accredited, initially and on an on-goir basis, by either the Commission on Accreditation for Home Ca Inc., or the National HomeCaring Council, a Division of the Fou dation for Hospice and Homecare.

"Homemaker-home health aide" means a person who:

1. Successfully *[completed]* ***completes*** a training program i personal care services and is certified by the New Jersey State Depar ment of Law and Public Safety, Board of Nursing, as a homemake home health aide. A copy of the certificate *[or other documenta tion]* issued by the New Jersey Department of Law and Publ Safety, Board of Nursing ***or other documentation acceptable to t Division*** is retained in the personnel file;

2. Successfully completes a minimum of 12 hours in-service educa tion per year offered by the agency; and

3. Is supervised by a registered professional nurse of a Medica approved home health provider agency.

"Hospice agency" means a Medicare certified hospice approve by the Department of Human Services, Division of Medical A sistance and Health Services to provide hospice services under th AIDS Community Care Alternatives Program. (N.J.A.C. 10:60-3.1

"Hospice service" means service provided by a Medicaid approve hospice agency to recipients enrolled in the AIDS Community Ca Alternatives Program (ACCAP) who are certified by an attendin physician as terminally ill, with a life expectancy of up to six month Services are available on a daily 24-hour basis as needed within a individualized plan of care.

"Levels of care" means two levels of home health care service acute and chronic, provided by a certified, licensed home healt agency, as needed, to Medicaid recipients, upon request of the attenc ing physician.

1. "Acute home health care" is a concentrated and/or comple professional and non-professional service on a continuing basis wher there is anticipated change in condition and services required. Acut home health care services may be provided for periods up to *[6 days]* ***two months***.

2. "Chronic home health care" is either a long or short-terr uncomplicated*,* professional and non-professional care*,* wher there is no anticipated change in condition and services require Chronic home health care services may be provided for periods c up to six months.

"Licensed practical nurse" means a person who is licensed by th State of New Jersey as a practical nurse, pursuant to N.J.S.A 45:11-27 et seq., having completed formal accredited nursing educa tion programs.

"Medicaid district office" means one of the Division's county based offices located throughout the State which, for purposes of thi manual, administers a home care quality assuance program throug its case management staff via a post-payment review.

"Nutritionist" means a person who has graduated from an ac credited college or university, with a major in foods or nutrition o the equivalent course work for a major in the subject area, and tw years of full-time professional experience in nutrition. Successfu completion of a dietetic internship of traineeship in hospital or com munity nutrition approved by the American Dietetic Association, o completion of a master's degree in the subject area may be substitute for the two years of full-time experience.

"Occupational therapist" means a person, who is registered by the merican Occuaptional Therapy Association, or a graduate of a ·ogram in occupational therapy approved by the Council on Medi-.l Education of the American Medical Association and engaged in e supplemental clinical experience required before registration by e American Occupational Therapy Association. If treatment and/ · services are provided in a state other than New Jersey, the occupa-ɔnal therapist shall meet the practice requirements of that state cluding licensure, if applicable*,* and shall also meet all applicable deral requirements.

"Performance standards" for the purpose of this manual means .e criteria established by this Division in order to measure the recipeint/caregiver's]* ***recipient/caregiver's*** satisfaction with the ıality, quantity and appropriateness of the services delivered.

"Personal care assistant" means a person who:

1. Successfully completed personal care services training and is ɔrtified by the New Jersey State Department of Law and Public ıfety, Board of Nursing, as a homemaker-home health aide. A copy ' the certificate or other documentation issued by the New Jersey epartment of Law and Public Safety, Board of Nursing is retained . the personnel file;

2. Successfully completes a minimum of 12 hours in-service educa-on per year offered by the agency; and

3. Is supervised by a registered professional nurse of a Medicaid ɔproved homemaker/personal care assistant provider agency.

"Personal care assistant services" means health related tasks per-ɔrmed by a qualified individual in a recipient's home, under the ıpervision of a registered professional nurse, as certified by a phys-ian in accordance with a *[recipeint's]* ***recipient's*** written plan f care.

"Physical therapist" means a person who is a graduate of a pro-ram of physical therapy approved by both the Council on Medical ducation of the American Medical Association and the American hysical Therapy Association or its equivalent; and

1. If practicing in the State of New Jersey, is licensed by the State f New Jersey; or

2. If treatment and/or services are provided in a state other than lew Jersey, meets the requirements of that state, including licensure, ' applicable. The practitioner shall also meet all applicable Federal ɛquirements.

"Plan of care" means the individualized and documented program f health care services provided by all members of the home health r homemaker agency involved in the delivery of home care services ɔ a recipient. The plan includes short***-term*** and long-term goals ɔr rehabilitation, restoration or maintenance made in cooperation /ith the recipient and/or responsible family member or interested erson. Appropriate instruction of recipient, and/or the family or ıterested person as well as a plan for discharge are also essential omponents of the treatment plan. The plan shall be reviewed per-ɔdically and revised appropriately according to the observed changes ɔ the recipient's condition.

"Preadmission screening (PAS)" means that process by which all ligible Medicaid recipients and individuals who may become Medi-aid eligible within six months following admission to a Medicaid ertified nursing facility, who are seeking admission to a Medicaid ertified nursing facility receive permission screening by the Medicaid)istrict Office to determine appropriate placement prior to ad-ıission to a nursing facility as pursuant to N.J.S.A. 30:4D-17.10 P.L. 1988, c.97).

"Prior authorization" means the process of approval by the MDO ırior to the provision of services. In the context of the home care ıanual, prior authorization may be applied in situations of con-inued non-compliance with program requirements.

"Private duty nursing" means individual and continuous nursing are, as different from part-time or intermittent care, provided by icensed nurses in the home to recipients under Model Waiver III ınd the AIDS Community Care Alternatives Program.

"Private duty nursing agency" means a licensed home health agen-·y, voluntary non-profit homemaker agency, private employment ıgency and temporary-help service agency approved to priovide pri-·ate duty nursing services under Model Waiver III and the AIDS Community Care Alternatives Program (ACCAP). The private duty nursing agency shall have been in operation and actively engaged in home care services in New Jersey for a period of not less than one year prior to application.

"Public health nurse" means a person licensed as a registered professional nurse, who has completed a baccalaureate degree program approved by the National League for Nursing for public health preparation, or post-baccalaureate study which includes content approved by the National League for Nursing for public health nursing preparation.

"Quality assurance", for the purpose of this manual, means a system by which the Medicaid District Office staff shall conduct post-payment reviews to determine the recipient/caregiver's satisfaction with the quality, quantity and appropriateness of home care services provided to Medicaid recipients.

"Registered professional nurse" means a person who is licensed by the State of New Jersey as a registered professional nurse, pursuant to N.J.S.A. 45:11-26 et seq.

"Social worker" means a person who has a master's degree from a graduate school of social work accredited by the Council on Social Work Education, and has one year of post-masters social work experience in a health care setting.

"Social work assistant" means a person who has a baccalaureate degree in social work, or psychology, or sociology or other field related to social work and has had at least one year of social work experience in a health care setting.

"Speech-language pathologist" means a person who has a certificate of clinical competence from the American Speech-Language-Hearing Association; has completed the equivalent education requirements and work experience necessary for the certificate, or has completed the academic program and is acquiring supervised work experience to qualify for the certificate; and

1. If practicing in the State of New Jersey, is licensed by the State of New Jersey; or

2. If treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable. The practitioner shall also meet all applicable Federal requirements.

SUBCHAPTER 2. COVERED HOME SERVICES (HOME HEALTH CARE SERVICES AND PERSONAL CARE ASSISTANT SERVICES)

10:60-2.1 Home health care services

(a) Home health care services covered by the New Jersey Medicaid Program are limited to those services provided directly by a home health agency approved to participate in the New Jersey Medicaid Program or through arrangement of that agency for other services.

(b) Covered home health care services are those provided according to medical, nursing and other health care related needs as documented in the individual plan of care on the basis of medical necessity and on the goals to be achieved and/or maintained.

(c) Home health care services shall be directed toward rehabilitation and/or restoration of the recipient to the optimal level of physical and/or mental functioning, self-care and independence, or directed toward maintaining the present level of functioning and preventing further deterioration, or directed toward providing supportive care in declining health situations.

(d) The types of home health agency services covered include professional nursing by a public health nurse, registered professional nurse, or licensed practical nurse, homemaker-home health aid services; physical, occupational or speech-language pathology services; medical social services; nutritional services; certain medical supplies; durable medical equipment; and personal care assistant services. Currently, private duty nursing services are not a covered service under the New Jersey Medicaid Program except in Model Waiver III and AIDS Community Care Alternatives Program (ACCAP).

1. Homemaker-home health aide services are performed by a New Jersey certified homemaker-home health aide under the direction and supervision of a registered professional nurse. Services include personal care, health related tasks and household duties. In all areas of service, the homemaker-home health aide shall encourage the well

members of the family, if any, to carry their share of responsibility for the care of the recipient as per the written established ***professional*** plan of care.

i. Household duties are covered only when combined with personal care and other health services provided by the home health agency. Household duties can include such services as the care of the recipient's room, personal laundry, shopping, meal planning and preparation. In contrast, personal care services can include assisting the recipient with grooming, bathing, toileting, eating, dressing, and ambulation. The determining factor for the provision of household duties shall be the degree of functional disability of the recipient as well as the need for physician prescribed personal care and other health services, and not solely the recipient's medical diagnosis.

ii. The registered professional nurse, in accordance with the physician's plan of care, prepares written instructions for the homemaker-home health aide to include the amount and kind of supervision needed ***of the homemaker-home health aide***, the specific needs of the recipient and the resources of the recipient, the family, and other interested persons. Supervision of the homemaker-home health aide in *[thee]* ***the*** home shall be provided by the registered professional nurse or appropriate professional staff member at a minimum of one visit every two weeks when in conjunction with skilled nursing, physical or occupational therapy or speech-language pathology services. In all other situations, supervision shall be provided at the frequency of one visit every 30 days. Supervision may be provided up to one visit every *[60 days]* ***two months*** with written justification in the agency's records.

iii. The registered professional nurse, and other professional staff members, shall make visits to the recipient's residence to observe, supervise and assist, when the homemaker-home health aide is present or when the aide is absent, to assess relationships and determine whether goals are being met.

2. Medical equipment is an item, article or apparatus which is used to serve a medical purpose, is not useful to a person in the absence of disease, illness or injury and is capable of withstanding repeated use (durable). When durable medical equipment is essential in enabling the home health agency to carry out the plan of care for a recipient, a request for authorization for the equipment must be made by an approved medical supplier. The authorization, which is requested of the Medicaid District Office, requires a personally signed, legible prescription from the attending physician. Durable medical equipment either rented or owned by the home health agency cannot be billed to the New Jersey Medicaid Program (see Medical Supplier Manual, N.J.A.C. 10:59-1.5 and 1.7).

3. When the agency provides or arranges for medical social services, the services shall be provided by a social worker, or by a social work assistant under the supervision of a social worker. These shall include, but not be limited to, the following:

i. Identifying the significant social and psychological factors related to the health problems of the recipient and reporting any changes to the home health agency;

ii. Participating in the development of the plan of care, including discharge planning, with other members of the home health agency;

iii. Counseling the recipient and family/interested persons in understanding and accepting the recipient's health care needs, especially the emotional implications of the illness;

iv. Coordinating the utilization of appropriate supportive community resources, including the provision of information and referral services; and

v. Preparing psychosocial histories, ***and*** clinical *[and progress]* notes.

4. Medical supplies, other than drugs and biologicals, including, but not limited to, gauze, cotton bandages, surgical dressing, surgical gloves, ostomy supplies, and rubbing alcohol, are normally supplied by the home health agency to enable the agency to carry out the plan of care established by the attending physician and agency staff.

i. When a recipient requires an unusual or an excessive amount requiring more than one month of medical supplies, prior authorization for the supplies shall be requested/received from the appropriate Medicaid District Office. Requests for prior authorization of an unusual or an excessive amount of medical supplies provided by an approved medical supplier shall be accompanie by a personally signed, legible prescription from the attending phy ician.

5. The home health agency shall provide comprehensive nursin services under the direction of a public health nurse supervisor director as defined by the New Jersey State Department of Healtl These services shall include, but not be limited to, the following

i. Participating in the development of the plan of care with oth health care team members, which includes discharge planning;

ii. Identifying the nursing needs of the recipient through an initi assessment and periodic reassessment;

iii. Planning for management of the plan of care particularly related to the coordination of other needed health care services;

iv. Skilled observing and monitoring of the recipient's respons to care and treatment;

v. Teaching, supervising and consulting with the recipient ar family/interested persons involved with his or her care in metho of meeting the nursing care needs in the home and community settin

vi. Providing direct nursing care services and procedures includin but not limited to:

(1) Wound care/decubitus care and management;

(2) Enterostomal care and management;

(3) Parenteral medication administration;

(4) Indwelling catheter care.*

*[vi.]****vii.*** Implementing restorative nursing care measures i volving all body systems including, but not limited to:

(1) Maintaining good body alignment with proper positioning bedfast/chairfast recipients;

(2) Supervising and/or assisting with range of motion exercise

(3) Developing the recipient's independence in all activities of dai living by teaching self-care, including ambulation within the limi of the treatment plan; and

(4) Evaluating nutritional needs including hydration and skin i tergrity; observing for obesity and malnutrition;

*[vii.]****viii.*** Teaching and assisting the recipient with practice the use of prosthetic and orthotic devices and durable medical equi ment as ordered;

*[viii.]****ix.*** Providing the recipient and the family or interest persons support in dealing with the mental, emotional, behavior and social aspects of illness in the home;

*[ix.]****x.*** Preparing nursing documentation including nursi assessment, nursing history, clinical nursing records and nursing pr gress notes; and

*[x.]****xi.*** Supervising and teaching other nursing service perso nel.

6. When the agency provides or arranges for dietary services, tl services shall be provided by a registered dietitian or nutritionis These services shall include*,* but are not limited to*,* the followin

i. Determining the priority of nutritional care needs and develo ing long and short-term goals to meet those needs;

ii. Evaluating the recipient's home situation, particularly tl physical areas available for food storage and preparation;

iii. Evaluating the role of the family/interested persons in relatic to the recipient's diet control requirements;

iv. Evaluating the recipient's nutritional needs as related to mec cal and socioeconomic status of the home and family resources;

v. Developing a dietary plan to meet the goals and implementi the plan of care;

vi. Instructing recipient, other home health agency personnel ar family/interested persons in dietary and nutritional therapy; anc

vii. Preparing clinical and dietary progress notes.

7. Personal care assistant services are described in N.J.A.(10:60-2.2.

8. Special therapies include physical and occupational therapy ar speech-language pathology services. Special therapists/pathologis shall review the initial plan of care and any change in the plan care with the attending physician and the professional nursing sta of the home health agency. The attending physician shall be giv an evaluation of the progress of therapies provided as well as tl recipient's reaction to treatment and any change in the recipient

condition. The attending physician shall approve of any changes in the plan of care and delivery of therapy services.

i. The attending physician shall prescribe in writing the specific methods to be used by the therapist and the frequency of therapy services. "Physical therapy as needed," or a similarly worded blanket order by the attending physician is not acceptable.

ii. Special therapists shall provide instruction to the home health agency staff, the recipient, the family and/or interested persons in follow-up supportive procedures to be carried out between the intermittent services of the therapists to produce the optimal and desired results.

(1) When the agency provides or arranges for physical therapy services, they shall be provided by a licensed physical therapist. The duties of the physical therapist shall include, but not be limited to, the following:

(A) Evaluating and identifying the recipient's physical therapy needs;

(B) Developing long and short-term goals to meet the individualized needs of the recipient and a treatment plan to meet these goals. Physical therapy orders shall be related to the active treatment program designed by the attending physician to assist the recipient to his or her maximum level of function which has been lost or reduced by reason of illness or injury;

(C) Observing and reporting to the attending physician the recipient's reaction to treatment as well as any changes in the recipient's condition;

(D) Documenting clinical and progress notes reflecting restorative procedures needed by the recipient, care provided, and the recipient's response to therapy, along with the notification and approval received from the physician; and

(E) Physical therapy services, which may include, but not be limited to, active and passive range of motion exercises, ambulation training, and training for the use of prosthetic and orthotic devices. Physical therapy does not include physical medicine procedures, administered directly by a physician or by a physical therapist which are purely palliative; for example, applications of heat *per se* in any form, massage, routine and/or group exercises, assistance in any activity or in the use of simple mechanical devices not requiring the special skill of a qualified physical therapist.

(2) When the agency provides or arranges for speech-language pathology services, the services shall be provided by a certified speech-language pathologist. The duties of a speech-language pathologist shall include, but not be limited to, the following:

(A) Evaluating, identifying, and correcting the individualized problems of the communication impaired recipient;

(B) Developing long and short-term goals and applying speech-language pathology service procedures to achieve identified goals;

(C) Coordinating activities with and providing assistance to a certified audiologist, when indicated;

(D) Observing and reporting to the attending physician the recipient's reaction to treatment as well as any changes in the recipient's condition; and

(E) Documenting clinical and progress notes reflecting restorative procedures needed by the recipient, care provided, and the recipient's response to therapy, along with the notification and approval received from the physician.

(3) The need for occupational therapy is not a qualifying criterion for initial entitlement to home health services benefits. However, if an individual has otherwise qualified for home health benefits, his or her eligibility for home health services may be continued solely because of his or her need for occupational therapy. Occupational therapy services shall include, but not be limited to, activities of daily living; use of adaptive equipment, and home-making task oriented therapeutic activities. When the agency provides or arranges for occupational therapy services, the services shall be provided by a registered occupational therapist. The duties of an occupational therapist shall include, but not be limited to, the following:

(A) Evaluating and identifying the recipient's occupational therapy needs;

(B) Developing long and short-term goals to meet the individualized needs of the recipient and a treatment plan to achieve these needs;

(C) Observing and reporting to the attending physician and recipient's reaction to treatment as well as any changes in the recipient's condition; *[and]*

(D) Documenting clinical progress notes reflecting restorative procedures needed by the recipient; care provided; and recipient's responses to therapy; along with the notification and approval received from the physician*[.]**; **and***

(E) Occupational therapy services shall include, but not be limited to, activities of daily living, use of adaptive equipment, and home-making task oriented therapeutic activities.

(e) The basis of reimbursement for home health services is as follows:

1. For New Jersey approved home health agencies, the New Jersey Medicaid Program follows the Medicare principles of reimbursement which are based upon the lowest of 100 percent of reasonable covered costs, the published costs limits, or covered charges.

i. However, the Program does not follow the Medicare principles of reimbursement relating to the recovery of previously unreimbursed cost over a two year period.

ii. Interim reimbursement is on the basis of 100 percent or less (if reasonable allowable cost is anticipated to be less) of covered charges.

iii. Retroactive settlement and final reimbursement are based on Medicare reimbursable cost principles.

2. For out-of-State approved home health agencies, final reimbursement is on the basis of 80 percent of covered reasonable charges. There is no cost filing required and no retroactive settlement is made.*

10:60-2.2 Personal care assistant services

(a) Personal care assistant services shall be provided by a certified, licensed home health agency or by a proprietary or voluntary nonprofit accredited homemaker agency.

(b) Personal care assistant services are health related task performed by a qualified individual in a recipient's home, under the supervision of a registered professional nurse, as certified by a physician in accordance with a written plan of care. These services are available from a home health agency or a homemaker agency.

1. The purpose of personal care is to accommodate long-term chronic or maintenance health care, as opposed to short-term skilled care required for some acute illnesses.

2. Personal care assistant services shall be reimbursable when provided to Medicaid eligible recipients in their place of residence, including:

i. A private home;

ii. A rooming house;

iii. A boarding home;

iv. A Division of Youth and Family Services' (DYFS) foster care home; or

v. A Division of Developmental Disabilities (DDD) foster care home.

3. *[Medcaid]* ***Medicaid*** reimbursement shall not be made for personal care assistant services provided to Medicaid eligible recipients in the following:

i. A residential health care facility;

ii. A Class C boarding home;

iii. A hospital; or

iv. A nursing facility.

4. Personal care assistant services provided by a family member are not covered services and are not reimbursable by the New Jersey Medicaid Program.

(c) Personal care assistant services are described as follows:

1. Activities of daily living are performed by a personal care assistant, and include, but are not limited to:

i. Care of the teeth and mouth;

ii. Grooming: care of hair, including shampooing, shaving, and the ordinary care of nails;

iii. Bathing in bed, in the tub or shower;

iv. Using the toilet or bed pan;

v. Changing bed linens with the recipient in bed;

vi. Ambulation indoors and outdoors, when appropriate;

vii. Helping recipients in moving from bed to chair or wheelchair, in and out of tub or shower;

viii. Eating and preparing meals, including special therapeutic diets for the recipient;

ix. Dressing;

x. Relearning household skills; and

xi. Accompanying the recipients to clinics, physician office visits, and/or other trips made for the purpose of obtaining medical diagnosis treatment or otherwise serve a therapeutic purpose.

2. Household duties that are essential to the recipient's health and comfort, performed by a personal care assistant, include, but are not limited to:

i. Care of the recipient's room and areas used by the recipient, including sweeping, vacuuming, dusting;

ii. Care of kitchen, including maintaining general cleanliness of refrigerator, stove, sink and floor, dishwashing;

iii. Care of bathroom, including maintaining cleanliness of toilet, tub, shower and floor;

iv. Care of recipient's personal laundry and bed linen (which may include necessary ironing and mending);

v. Necessary bed-making and changing of bed linen;

vi. Re-arranging of furniture to enable the recipient to move about more easily in his or her room;

vii. Listing food and household supplies needed for the health and maintenance of the recipient;

viii. Shopping for above supplies, conveniently storing and arranging supplies, and doing other essential errands; and

ix. Planning, preparing and serving meals.

3. Health related activities, performed by a personal care assistant, are limited to:

i. Helping and monitoring recipient with prescribed exercises which the recipient and the personal care assistant have been taught by appropriate personnel;

ii. Rubbing the recipient's back if not contraindicated by physican;

iii. Assisting with medications that can be self-administered;

iv. Assisting recipient with use of special equipment such as walker, braces, crutches, wheelchair, etc., after thorough demonstration by a registered professional nurse or physical therapist, with return demonstration until a registered professional nurse or physical therapist is satisfied that recipient can use equipment safely;

v. Assisting recipient with simple procedures as an extension of physical or occupational therapy, or speech-language pathology services; and

vi. Taking oral and rectal temperature, radial pulse and respiration.

(d) Duties of the registered professional nurse are as follows:

1. The registered professional nurse, in accordance with the physician's certification of need for care, performs an assessment and prepares a plan of care for the personal care assistant to implement. The assessment and plan of care shall be completed at the start of service. However, in no case shall the nursing assessment and plan of care be done more than 48 hours after the start of service. The plan of care includes the tasks assigned to meet the specific needs of the recipient, hours of service needed, and takes into consideration the recipient's strengths, the needs of the family and other interested persons. A dated plan of care shall also include short-term and long-term nursing goals, as well as the signature of the personal care assistant to indicate that it has been reviewed in conjunction with the registered professional nurse who also signs the plan of care.

2. Direct supervision of the personal care assistant shall be provided by a registered nurse at a minimum of one visit every 60 days, initiated within 48 hours of the start of service, at the recipient's home during the personal care assistant's assigned time. The purpose of the supervision is to evaluate the personal care assistant's performance and to determine that the plan of care has been properly implemented. At this time, appropriate revisions to the plan of care shall be made. Additional supervisory visits shall be made as the situation warrants.

3. A personal care assistant nursing reassessment visit shall be provided at least once every six months, or more frequently if the recipient's condition warrants, to reevaluate the recipient's need for continued care.

(e) Recordkeeping for personal care assistant services is as follow

1. Clinical records and reports shall be maintained for each recip ent covering the medical, nursing, social and health related care i accordance with accepted professional standards. Such informatio must be readily available, as required, to representatives of th Division of Medical Assistance and Health Services or its agent

2. Clinical records shall contain, at a minimum, an initial nursin assessment, a six-month nursing reassessment, a recipient-specif plan of care, signed and dated progress notes describing the recip ent's condition and documentation of the supervision provided to th personal care assistant every 60 days, and a personal care assistar assignment sheet signed and dated weekly by the personal care assi tant.

3. All clinical records shall be signed and dated by the registere professional nurse in accordance with accepted professional star dards, and shall include documentation described above.

(f) Reimbursement for personal care assistant services is as fo lows:

1. Personal care assistant services shall be reimbursed on a pe hour, fee-for-service basis for weekday, weekend and holida services. Nursing assessment and reassessment visits under this pr gram shall be reimbursed on a per visit, fee-for-service basis.

2. Personal care assistant services reimbursement rates (se N.J.A.C. 10:60-5) are all inclusive maximum allowable rates. N direct or indirect cost over and above the established rates may b considered for reimbursement. At all times the provider shall refle its standard charge on the Health Insurance Claim Form, 1500 N.. (Appendix E), incorporated herein by reference even though th actual payment may be different. A provider shall not charge the Ne Jersey Medicaid Program in excess of current charges for oth payors.

3. For reimbursement purposes only, a weekend means a Saturda or Sunday; a holiday means an observed agency holiday which is als recognized as a Federal or state holiday.

4. A new provider shall be issued a Medicaid Provider ID Numb by the fiscal agent. Those providers already enrolled as a provid of homemaker services in the Community Care Program for th Elderly and Disabled (see N.J.A.C. 10:60-3) shall use the sam provider number issued for the Community Care Program whe completing the Health Insurance Claim Form, 1500 N.J., for pe sonal care assistant services.

10:60-2.3 Additional requirements for provision of covered service

(a) This section outlines requirements governing the provision home care services, as set forth in (b), (c) and (d) below.

(b) Requirements for provision of home health care services a as follows:

1. To qualify for payment of home health care benefits by the Ne Jersey Medicaid Program, the recipient's need for services shall b certified, in writing, by the attending physician who must be license to the home health agency at least once every *[60 days]* **tw months***. The certifications shall be kept in the home health agency file for appropriate review.

2. A plan of care shall be developed by the attending physicia in cooperation with agency personnel. It shall include, but not b limited to, medical, nursing, and social care information. The pla shall be re-evaluated at least every *[60 days]* **two months*** an revised as necessary. The following shall be part of the plan of car

i. The recipient's major and minor impairments and diagnose

ii. A summary of case history, including medical, nursing, an social data;

iii. The period covered by the plan;

iv. The number and nature of service visits to be provided by th home health agency;

v. Additional health related services supplied by other provider

vi. A copy of physician's orders and their up-date;

vii. Medications and treatments, and personnel involved;

viii. Equipment and supplies required;

ix. Goals, long and short-term;

x. Preventive, restorative, maintenance techniques to be provide including the amount, frequency and duration;

xi. The recipient's, family's, and interested person's involvement (for example, teaching); and

xii. Discharge planning in all areas of care (coordinated with short and long-term goals);

(1) As a significant part of the plan of care, a recipient's potential for improvement shall be periodically reviewed and appropriately revised. These revisions shall reflect changes in the medical, nursing, social and emotional needs of the recipient, with attention to the economic factors when considering alternative methods of meeting these needs.

(2) Discharge planning shall take the recipient's perferences into account when changing the intensity of care in his or her residence, arranging services with other community agencies, and transferring to or from home health providers. Discharge planning also provides for the transfer of *[approprite]* ***appropriate*** information about the recipient by the referring home health agency to the new providers to ensure continuity of health care.

3. The following relate to medical care:

i. Home health care services shall be performed pursuant to a censed physician's orders and in accordance with a plan of care.

ii. The attending physician shall review and approve any changes to the medical plan of care being recommended by agency personnel.

iii. The physician's orders shall be revised as needed appropriate to the recipient's condition, but shall be renewed in writing at least very *[60 days]* ***two months***.

iv. The nurse or therapist shall immediately record and sign verbal orders and obtain the physician's counter signature, in conformance with written agency policy.

4. The following relate to nursing care:

i. The home health agency professional nursing staff shall evaluate the recipient's needs, make a nursing diagnosis, develop a nursing plan of care, provide nursing services and coordinate other therapeutic services to implement the approved medical and nursing plan of care.

ii. There shall be an assessment of the recipient's acceptance of his or her illness and recipient's receptivity to home health services.

iii. A determination shall be made of the recipient's psychosocial needs in relation to the utilization of other community resources.

iv. A plan describing *[the]* social services *[shall be]* ***when*** provided by the social worker ***shall*** be reviewed and any referrals [that shall be made]* ***required*** to meet the needs of the recipient*,* shall be developed and implemented.

5. *[Federal]* ***The following*** requirements for clinical records and reports for home health care services shall be met and include, but not necessarily be limited to, the following:

i. Clinical records containing pertinent past and current information according to accepted professional standards shall be maintained by the home health agency for each recipient receiving home health care services. The clinical record shall include at least the following:

(1) A plan of care as described in (b)2 above;

(2) Appropriate identifying information; and

(3) The name, address and telephone number of recipient's physician.

ii. Clinical notes by nurses, social workers, and special therapists shall be written, signed and dated on the day each service is provided.

iii. *[Progress]* ***Clinical*** notes to evaluate a recipient's response to service on a regular, periodic basis shall be written, signed and dated by each discipline providing services.

iv. Summary reports of pertinent factors from the clinical *[and Progress]* notes of the nurses, social workers, and special therapists providing services shall be submitted to the attending physician at least every *[60 days]* ***two months***.

v. Transfer of the recipient to alternative health care shall include transfer of appropriate information from the recipient's record.

(c) Prerequisites for provision of personal care assistant services are as follows:

1. Personal care assistant services shall be prescribed by the attending physician in accordance with a written plan of care (see (b)2 above); and

2. Personal care assistant services shall be provided under the supervision of a registered professional nurse.

(d) The relationship of the provider with the Medicaid District Office (MDO) shall be as follows:

1. Preadmission screening (PAS) is required for all Medicaid-eligible individuals and other individuals applying for nursing facility (NF) services. MDO professional staff conduct PAS assessments on individuals in hospitals and community settings to evaluate need for nursing facility services and to determine the appropriate setting for the delivery of services. Individuals in hospitals or community settings referred for nursing facility *[placements]* ***care*** who have been determined not to require nursing facility ***placement*** or who select alternatives to nursing facility care will be referred for home health services. A health services delivery plan (HSDP) shall be completed by the MDO staff at the conclusion of the PAS assessment and shall be a component of the referral package to the home care provider. The HSDP shall be forwarded to the authorized care setting and shall be attached to the recipient's medical record upon admission to a nursing facility or when the recipient receives services from home care agencies. The HSDP may be updated as required to reflect changes in the recipient's condition. The HSDP provides data base history which reflects current or potential health problems and required services. The discharge planning unit or social service department of the hospital shall provide home care agencies with HSDPs for individuals who have been assessed in a hospital setting. The MDOs shall provide HSDPs for individuals who have been assessed in a community setting during the PAS process.

i. For the many individuals in the community setting referred for home care services outside the PAS process, an HSDP shall not be provided.

2. An initial visit to evaluate the need for home health services or personal care assistant services shall be made by the provider prior to the submission of notification to the MDO using the HCFA 485 (Appendix D) incorporated herein by reference or the FD-139 form (Appendix C) incorporated herein by reference.

3. Subsequent to an initial evaluation of need for home health and/or personal care assistant services, the provider shall initiate the services in accordance with its plan of care.

4. The HCFA 485 shall replace the FD-139 for Medicare/Medicaid providers. The provider shall notify the MDO at the time of initiating the services by submitting a copy of the HCFA 485 which shall be signed by the agency nurse and need not be countersigned by the physician. The signature of the physician prescribing the services, however, shall be kept on file in the agency. Providers utilizing the HCFA 485 shall include the HSP (Medicaid) Case Number when completing the form. For the non-Medicare certified agency, the provider shall submit to the MDO an FD-139 which shall be signed by the agency nurse and need not be countersigned by the physician. The signature of the physician prescribing the services shall be kept on file in the agency.

5. The HCFA 485 and the FD-139 shall be submitted to the MDO upon initiation of services and once every 12 months on a continuing basis. Providers shall notify the MDO when services have been terminated.

6. On a random selection basis, MDO staff shall conduct post-payment quality assurance reviews. At the specific request of the MDO, the provider shall submit a plan of care and other documentation for those Medicaid recipients selected for a quality assurance review.

7. Upon completing the post-payment quality assurance review, the MDO shall forward a performance report to the provider based on compliance with the standards described in N.J.A.C. 10:60-2.4.

i. Standards are applied to services as provided by the agency.

(e) Service limitations are as follows:

1. When the cost of home care is equal to or in excess of the cost of institutional care over a protracted period (that is, six months or more), the MDO staff may opt to limit or deny the provision of home care services on a prospective basis.

2. Personal care assistant services are limited to a maximum of 25 hours per week.

10:60-2.4 Standards of performance for post service review

(a) Professional staff from the MDO shall conduct a post-payment quality assurance review of Medicaid recipients for whom home care services have been provided. The review shall principally involve contact with the Medicaid recipient, and focus on the following three major categories:

1. The quality ***and appropriateness*** of services;

2. Comparative analysis between claim payments to the plan of care; and

3. The recipient/caregiver satisfaction with the services.

(b) Standards of performance are as follows:

1. Skilled nursing services and visits shall be based on a comprehensive assessment performed by a registered professional nurse to identify care needs and required services ***and*** shall be provided as designated by the plan of care.

i. Home visits for nursing services shall be provided to the recipient as ordered by the physician and as designated by the standards of nursing practice.

ii. The nurse shall make home visits as appropriate and as scheduled in the plan of care. Supervision of home health aide services is an integral component of these visits.

iii. Services shall be within the scope of practice of personnel assigned.

iv. Appropriate referrals for required services shall be instituted on a timely basis.

v. Nursing progress notes and plans of care shall reflect the significant changes in condition which require changes in the scope and timeliness of service delivery.

2. Homemaker-home health aide services and personal care assistant services shall be provided by the agency in accordance with the plan of care.

i. The aide shall arrive and leave each day as scheduled by the agency.

ii. The same aides shall be assigned ***on a regular basis with an intent of assuring continuity of care for the recipient*** unless there are unusual documented circumstances, such as a difficult recipient/caregiver relationship, difficult location, or personal reasons of aide or recipient/caregiver.

iii. Services shall be within the scope of practice of personnel assigned.

iv. Appropriate training and orientation shall be provided by licensed personnel to assure the delivery of required services.

v. The aide provides appropriate services as reflected in the plan of care and identified on the assignment sheet.

vi. Home care services shall be provided to the recipient to maintain the recipient's health or to facilitate treatment of an illness or injury.

3. Physical therapy, occupational therapy or speech-language pathology services shall be provided as an integral part of a comprehensive medical program. These rehabilitative services shall be provided through home visits for the purpose of attaining maximum reduction of physical or mental disability and restoration of the individual to the best functional level.

i. The services shall be provided with the expectation, based on the assessment made by the physician of the recipient's rehabilitation potential, that the condition of the individual shall improve materially in a reasonable and generally predictable period of time, or the services are necessary towards the establishment of a safe and effective maintenance program.

ii. The complexity of rehabilitative services is such that it can only be performed safely and effectively by a therapist. The services shall be consistent with the nature and severity of the illness or injury. The amount and frequency of these services shall be reasonable and necessary, and the duration of each visit shall be a minimum of 30 minutes.

iii. The services shall be specific and effective treatment for the recipient's condition and shall be provided in accordance with accepted standards of medical practice.

iv. For physical therapy standards, see N.J.A.C. *[10:60-2.1(d)8(E)]* ***10:60-2.1(d)8ii(1)(E) in this manual***.

4. Social services and visits of social service professionals ar necessary to resolve social or emotional problems that are or ma be an impediment to the effective treatment of the individual's med cal condition or rate of recovery.

i. Medical social services shall be provided as ordered by th physician and furnished by the social worker.

ii. The plan of care indicates the appropriate action taken t obtain the available community resources to assist in resolving th recipient's problems or to provide counseling services which ar reasonable and necessary to treat the underlying social or emotion problems which are impeding the recipient's recovery.

iii. The services shall be responsive to the problem and the fre quency of the services shall be for a prescribed length of time.

5. Nutritional services and visits of a dietitian or nutritionist sha be provided as needed to resolve nutritional problems which are c may be an impediment to the effective treatment of the recipient' medical condition or rate of recovery.

i. Nutritional services shall be provided as ordered by the phys ician and furnished by a dietitian or nutritionist in accordance wit accepted standards of professional practice.

ii. The plan of care shall indicate the nutritional care needs an the goals to meet those needs.

iii. Services shall be provided to the recipient and/or the family interested others involved with the recipient's nutritional care.

iv. The services shall be specific and for a prescribed period c time.

v. The progress notes and care plan shall reflect significant change or problems which require changes in the scope and timeliness c service delivery visits.

6. The services shall be provided to the satisfaction of the recip ent/caregiver.

i. There shall be evidence that the recipient/caregiver has partic pated in the development of the plan of care.

ii. Identified problems shall be resolved between the agency an the recipient/caregiver when possible.

iii. The agency shall make appropriate referrals for unmet recip ent needs.

iv. Recipient/caregiver shall be promptly informed of changes i aides and/or schedules.

v. Recipients/caregivers shall be aware of the agency name, tele phone number, and contact person in the event of a problem.

7. The home health agency shall be aware of the recipient's nee and shall make the appropriate arrangements for securing medica equipment, appliances and supplies.

i. The agency shall assist the recipient in obtaining equipmen appliances, and supplies when needed under Medicare and/or Med caid guidelines.

ii. The agency shall monitor equipment, appliances and supplie to assure that all items are serviceable and used safely and effectively

iii. The agency shall be responsible for contacting the provider fo problems relating to the utilization of equipment, appliances an supplies.

8. Documentation of services as requested by the Division c Medical Assistance and Health Services shall be timely, accurate complete and legible.

i. There shall be a current aide assignment sheet for each recipien available either in the home or at the agency, dated and signed b the nurse. The assignment shall be based on a nursing assessmen of the recipient's needs and shall list the aide's duties as required i the plan or care.

ii. The agency shall document significant changes in health and or social status, including recent hospitalization, in the progress note and make appropriate changes in the plan of care as needed.

iii. Initial evaluations and progress notes shall be provided to th MDO upon request for all nursing services.

iv. Initial evaluations, progress notes and goals shall be provide to the MDO upon request for physical, occupational and speech language therapies and social services.

10:60-2.5 On-site monitoring visits

(a) For a homemaker agency and a private duty nursing agency on-site monitoring visits shall be made periodically by Division staf

› the agency to review compliance with personnel, recordkeeping ıd service delivery requirements. (Appendix A, Home Care Agency eview form, FD-342, incorporated herein by reference). The results ˆ these monitoring visits shall be reported to the agency, the Medi-ıid District Office, and when indicated, a plan of correction shall ɜ required. Continued non-compliance with requirements shall re-ılt in such sanctions as curtailment of accepting new recipients for ·rvices, suspension or rescission of the agency's provider contract.

(b) For a hospice agency, on-site monitoring visits shall be made ɜriodically by Division staff to the agency to review compliance with ɜrsonnel, recordkeeping and service delivery requirements (Appen-x B, Hospice Agency Review Summary, FD 351 form, incorporated ɜrein by reference). The results of these monitoring visits shall be ·ported to the agency with a copy to the Medicaid District Office, ıd when indicated, a plan of correction will be required. Continued ɔn-compliance with requirements shall result in such sanctions as ırtailment of accepting new recipients for services, suspension or ·scission of the agency's provider contract.

):60-2.6 Provisions for fair hearings

Providers and recipients can request for fair hearings as set forth N.J.A.C. 10:49-1.16.

UBCHAPTER 3. HOME AND COMMUNITY-BASED SERVICE PROGRAMS

):60-3.1 Community Care Program for the Elderly and Disabled (CCPED)

(a) The Federal Omnibus Budget Reconciliation Act of 1981 (Sec-on 2176, P.L. 97-35) encouraged the development of community-ıased service programs rather than institutional service programs. his law was codified as Section 1915(c) of the Social Security Act ee 42 U.S.C 1936n).

1. Under the provision of this Federal legislation, a request for home and community-based services waiver for elderly and disabled ıdividuals was submitted by the New Jersey Department of Human ɜrvices and approved by the United States Department of Health ıd Human Services. The waiver is renewable every five years and ·rves a limited number of recipients Statewide who must meet the ıedical and financial eligibility requirements.

(b) The Community Care Program for Elderly and Disabled ˆCPED) is a waivered program, administered by the Division of ledical Assistance and Health Services, initiated to help eligible ·cipients remain living in the community rather than in a nursing ıcility.

1. The program allows for the allocation of community care slots hich are assigned Statewide in accordance with the needs of the opulation and the resources available to meet those needs. Each ɔunty has a designated case management site such as a county elfare agency, Office on Aging, home health agency or homemaker gency.

):60-3.2 Eligibility requirements for CCPED

(a) Financial eligibility for CCPED is determined by the county elfare agency/board of social services which serves the county here an individual resides. The standards used for income eligibility re set forth in N.J.A.C. 10:71-5.6(c)4, Table B, entitled "Variations ı Living Arrangements." Both the Supplemental Security Income ɔSI) community standard and the Medicaid institutional standard ppear in this table. The actual amounts, recomputed periodically ased upon the cost-of-living increase, are subject to change each me a cost-of-living increase occurs.

1. Recipients financially eligible for Medicaid services under the ɔmmunity eligibility standards are not covered under CCPED. ˆCPED also does not serve recipients who are eligible under the ledically Needy Program.

(b) Program eligibility criteria are as follows:

1. An applicant 65 years or older shall be eligible for Medicare enefits or have other medical insurance which includes physician ɔverage and hospitalization.

2. An applicant under 65 shall be determined disabled by the ocial Security Administration (SSA) and be eligible for Medicare enefits or be determined disabled by the Division of Medical Assistance and Health Services, Disability Review Section, and have other medical insurance which includes physician coverage and hospitalization.

3. An applicant shall be ineligible in the community for Supplemental Security Income (SSI), or the applicant's total income, excluding deemed income, shall exceed the appropriate SSI community standard up to the Medicaid institutional standard. Parental and spousal income are not considered in the determination of eligibility.

4. An applicant's own resources shall not exceed the Medicaid Only limits. Resources of a parent are not deemed. While the spouse's resources are considered, up to one-half of the total resources are protected for the use of the spouse.

5. An applicant shall be in need of the type of care provided in an institutional setting and meet, at a minimum, the New Jersey's Medicaid Program's nursing facility's level of care criteria.

6. In order for an applicant to be enrolled in the program, a waiver slot shall be available.

(c) The total cost of services for the recipient in the community reimbursed by Medicaid shall not exceed the established cost limitation for institutional care for that recipient.

(d) A Medicaid Eligibility Identification (MEI) card shall be distributed to the recipient eligible for CCPED. Approved services are listed on the card as exhibited in N.J.A.C. 10:49, Appendix A.

(e) Retroactive eligibility is not available to CCPED recipients; no service received prior to the date of enrollment shall be considered for reimbursement.

10:60-3.3 Services available under CCPED

(a) Services provided under CCPED complement the services provided under the Medicare Program or other physician and hospital benefit coverage for non-Medicare eligible individuals. A modified package of seven Medicaid covered services is available.

(b) Services provided under CCPED include the following:

1. Case management: A process in which a social worker or professional nurse is responsible for planning, locating, coordinating, and monitoring a group of services designed to meet the individual health needs of the recipient being served. The case manager is the pivotal person in establishing a service package.

i. Case management is not provided when a recipient is in an inpatient hospital setting and the stay extends beyond a full calendar month.

2. Home health care: Provided by a licensed home health agency, which may include skilled nursing care; homemaker/home health aide services; physical and occupational therapy; speech-language pathology services; medical social services and medical supplies. Medical supplies are limited to a maximum of $50.00 per month. Covered home care services are provided according to medical, nursing and other health-related needs, as documented in the recipient's plan of care.

3. Homemaker services: Personal care, household tasks, and activities of daily living, provided to a recipient in the home by either a home health agency or a homemaker agency.

4. Medical day care: A program of medically supervised, health and health related services provided in an ambulatory care setting to recipients who are non-residents.

5. Social adult day care: A comprehensive social and health related outpatient program for the frail, moderately handicapped, slightly confused recipient who needs care during the day.

6. Medical transportation: Non-emergency transporting of a recipient by an approved, suitable vehicle to obtain health services. Transportation may be provided by invalid coach or by lower modes of service that are arranged/provided by the county welfare agency/board of social services.

7. Respite care: A temporary service offered on an intermittent basis to recipients being cared for at home. The purpose of this service is to relieve the informal caregivers, allowing for a leave of absence in order to reduce stress or to meet a family crisis. Respite care can be provided in a recipient's home by a home health agency, homemaker agency, or in a nursing facility for limited periods of time. Nursing home respite care is limited to 30 days per calendar year.

(c) The services listed under (b) above may be limited in duration or amount depending upon the cost of the service plan under CCPED and the medical needs of the recipient.

(d) Other services covered by the New Jersey Medicaid Program are not available to the CCPED recipient.

10:60-3.4 Procedures used as financial controls for CCPED

(a) The program costs shall be restricted by limits placed on the number of community care slots assigned each county and on per recipient costs. The Division may elect to exclude individuals for whom there is an expectation that costs to Medicaid for waiver services may exceed the cost of nursing facility care.

(b) A case manager shall be responsible for the development of the service plan with each recipient/family and with input from the provider agencies and Medicaid professional staff. The case manager shall be responsible for monitoring the cost of the service package.

(c) CCPED Statewide per recipient service cost limits shall be determined by the Division of Medical Assistance and Health Services once a year and distributed to the case management sites and Medicaid District Offices.

10:60-3.5 Basis for home health agency reimbursement and cost reporting (CCPED)

(a) A home health agency participating in the CCPED shall be reimbursed by the New Jersey Medicaid Program on a fee-for-service basis for services provided. Fees shall be based on audited cost report data which is inflated to the current year. Agencies shall be precluded from receiving additional reimbursement for the cost of the community care services above the fee established by the Medicaid Program. This applies to both freestanding and hospital-based home health agencies.

1. The provider at all times shall reflect its standard charge on the Health Insurance Claim Form, 1500 N.J., even though the actual payment may be different.

(b) The Health Insurance Claim Form, 1500 N.J., shall be used for billing.

(c) CCPED cost reporting information for home health agencies is as follows:

1. Cost finding techniques shall be applied within Medicare's principles to both those recipients receiving services covered by the waiver, as well as those recipients not covered by the waiver.

2. All costs associated with the provision of services to CCPED recipients shall be included in the routine Medicare/Medicaid cost-reporting mechanisms (HCFA 1728-86 free-standing agencies; HCFA 2552-85 hospital-based agencies). Non-reimbursable cost centers shall be established for all services other than skilled nursing, physical therapy, occupational therapy, speech-language pathology services, medical social services, home health aide visits, respite care rendered by home health aides and certain medical supplies.

3. All visits provided to CCPED recipients shall be included in the total number of visits provided for each service respectively. This shall establish a cost per visit as applied to the Medicare and Medicaid Programs.

4. When worksheet D4 (Computation of Medicaid Cost) is completed, only the data applicable to services rendered to regular Medicaid recipients not enrolled in the Community Care Program shall be reconciled.

5. The process at (c)1 through 4 above allows the provider:

i. To be reimbursed on a fee-for-service basis for Community Care Program recipients;

ii. To maintain compliance with Medicare reimbursement principles; and

iii. To have all costs associated with these services allocated to respective payors.

10:60-3.6 Basis for homemaker agency reimbursement (CCPED)

(a) A homemaker agency providing services under CCPED shall be reimbursed by the New Jersey Medicaid Program on a fee-for-service basis for services provided. Fees shall be paid on an hourly/weekday or hourly/weekend/holiday basis.

(b) The Health Insurance Claim Form, 1500 N.J., shall be used for billing.

10:60-3.7 Model Waiver Programs

(a) The Home and Community-Based Services Waivers for Blin or Disabled Children and Adults (Model Waivers) are renewabl Federal waiver programs funded under Title XIX (Medicaid). Th waivers, prepared by the Division of Medical Assistance and Healt Services in response to the Omnibus Budget Reconcilitation Act c 1981, Section 176, Public Law 97-35, encourage the development c community-based services. The purpose of these programs is to hel eligible recipients remain in the community, or return to the com munity, rather than be cared for in a nursing facility or hospit setting.

(b) New Jersey has three approved, Federally renewable Mod Waivers: Model Waiver I, Model Waiver II and Model Waiver II Each program serves a limited number of recipients Statewide wh meet the medical and financial eligibility requirements.

(c) The Division of Medical Assistance and Health Services admir isters the overall programs. Additionally, it has the responsibility fc assessing a recipient's need for care and for determining which recip ent will be served by the program.

10:60-3.8 Eligibility requirements for Model Waivers

(a) Program eligibility criteria for Model Waivers are as follow

1. Recipients shall be in need of institutional care and meet, a a minimum, the nursing facility level of care criteria. Model Waiv III requires the need for private duty nursing services.

2. For all Model Waivers, a recipient's total income shall excee the SSI community standard up to the institutional cap or be ir eligible in the community because of SSI deeming rules. Mod Waiver III, however, may also serve recipients who are eligible fc Medicaid in the community.

3. Recipients shall be blind or disabled children and adults. A recipients who have not been determined disabled by the Soci Security Administration (SSA) must be determined disabled by th Division of Medical Assistance and Health Services, Disability Re view Section, using the same SSA criteria.

4. Recipients who are financially Medicaid eligible under the com munity eligibility standards are not eligible for Model Waiver I an II. Model Waiver III, however, may serve these recipients, except fc those recipients served under the Medically Needy Program.

5. There is no deeming of spousal income or parental income c resources in the determination of eligibility. While the spouse's re sources are considered in the determination of eligibility, up to one half of the total resources are protected for the use of the spous

6. A recipient's resources cannot exceed the resource limit estat lished for recipients eligible under the Medicaid Only Progran Financial eligibility is established by the county welfare agency board of social services located in the recipient's county of residenc

7. In order for an applicant to be enrolled in the program, a waiv slot must be available.

(b) Retroactive eligibility is not available to waiver recipients fc those Medicaid services provided only by virtue of enrollment in th waiver programs.

(c) A Medicaid Eligibility Identification (MEI) card (FD-73/17 shall be issued to the Model Waiver recipient by the county welfa agency/board of social services for the recipient applying for Mod Waiver I or II and also for the recipient applying for Model Waiv III who is not categorically eligible for Medicaid in the community The county welfare agency/board of social services may issue temporary MEI card.

1. A Model Waiver III recipient who is categorically eligible fc Medicaid shall continue to receive a MEI Card in the same manne as before his or her participation. The Medicaid District Office ma issue a temporary MEI Card.

10:60-3.9 Services included under the Model Waiver programs

(a) Except for nursing facility services, all approved services unde the New Jersey Medicaid Program as described in N.J.A.C. 10:4 are available under the Model Waiver programs from approve Medicaid providers.

(b) Additional waivered services are as follows:

1. Case management: A process in which a professional nurse c social worker is responsible for planning, locating, coordinating, an

monitoring a group of services designed to meet the individual health needs of the recipient being served. The case manager shall be the pivotal person in establishing a service package.

i. Special child health service units under contract to the New Jersey Department of Health shall provide case management to children up to the age of 21.

ii. Recipients 21 years of age or older shall be referred for case management services to those sites which provide case management services for New Jersey Medicaid's Community Care Program for the Elderly and Disabled.

iii. Case management shall not be provided when a recipient is in an inpatient hospital setting and the stay extends a full calendar month.

2. Private-duty nursing: A waivered service provided under Model Waiver III only and not under Model Waiver I or II. Private-duty nursing shall be provided in the community only, not in an inpatient hospital setting. The recipient shall have a live-in primary caregiver (adult relative or significant other adult) who accepts 24-hour responsibility for the health and welfare of the recipient. A maximum of 16 hours of private-duty nursing may be provided in any 24-hour period.

i. An individual clinical record shall be maintained for each recipient receiving private-duty nursing service. The record shall address the physical, emotional, nutritional, environmental and social needs according to accepted professional standards.

ii. Clinical records maintained at the agency shall contain at a minimum the following:

(1) A referral source;

(2) *[A diagnosis]* ***Diagnoses***;

(3) A physician's treatment plan and renewal of treatment plan every 90 days;

(4) Interim physician orders as necessary for medications and/or treatment;

(5) An initial nursing assessment by a registered nurse within 48 hours of initiation of services;

(6) A six-month nursing reassessment;

(7) A nursing care plan; and

(8) Signed and dated progress notes describing recipient's condition.

iii. Direct supervision of the private-duty nurse shall be provided by a registered nurse at a minimum of one visit every 30 days at the recipient's home during the private-duty nurse's assigned time. Additional supervisory visits shall be made as the situation warrants.

iv. Clinical records maintained in the recipient's home by the private-duty nurse shall contain at a minimum the following:

(1) *[A diagnosis]* ***Diagnoses***;

(2) A physician treatment plan and interim orders;

(3) A copy of the initial nursing assessment and six month reassessment;

(4) A nursing care plan;

(5) Signed and dated current nurse's notes describing the recipient's condition and documentation of all care rendered; and

(6) A record of medication administered.

v. Personnel files shall be maintained for all private-duty registered nurses and licensed practical nurses and shall contain at a minimum the following:

(1) A completed application for employment;

(2) Evidence of a personal interview;

(3) Evidence of a current license to practice nursing;

(4) Satisfactory employment references;

(5) Evidence of a physical examination; and

(6) Ongoing performance evaluation.

vi. On-site monitoring visits shall be made periodically by Division staff to the private-duty nursing agency to review compliance with personnel, recordkeeping and service delivery requirements.

(c) The items and services provided to covered recipients shall be limited in duration or amount depending upon the cost of the service plan under the Model Waiver. Any limitation imposed shall be consistent with the medical necessity of the recipient's condition, as determined by the attending physician or other practitioner, in accordance with standards generally recognized by health professionals and promulgated through the New Jersey Medicaid Program.

10:60-3.10 Basis for reimbursement for Model Waiver services

(a) A home health agency provider of private-duty nursing services and personal care assistant services shall be reimbursed by the New Jersey Medicaid Program on a fee-for-service basis for services provided. Providers shall be precluded from receiving additional reimbursement for the cost of these services above the fee established by the Medicaid Program.

1. All costs associated with the provision of private-duty nursing and personal care assistant services shall be included in the routine Medicare/Medicaid cost-reporting mechanism.

(b) The Health Insurance Claim Form, 1500 N.J., is used when billing for case management, private-duty nursing services and personal care assistant services.

1. The provider at all times shall reflect its standard charges on the Health Insurance Claim Form, 1500 N.J., even though the actual payment may be different.

(c) Home health services are billed on the UB-82 HCFA-1450 form (Appendix F, incorporated herein by reference).

(d) See N.J.A.C. 10:60-5 for codes to be used when submitting claims for the Model Waiver Program, I, II or III.

10:60-3.11 Procedures used as financial controls

(a) Total program costs shall be restricted by limits placed on the maximum number of recipients served Statewide in each of the three programs.

(b) A case manager shall be responsible for the development of the service plan with each recipient/family and with input from the provider agencies and the Medicaid professional staff. The case manager shall be responsible for monitoring the cost of the service package.

(c) The cost of Medicaid services provided shall not exceed the cost of institutionalization for the recipient.

10:60-3.12 AIDS *[community care alternatives program (ACCAP)]* ***Community Care Alternatives Program (ACCAP)***

(a) The AIDS *[community care alternatives program (ACCAP)]* ***Community Care Alternatives Program (ACCAP)*** is a renewable Federal waiver program which offers home and community-based services to recipients with Acquired Immune Deficiency Syndrome (AIDS) or with AIDS-Related Complex (ARC) and children up to the age of five who are HIV positive.

(b) The waiver, prepared by the Division of Medical Assistance and Health Services in response to the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) and the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509), encourages the development of community-based services. The purpose of the program is to help eligible recipients to remain in, or to return to, the community rather than be cared for in a nursing facility or hospital setting.

(c) The program is Statewide with slots allocated to each county based upon the estimated number of AIDS/ARC recipients to be served.

(d) The Division of Medical Assistance and Health Services administers the overall program. Additionally, it has the responsibility for assessing a recipient's need for care and for determining which recipients will be served by the program.

10:60-3.13 Application process for ACCAP

(a) Individuals who are not currently Medicaid eligible or recipients currently eligible for Medicaid through the Aid to Families with Dependent Children (AFDC) and who wish to apply for ACCAP, shall make application to the county welfare agency/board of social services located in the county where the individual resides.

(b) Supplemental Security Income (SSI) recipients who wish to apply for ACCAP shall make application to the appropriate Medicaid District Office serving their county of residence.

(c) Applications for children under the supervision of the Division of Youth and Family Services (DYFS) shall be initiated by DYFS.

10:60-3.14 Eligibility criteria

(a) Recipients eligible for ACCAP shall be:

1. Diagnosed as having AIDS or ARC, or be a child up to the age of five who is HIV positive;

2. In need of institutional care and meet, at a minimum, the nursing facility level of care criteria established by the New Jersey Medicaid Program (N.J.A.C. 10:63-1.3);

3. Categorically needy, that is, recipients who are Medicaid eligible in the community, except for those served under the Medically Needy Program; or

4. Optionally categorically needy, that is, recipients who have incomes which exceed the SSI community standard up to the institutional CAP and have resources which fall within the institutional standard. There is no deeming of spousal income or parental income or resources in the determination of eligibility for ACCAP. While the spouse's resources are considered in the determination of eligibility, up to one-half of the total resources are protected for the use of the spouse.

i. Optionally categorically needy recipients under the age of 65 shall be determined disabled by the Social Security Administration (SSA) or by the Division of Medical Assistance and Health Services, Disability Review Section, using SSA disability criteria.

(b) Retroactive eligibility is not available to waiver recipients for those Medicaid services provided only by virtue of enrollment in the waiver program.

(c) All recipients determined to be eligible for ACCAP shall be issued a Medicaid Eligibility Identification card.

(d) In order for an applicant to be enrolled in the program, a waiver slot must be available.

10:60-3.15 ACCAP services

(a) All Medicaid services, except for nursing facility services, are available under ACCAP in accord with an individualized plan of care. Additionally, the following services are available to the eligible recipient:

1. Case management: a process in which a public health nurse or social worker (MSW) in a community agency is responsible for planning, locating, coordinating and monitoring a group of services designed to meet the individual needs of the recipient being served.

i. Case management units under contract to the New Jersey State Department of Health shall provide case management services to children up to the age of 21.

ii. Recipients 21 years of age or older shall be referred to case management sites which provide case management services for New Jersey Medicaid's ACCAP.

iii. Case management shall not be provided when a recipient is in an inpatient hospital setting and the stay extends a full calendar month or beyond.

2. Private-duty nursing (PDN): *[care]* ***Care*** provided by a registered professional nurse or licensed practical nurse. PDN is continuous rather than part-time or intermittent *[care]*. A nurse shall be employed by a licensed home health agency, voluntary non-profit homemaker/home health aide agency, private employment agency and temporary-help service agency approved by Medicaid to provide PDN services. PDN services shall be provided up to 16 hours per day, per person, but only when there is a live-in primary adult caregiver who accepts 24-hour per day responsibility for the health and welfare of the individual (see *[N.J.A.C. 10:60-2.2(e)5]* ***N.J.A.C. 10:60-3.9(b)2*** for recordkeeping requirements).

3. Certain narcotic and drug abuse treatments at home: The program allows drug treatment centers, approved as Medicaid providers, to provide methadone treatment, individual psychotherapy and family therapy at home.

4. Personal care assistant service: These are health-related tasks performed in the recipient's home by a certified individual who is under the supervision of a registered professional nurse. These services shall be prescribed by a physician and shall be provided in accord with a written plan of care. Personal care assistant service under ACCAP may exceed the regular program limitation of 25 hours per recipient, per week. Only Medicaid-approved personal care assistant providers shall provide personal care assistant service under ACCAP.

5. Medical day care: This allows for health, social and supportive services on an outpatient basis, several days a week, in an approved medical day care center. Reimbursement is made at a negotiated rate.

6. Specialized group foster care home for children: This allows for an array of health care services provided in a residential health care program for children from birth to six years of age. All children served by the home are under the supervision of the Division of Youth and Family Services (DYFS).

7. Hospice care: This provides optimum comfort measures (including pain control), support and dignity to recipients certified by an attending physician as terminally ill, with a life expectancy of up to six months. Family and/or other caregivers are also given support and direction while caring for the dying recipient. Services shall be provided by a Medicaid approved, Medicare certified hospice agency and available to a recipient on a daily, 24-hour basis. Hospice care shall be approved by the attending physician and shall be prior authorized by the Medicaid district office, using the FD-139 form (for recordkeeping requirements, see N.J.A.C. 10:60-2.3(b)5). Reimbursement shall be at an established fee paid on a per diem basis.

(b) Total program costs in ACCAP are limited by the number of community care slots used each year and by costs per recipient. The cost of each recipient's service package shall be no more than the cost of institutional care for that recipient, determined at a projected weighted cost of hospital care by the Division of Medical Assistance and Health Services.

10:60-3.16 Basis for reimbursement for ACCAP services

(a) A fee-for-service reimbursement methodology shall be utilized for ACCAP ***waiver*** services.

(b) The Health Insurance Claim Form, 1500 N.J., is used when requesting reimbursement for services provided. Home health services are billed using the UB-82 HCFA-1450 form.

(c) See N.J.A.C. 10:60-5 for codes used when submitting claims for ACCAP.

SUBCHAPTER 4. HOME CARE EXPANSION PROGRAM

10:60-4.1 Scope and authority

(a) The Home Care Expansion Act (P.L. 1988, c.92) was signed into law August 4, 1988 and its program, the Home Care Expansion Program (HCEP), became effective May 1, 1989. The intent of the program is to offer home care services to elderly and disabled persons in New Jersey who are in need of long-term home care services and whose income or resources exceed the financial requirements for Medicaid or the Division of Medical Assistance and Health Services' Home and Community-Based Waiver Programs. It is anticipated that the provision of home care services shall delay or avoid institutionalization.

(b) The Home Care Expansion Program (HCEP) is administered by the Division of Medical Assistance and Health Services and is available state-wide. Program slots are limited based upon the available annual appropriation and are allocated to each county. Each county has designated home and community-based programs case management sites which is utilized for HCEP.

10:60-4.2 Eligibility requirements for HCEP

(a) Financial eligibility shall be determined by the Division's Bureau of Pharmaceutical Assistance to the Aged and Disabled (PAAD) initially and on an annual basis using existing PAAD processes and policies where applicable.

(b) To qualify for services, an applicant shall meet the following criteria:

1. Be a resident of New Jersey for at least 30 days;

2. Have an annual income of less than $18,000 if single, or if married, less than $21,000 in combination with that of a spouse;

3. Have resources less than $15,000, as an indivudal or in combination with a spouse.

i. Real property is not considered an available resource for purposes of determining eligibility for HCEP. However, if real property is sold, then the proceeds of the sale would be considered as a countable resource.

ii. The Home Care Expansion Program only considers liquid resources. Examples of liquid resources are cash or any item which can

be readily converted to cash. These can include, but are not limited to, stocks, bonds, mutual funds, money market funds, certificates of deposit, savings accounts, checking accounts, trusts, annuities, saving bonds, treasury notes, treasury bills and treasury bonds.

iii. If an application is received for a child who meets other program requirements, only the child's income and/or resources shall be considered. There is no deeming of parental income or resources;

4. Be eligible for, or receiving, Medicare benefits, or have other health insurance which includes hospital and physician coverage;

5. Be 65 years or older; or, if under 65 years of age, be determined permanently and totally disabled by the Social Security Administration (SSA) or by the Division of Medical Assistance and Health Services, Disability Review Section.

i. The beneficiary shall be responsible for costs incurred relevant to the disability determination, that is, physician's examination, etc.; and

6. Be in need of nursing facility services which are medically necessary to avoid or delay institutionalization.

(c) Voluntary assignments or transfers of real or personal property by an applicant (and/or spouse), for less than adequate consideration, will cause the applicant to be automatically deemed ineligible for HCEP benefits. The period of ineligibility shall extend for up to 30 months from the date of such assignment or transfer unless a preponderance of evidence, submitted by the applicant, proves that the action was carried out for reason(s) other than to cause the applicant to become or remain eligible for HCEP benefits.

1. Voluntary assignment or transfer is defined as a gift, trade, sale, or other transfer of any claim, right, interest, or property, including any future right or interest. Less than adequate consideration means for less than fair market value. Where no evidence or inadequate evidence is submitted to support the applicant's contention, the applicant shall be ineligible for HCEP benefits for the number of months which results from dividing the uncompensated value of the resource by the Statewide average lowest semi-private room rate for nursing home care. The period of ineligibility shall not exceed 30 months.

(d) Applicants who are eligible for the Community Care Program for the Elderly and Disabled (CCPED) shall be eligible for HCEP if CCPED services are unavailable in the applicant's county of residence.

(e) The total cost of services for the beneficiary in the community may not exceed 70 percent of the cost of institutional care.

(f) The following relate to identifying the beneficiary eligible for HCEP services:

1. Although HCEP is not a Title XIX (Medicaid) Program, a standard Medicaid Eligibility Identification (MEI), FD-73/178, card is issued to the beneficiary.

2. Program services for which the beneficiary is eligible are listed on the card in the upper right-hand corner.

(g) There is no retroactive eligiblity in HCEP. No service received prior to the date of enrollment can be reimbursed by HCEP. The date of enrollment is the date that financial eligibility and medical need for services are established, and a program slot is available.

10:60-4.3 Services available under HCEP

(a) The seven services provided under HCEP are:

1. Case management: *[a]* *A* process in which a social worker or professional nurse shall be responsible for planning, locating, coordinating, and monitoring a group of services designed to meet the individual health needs of the beneficiary being served. The case manager shall be responsible for the initial and ongoing assessment of the beneficiary's need for home care services, the determination of cost-share liability, and shall be the pivotal person in establishing a service package to meet those needs.

i. Case management is not to be provided when a beneficiary is in an inpatient hospital setting and the stay extends beyond a full calendar month;

2. Home health care: Provided by a licensed home health agency which may include skilled nursing care; homemaker/home health aide services; physical therapy and occupational therapy; speech-language pathology services; medical social services and medical supplies. Medical supplies, provided by the home health agency, shall be limited to a maximum of $50.00 a month. Covered home care services are provided according to medical, nursing and other health-related needs, as documented in the beneficiary's plan of care;

3. Homemaker: Personal care, household tasks, and activities of daily living, provided to a beneficiary in the home by either a home health agency or a homemaker agency;

4. Medical day care: *[a]* *A* program of medically supervised, health and health-related services provided in an ambulatory care setting to a beneficiary who is a non-resident of the medical day care center;

5. Social adult day care: A comprehensive social and health-related outpatient program for the frail, moderately handicapped, slightly confused beneficiary who needs care during the day;

6. Medical transportation: Non-emergency transporting of a beneficiary by an approved, suitable vehicle to obtain health services. Transportation may be provided by an invalid coach or by lower modes of service that are arranged/provided by the County Welfare Agency/Board of Social Services; and

7. Respite care: A temporary service offered on an intermittent basis to a beneficiary being cared for at home. The purpose of this service is to relieve the informal caregivers, allowing for a leave of absence in order to reduce stress or to meet a family crisis. Respite care can be provided in a beneficiary's home by a home health agency, homemaker agency or in a nursing facility for limited periods of time.

(b) The services, listed under (a) above, may be limited in duration or amount depending upon the medical needs of the beneficiary; the availability and cost of the care; and program openings allowed by program funding. Services are rendered by providers approved by the Division of Medical Assistance and Health Services for the Community Care Program for the Elderly and Disabled.

(c) Services other than the seven in (a) above are not available to the beneficiary eligible for HCEP.

(d) Cost sharing for HCEP is as follows:

1. Beneficiaries may be required to share in the cost of their services. Cost-share is calculated by the case manager on a monthly basis and shall be the amount of the beneficiary's monthly income in excess of a standard monthly maintenance allowance plus allowable medical or remedial expenses paid that month. Beneficiaries are then billed monthly if this determination indicates that cost share is owed.

2. The Bureau of Pharmaceutical Assistance to the Aged and Disabled (PAAD) is responsible for the billing and collection of the beneficiary's cost-share liability.

3. Non-payment of cost-share for two consecutive months shall result in termination from the program. Partial payment will be allowed for one month; cost-share shall be paid in full (current and arrears) within 60 days of the date of the initial bill.

10:60-4.4 Procedures used as financial controls for HCEP

(a) Total program costs are limited to the amount appropriated by the State legislature.

(b) Program cost is controlled by the number of beneficiaries served and per beneficiary costs.

(c) A case manager is responsible for the development of the service plan with each beneficiary/family, with input from provider agencies. A case manager is responsible for monitoring the cost of the service package as per program guidelines.

(d) HCEP Statewide service cost caps and allocation of program slots shall be coordinated by the Division of Medical Assistance and Health Services, Office of Home Care Programs.

10:60-4.5 Basis for reimbursement

(a) A fee-for-service reimbursement methodology shall be utilized for all HCEP services utilizing a Health Insurance Claim Form, 1500 N.J. Transportation providers will utilize the MC-12 form, Transportation Claim.

10:60-4.6 Termination from HCEP

(a) Beneficiaries shall be terminated from HCEP if:

1. His or her income is above program requirements;

2. His or her resources are above program requirements;

3. He or she is assessed as no longer in need of long-term home care services; or

4. His or her cost-share payments are not paid in full for two consecutive months.

(b) A beneficiary found ineligible because of an increase in annual income or resources is liable for repayment of all monies paid for HCEP services from the beginning of the calendar year, not only for those payments made after income or resources were increased. Program eligibility is based upon annual income and resources.

(c) A beneficiary terminated from HCEP shall be billed by the Bureau of Pharmaceutical Assistance to the Aged and Disabled for services rendered during a period if ineligibility.

(d) The Director of the Division may, in his or her discretion, take all necessary action to recover the cost of benefits incorrectly paid on behalf of the beneficiary. The Director may waive the Division's right to recover, when appropriate.

(e) A beneficiary who is terminated from HCEP participation may exercise his or her right to appeal the decision by submitting a request for a fair hearing in accordance with N.J.A.C. 10:49-5.3. Such request shall be submitted within 20 days from the date of the letter of termination.

1. If a hearing is granted in a situation where the beneficiary is assessed as no longer in need of home care services or cost-share has not been paid in full for two consecutive months, and the beneficiary is receiving services under HCEP, payment for these services can continue until a final decision is made. However, if the beneficiary chooses to continue to receive services and the termination is upheld at the fair hearing, the beneficiary will be billed for any service received after five days from the date of the Office of Home Care Programs' letter of termination.

2. If a hearing is granted in a situation where the beneficiary's income or resources are above program requirements, payment for the services will cease at the point that the ineligibility determination is made.

(f) A previously terminated beneficiary may be eligible for HCEP if:

1. His or her income and resources meet program requirements;
2. Home care services are needed to avoid institutionalization; and
3. His or her cost-share payments and any other monies owed to HCEP are paid.

SUBCHAPTER 5. HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)

10:60-5.1 Introduction

(a) The New Jersey Medicaid Program adopted the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). The HCPCS codes as listed in this Subchapter are relevant to certain Medicaid Home Care services.

(b) These codes are used when requesting reimbursement for certain Home Care services and when a Health Insurance Claim Form, 1500 N.J., is required.

10:60-5.2 HCPCS CODES

(a) PERSONAL CARE ASSISTANT SERVICES FOR MEDICAID AND MODEL WAIVERS

HCPCS CODE	DESCRIPTION
Z1600	Personal Care Assistant Service (Individual/hourly/weekday)
Z1605	Personal Care Assistant Service (Group/hourly/weekday)
Z1610	Initial Nursing Assessment Visit
Z1611	Personal Care Assistant Service (Individual/1/2 hour/weekday
Z1612	Personal Care Assistant Service (Group/1/2 hour/weekday)
Z1613	Nursing Reassessment Visit
Z1614	Personal Care Assistant Service (Individual/hourly/weekend/holiday)
Z1615	Personal Care Assistant Service (Individual/1/2 hour/weekend/holiday)
Z1616	Personal Care Assistant Service (Group/hourly/weekend/holiday)
Z1617	Personal Care Assistant Service (Group/1/2 hour weekend/holiday)

(b) COMMUNITY CARE PROGRAM FOR THE ELDERL' AND DISABLED (CCPED) AND HOME CARE EXPANSIOI PROGRAM (HCEP)

HCPCS CODE	DESCRIPTION
Z1240	Case Management, per recipient, per month

The following codes are to be used by licensed Home Health Agencies ONLY

Z1245	Home Health Aide Visit, up to 4 hours
Z1250	Home Health Aide Visit, 5 to 8 hours
Z1255	Physical Therapy, daily
Z1260	Speech-Language Therapy, visit
Z1265	Occupational Therapy, visit
Z1270	Medical Social Services visit
Z1275	Skilled Nursing Care Visit
Z1280	Medical Supplies (per month)
Z1339	Home Health Aide (per hour)

The following codes may be used by licensed Home Health Agencie or Homemaker Agencies

Z1200	Homemaker, hourly, weekday
Z1205	Initial Evaluation, R.N.
Z1290	Nursing Reassessment Visit
Z1295	Homemaker, hourly, weekend, holiday
Z1210	Respite Care, 8-hour day
Z1215	Respite Care, 8-hour night
Z1220	Respite Care Day—over 8 hours, up to 12 hours
Z1225	Respite Care Night—over 8 hours, up to 12 hours
Z1230	Respite Care over 12 hours, up to 24 hours
Z1285	Respite Care, Nursing Facility, daily
Z1235	Social Adult Day Care, daily
90050	Medical Day Care, daily

In addition to the above, the following are appropriate to HCEI only ***and used only by HCEP case managers***.

Z1202	Initial Comprehensive Needs Assessment *[(HCEI only)]*
Z1203	Collection of Disability Information *[(HCEP only)]'

(c) HCPCS CODES FOR MODEL WAIVERS AND AIDS COMMUNITY CARE ALTERNATIVES PROGRAM

HCPCS CODE	DESCRIPTION
MODEL WAIVERS I, II, and III	
Z1700	Case Management, per recipient/per month *[(Model Waiver)]*
MODEL WAIVER III and AIDS COMMUNITY CARE ALTERNATIVES PROGRAM	
Z1710	PDN-RN, Per Hour/Weekday
Z1715	PDN-LPN, Per Hour/Weekday
Z1720	PDN-RN, Per Hour/Weekend/Evening/Holiday
Z1725	PDN-LPN, Per Hour/Weekend/Evening/Holiday
Z1730	PDN-RN Specialty, Per Hour/Weekday
Z1735	PDN-LPN Specialty, Per Hour/Weekday
Z1740	PDN-RN Specialty, Per Hour/Weekend/Evening/Holiday
Z1745	PDN-LPN Specialty, Per Hour/Weekend/Evening/Holiday

(d) HCPCS FOR AIDS COMMUNITY CARE ALTERNATIVES PROGRAM

HCPCS CODE	DESCRIPTION
Z1800	Case Management, Per Recipient/Month
Z1801	Case Management, Initial Month (one time only, per recipient)
Z1810	Hospice, daily
Z1820	Personal Care Assistant Service, Per Hour/Weekday/Individual

T1821	Personal Care Assistant Service, Per 1/2 Hour/Weekday/Individual
T1822	Personal Care Assistant Service, Per Hour/Weekend/Holiday/Individual
T1823	Personal Care Assistant Service, Per 1/2 Hour/Weekend/Holiday/Individual
T1824	Personal Care Assistant Service, Per Hour/Weekday/Group
T1825	Personal Care Assistant Service, Per 1/2 Hour/Weekday/Group
T1826	Personal Care Assistant Service, Per Hour/Weekend/Holiday/Group
T1827	Personal Care Assistant Service, Per 1/2 Hour/Weekend/Holiday/Group
T1828	Initial Nursing Assessment Visit
T1829	Nursing Reassessment Visit
T1830	Methadone Treatment at Home ***provided only by narcotic and drug treatment centers***
T1831	Urinalysis for Drug Addiction at Home ***provided only by narcotic and drug treatment centers***
T1832	Psychotherapy, Full Session at Home ***provided only by narcotic and drug treatment centers***
T1833	Psychotherapy, Half Session at Home ***provided only by narcotic and drug treatment centers***
T1834	Family Therapy at Home ***provided only by narcotic and drug treatment centers***
T1835	Family Conference at Home ***provided only by narcotic and drug treatment centers***
T1850	Intensive Supervision for Children with AIDS in Foster Care Homes, per recipient, per month ***provided only by DYFS***
T1851	Specialized Group Foster Home Care for Children, daily
T1852	Intensive Supervision for Children with ARC in Foster Care Homes, per recipient, per month ***provided only by DYFS***
T1853	Intensive Supervision for HIV-positive Children in Foster Care Homes, per recipient, per month ***provided only by DYFS***
T1860	Medical Day Care, daily

SUBCHAPTER 6. BILLING PROCEDURES FOR HOME CARE SERVICES *[(HOME HEALTH CARE SERVICES AND PERSONAL CARE ASSISTANT SERVICES)]*

10:60-6.1 Home care services billing procedures

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid*[-eligible individual]* ***recipient or individual served under HCEP***. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

(b) For all Home Health Care Services provided by a certified licensed home health agency ***except under CCPED and HCEP***, *[A]* ***a*** "Home Health Claim", form (MC-3C3), must be submitted to the appropriate Fiscal Agent, either Blue Cross and Blue Shield of New Jersey, Inc., or The Prudential Insurance Company of America.

(c) For all *[Personal Care Assistant Services]* ***case management, Personal Care Assistant Services, CCPED and HCEP services, private duty nursing and hospice care services*** provided by a home health and homemaker agency, an "Independent Outpatient Health Facility" form, MC-14, must be submitted to The Prudential Insurance Company of America. ***When private duty nursing and hospice care services are provided by other than a home health and homemaker agency, the MC-14 shall also be used.***

(d) Medicare/Medicaid coverage:

1. When the patient is covered under both Medicare and Medicaid, a HCFA-1487 Medicare form, (Home Health Agency Report and Billing, Hospital and Medical Insurance Benefits—Social Security Act), should be completed (Exhibit III). Item 14 (Block E) of the HCFA-1487 form must be checked and the HSP (Medicaid) Case Number and Person Number must be indicated. *[Prior authorization is not required.

2. Since Personal Care Assistant Services is not a Medicare covered service, item 14 on the FD-139 should not be completed.]*

*[3.]***2.*** For Home Health Care Service: If service is not covered under the Medicare Program or when Medicare benefits are exhausted, a Medicaid Home Health Claim form (MC-3C3) must be completed. *[Prior authorization is required before providing services to a Medicaid recipient.]*

*[4.]***3.*** When only part of a particular service provided on the same day is covered by Medicare, a separate Medicaid Home Health Claim form (MC-3C3) must be submitted *[with a copy of the approved FD-139 attached]* for the non-covered portion of the service. *[Prior authorization is required.]*

(e) See Appendix G, incorporated herein by reference, for a copy of the "Home Health Claim" form (MC-3C3) and the instructions for the proper completion of the form.

(f) See Appendix H, incorporated herein by reference, for a copy of the "Independent Outpatient Health Facility" form (MC-14), and the instructions for the proper completion of the form.

(g) For reimbursement, submit the Fiscal Agent copy of the "Independent Outpatient Health Facility" form, MC-14, to:

The Prudential Insurance Company of America
P.O. Box 1900
Millville, New Jersey 08332

1. Refer any questions regarding claim preparation to the Medicaid Claim Division II (609) 293-2175 or the toll-free number 1-800-582-7052.

10:60-6.2 Timeliness of claim submission and claim inquiry

For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.

10:60-6.3 Submitting corrected claims

To correct a previously submitted claim, the Home Health Agency and Personal Care Assistant Services provider should reproduce a legible copy of the submitted claim. Corrections should be made in red in the appropriate items. The corrected claim should be marked DEBIT-ADJ in the upper right hand margin. If all charges and visits reported on the previously submitted claims are to be deleted, mark it CANCEL ONLY. A corrected claim should be submitted if the charges change by more than $1.00.

10:60-6.4 Toll free telephone service

Refer any questions pertaining to Individual Medicaid Practitioner (IMP) Numbers to 1-800-582-7052. This toll free service is available from 8:00 A.M. to 4:00 P.M. Monday through Friday, except holidays.

10:60-6.5 Assessment of interest on overpayments (Home Health Agency Services Only)

(a) When a Home Health Agency files a cost report and the report indicates that there has been an overpayment, full refund should be remitted with the report. In situations where this is not done, or where the Fiscal Agent, Blue Cross or Prudential, discovers an overpayment during desk review, field audit, or final settlement, the Fiscal Agent will, within seven days of discovery, contact the provider and attempt to recoup the overpayment by obtaining a refund in a lump sum.

(b) If the provider is unable to make a lump sum refund, the Fiscal Agent will, within 30 days after the date it notifies the provider that an overpayment exists, work out a repayment agreement by a series of setoffs against interim payments or by a combination of set-offs and cash repayments or through cash repayments only.

(c) The type of arrangement to be worked out with the provider is left to the discretion of the Fiscal Agent. The Fiscal Agent shall, as a matter of policy, attempt to recoup the overpayment as quickly as possible. The period of recovery shall not exceed 12 months unless a longer period of repayment is approved by the Director, Division of Medical Assistance and Health Services.

(d) Effective 30 days after the adopting of this regulation, all repayment agreements, including those in existence at the time of adoption, shall be in writing, signed by a duly authorized officer of

the provider organization and an appropriate representative of the Fiscal Agent.

(e) If a repayment arrangement cannot be concluded within 30 days of notification by the Fiscal Agent, the Fiscal Agent shall make recovery through deductions from interim payments. In this instance, full recovery shall be made within 120 days from the date of initial contact.

(f) Recovery of the overpayments shall be made without regard to disputes in whole or in part of the Fiscal Agent's determination of the overpayment or pending appeals with the Provider Reimbursement Review Board (PRRB). As appeals are adjudicated, appropriate adjustments will be recognized and payments made.

(g) In all instances where full repayment cannot be made within 30 days of the Fiscal Agent's initial contact, interest shall be charged on the outstanding balance on the fifteenth of every month. The amount of interest shall be at the maximum legal rate on the date of the repayment agreement or thirty days after the date of initial contact, whichever is sooner.

(h) Where the discovery of an overpayment is prevented or burdened by errors contained within the cost report, either inadvertently or willfully, interest shall be charged as of the fifteenth of the first month (after) the cost filing was originally due.

(i) When cost filings are submitted more than 120 days after the close of the Home Health Agency's fiscal year and an overpayment is determined, interest shall be charged beginning on the fifteenth of the first month (after) the cost filing was originally due.

10:60-6.6 Automated Data Exchange

(a) Any approved provider may request approval to submit claim for reimbursement via an approved method of Automated Data Exchange. All costs of rental/purchase of a terminal, installation maintenance, and usage of telephone lines are the responsibility o the provider.

(b) Requests for approval must be submitted to the appropriat contractor:

The Prudential Insurance Company
P.O. Box 471
Millville, New Jersey 08332
or
Blue Cross of New Jersey
33 Washington Street
Newark, New Jersey 07102

(c) Any provider approved for an Automated Data Exchange claim submission system must comply with all regulations and restrictions set forth by the New Jersey Medicaid Program.

(d) A random billing sample will be audited after a three-month period. The review to compare data received via the Automated Data Exchange against the medical records will consist primarily of statement of charges, nature of services rendered, employment or accident related, other coverage, patient/provider signature, and verification that charges and procedure codes match services performed.

1. Subsequent audits will be scheduled at six-month intervals if the error rate is acceptable.

APPENDIX A

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

HOME CARE AGENCY REVIEW SUMMARY

'Agency _____ Date _____

Address _____ Phone _____

License Type: _____ Expiration Date _____

Accreditation: _____ Expiration Date _____

Administrator/Director _____

Nursing Supervisor(s): _____ Current License ____

Continuing Homemaker-Home Health Aide Training: ___ Hours per Year _____

Program and Attendance Records Kept: Yes ___ No ___

Type of Service Reviewed: Homemaker ___ PCA ___ PDN ___

No. Client Records Reviewed: _____ No. Personnel Records Reviewed _____

	YES	NO	N/A
1. Referral Source	___	___	___
2. Diagnosis	___	___	___
3. Physician's Orders	___	___	___
a. Renewal Orders	___	___	___
4. Initial Assessment	___	___	___
5. Reassessment	___	___	___
6. Plans of Care	___	___	___
7. Progress Notes	___	___	___
8. Medication Administration Record	___	___	___
9. Supervisory Visits	___	___	___
10. Signature on Service Report	___	___	___
11. Signature on Plan of Care	___	___	___
12. Continuity of Personnel	___	___	___
13. Appropriate Follow-up	___	___	___

	YES	NO	N/A
1. Application	___	___	___
2. Evidence of Interview	___	___	___
3. References	___	___	___
4. Certification or License	___	___	___
5. Probationary Evaluation	___	___	___
6. Annual Evaluation	___	___	___
7. Attendance at Inservice	___	___	___
8. Physical Exam	___	___	___
9. RN/LPN Performance Evaluation	___	___	___

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APPENDIX B

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Hospice Agency Review Summary

Agency: _____ Date: _____

Address: _____ Phone: _____

Administrator/Director: _____

Expiration Date of Agency License: _____

Written agreement for provision of all services Yes ___ No ___

Qualifications available of all personnel providing services Yes ___ No ___

Continuing Inservice Education for all personnel Yes ___ No ___

Ongoing quality assurance Yes ___ No ___

No. Client Records Reviewed _____ No. Personnel Records Reviewed _____

	Yes	No	N/A
1. Referral Source	___	___	
2. Diagnosis	___	___	
3. Physician Order	___	___	
a. Renewal Order	___	___	___
4. Initial Assessment	___	___	
5. Reassessment	___	___	___
6. Plan of Care	___	___	
7. Progress Notes	___	___	
8. Hospice Consent	___	___	
a. Revocation Consent	___	___	___
9. Appropriate Referral	___	___	

	Yes	No
1. Application	___	___
2. Evidence of Interview	___	___
3. References	___	___
4. License	___	___
5. Qualification Available	___	___
6. Physical exam	___	___
7. Performance Evaluation	___	___

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PLEASE TYPE OR PRINT

State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

APPENDIX C

REQUEST FOR HOME CARE AUTHORIZATION OR REAUTHORIZATION

PATIENT INFORMATION

1. Last Name | First Name | 2. Sex | 3. Age | 4. Address | 5. Social Security Account Number

6. HSP (Medicaid) Case Number | 7. Person Number ___ ___ | 8. Telephone Number ( ) Area Code | 9. Attending Physician's Name Last First | 10. M.D.s, D.O.s Telephone Number ( ) Area Code

11. Provider Identification (Name and address) | 12. Provider Telephone Number ( ) | 13. Provider Number

14. Provider Certification
I certify this agency has determined the services described are not covered by the Medicare (Title XVIII) Program or I have verified that this patient's benefits for these services have been exhausted. I will not submit any additional billing to Medicare for this patient.
Signature:

PROGRAM

15. Designate Type of Program:

( ) Home Health Care Services (attach MC-3C claim form) ( ) Community Care Waiver Services (attach to MC-14 claim form)
( ) Personal Care Assistant Services (attach to MC-14 claim form)

MEDICAL, NURSING AND SOCIAL INFORMATION

16. Name of Last Hospitalization or Long Term Care Facility | Date Admitted | Date Discharged

17. Diagnosis (including surgery and date)
Primary
Secondary
Diagnosis Known by
( ) Patient ( ) Family ( ) Neither

18. Prognosis (check one): ( ) Good ( ) Fair ( ) Poor ( ) Guarded

19.

Functional Limitations		Continence	Mental Behavior	Activities Permitted		Special Problems
( ) Contractures	( ) Speech	( ) Bladder incontin.	( ) Disoriented	( ) O.O.B	( ) Full	( ) Decubitus ulcer
( ) Paralysis	( ) Hearing	( ) Bowel incontin.	1-2-3 Spheres	( ) B.R.P.	( ) Part	( ) Skin Problem
( ) Amputation	( ) Vision	( ) Indwelling catheter	( ) Confused	( ) Ambulation	( ) None	( ) Allergy
( ) Wheelchair bound	( ) Other	( ) Colostomy	( ) Underactive/Regressed	( ) Stairs		( ) Other (specify)
( ) Assistive devices (explain):			( ) Anxious	Diet		
			( ) Behavior problem	( ) Regular	( ) Special (specify)	

20. Social Information:
Patient seems motivated to utilize Home Health ( ) Yes ( ) No
Family or friends available, willing and appropriate to assist ( ) Yes ( ) No
Patient's home is equipped for his/her care ( ) Yes ( ) No
If needed, community resources are available ( ) Yes ( ) No
Explanation of above and/or additional information

21. Goals: ( ) Rehabilitation ( ) Maintenance ( ) Preventive

Time Required: Discharge Plan:
Plan of Treatment (Medical Orders — Drugs, Treatment, Diet, etc.)

Nursing Components:
( ) Administer medications ( ) Instruction ( ) ADL ( ) Follow-up of special therapy ( ) Other (specify)
( ) Treatments ( ) Personal Care ( ) ROM ( ) B and B Retraining
( ) Observation/Supervision ( ) Restorative care ( ) Ambulation ( ) Transfer techniques

Special Therapies (O.T., P.T., S.T.)—Attach goals and time period to achieve same/progress notes as necessary.
Social Service:

REQUEST INFORMATION

22. Request Information: Starting date: Ending date:
Specify services/visits required: Visits/Hours: Charges/Fees; Per Visit/Per Hr./Per Half-Hr.

Skilled Nursing Care, RN		Initial Evaluation, R.N.	
Home Health Aide		Reassessment Visit, RN	
Physical Therapy		Homemaker	
Speech-Language Pathology		Private Duty Nursing	
Occupational Therapy		Respite	
Medical Social Services		Personal Care Assistant	
Medical Supplies		FOR DIVISION USE ONLY	
Other (identify)			

SIGNATURE OF PHYSICIAN REQUESTING SERVICES DATE | SIGNATURE/AGENCY REQUESTING SERVICES DATE

AUTHORIZATION

FOR DIVISION USE ONLY

23. Authorization Information: ( ) Authorization granted ( ) Authorization denied, letter attached ( ) Authorization granted as amended above

Authorization From: To:
Home Health Care Services ( ) Acute ( ) Chronic
Personal Care Assistant Services
Community Care Waiver Services
Medical Consultant | RSN: | SW II | DATE:

FD-139 (REV. 8/87) Medicaid 81344 Ed. 6/84

FISCAL AGENT COPY

APPENDIX D

HCFA-485—HOME HEALTH CERTIFICATION AND PLAN OF TREATMENT

Form HCFA-485 is reproduced from the *Medicare Intermediary Manual*, § 3902.6, Exhibit I.

Department of Health and Human Services
Health Care Financing Administration

Form Approved
OMB No. 0938-0357

HOME HEALTH CERTIFICATION AND PLAN OF TREATMENT

1. Patient's HI Claim No	2. SOC Date	3. Certification Period From / To	4. Medical Record No	5. Provider No

6. Patient's Name and Address	7. Provider's Name and Address

8. Date of Birth	9. Sex ☐ M ☐ F	10. Medications Dose/Frequency/Route (N)ew (C)hanged
11. ICD-9-CM	Principal Diagnosis	Date
12. ICD-9-CM	Surgical Procedure	Date
13. ICD-9-CM	Other Pertinent Diagnoses	Date

14. DME and Supplies	15. Safety Measures

16. Nutritional Req	17. Allergies

18 A. Functional Limitations

1 ☐ Amputation
2 ☐ Bowel/Bladder (Incontinence)
3 ☐ Contracture
4 ☐ Hearing
5 ☐ Paralysis
6 ☐ Endurance
7 ☐ Ambulation
8 ☐ Speech
9 ☐ Legally Blind
A ☐ Dyspnea With Minimal Exertion
B ☐ Other (Specify)

18 B. Activities Permitted

1 ☐ Complete Bedrest
2 ☐ Bedrest BRP
3 ☐ Up As Tolerated
4 ☐ Transfer Bed/Chair
5 ☐ Exercises Prescribed
6 ☐ Partial Weight Bearing
7 ☐ Independent At Home
8 ☐ Crutches
9 ☐ Cane
A ☐ Wheelchair
B ☐ Walker
C ☐ No Restrictions
D ☐ Other (Specify)

19. Mental Status: 1 ☐ Oriented 2 ☐ Comatose 3 ☐ Forgetful 4 ☐ Depressed 5 ☐ Disoriented 6 ☐ Lethargic 7 ☐ Agitated 8 ☐ Other

20. Prognosis: 1 ☐ Poor 2 ☐ Guarded 3 ☐ Fair 4 ☐ Good 5 ☐ Excellent

21. Orders for Discipline and Treatments (Specify Amount/Frequency/Duration)

22. Goals/Rehabilitation Potential/Discharge Plans

23. Verbal Start of Care and Nurse's Signature and Date Where Applicable

24. Physician's Name and Address	25. Date HHA Received Signed POT	26. I ☐ certify ☐ recertify that the above home health services are required and are authorized by me with a written plan for treatment which will be periodically reviewed by me. This patient is under my care is confined to his home and is in need of intermittent skilled nursing care and/or physical or speech therapy or has been furnished home health services based on such a need and no longer has a need for such care or therapy, but continues to need occupational therapy
27. Attending Physician's Signature (Required on 485 Kept on File in Medical Records of HHA)	Date Signed	

Form HCFA-485 (C4) (4-87)

HOME CARE AGENCY REVIEW

RECOMMENDATIONS TO AGENCY:

PROJECTED REVISIT: _____

AGENCY STAFF PRESENT:	OFFICE OF HOME CARE STAFF SIGNATURES
_____	_____
_____	_____
_____	_____

HEALTH INSURANCE CLAIM FORM

APPENDIX E

READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

MEDICARE ☐ MEDICAID ☐ CHAMPUS ☐ OTHER ☐ OMB No. 0938-0008

PATIENT & INSURED (SUBSCRIBER) INFORMATION

1. PATIENT'S NAME (First name, middle initial, last name)	2. PATIENT'S DATE OF BIRTH	3. INSURED'S NAME (First name, middle initial, last name)
4. PATIENT'S ADDRESS (Street, city, state, ZIP code) Telephone No.	5. PATIENT'S SEX MALE ☐ FEMALE ☐ 7. PATIENT'S RELATIONSHIP TO INSURED SELF ☐ SPOUSE ☐ CHILD ☐ OTHER ☐	6. PATIENT'S MEDICARE/CHAMPUS NO. (Include any letters) 8. PATIENT'S MEDICAID I.D. NO.
9. OTHER HEALTH INSURANCE COVERAGE— YES ☐ NO ☐ Enter Name of Policyholder and Plan Name and Address and Policy Number	10. WAS CONDITION RELATED TO: A. PATIENT'S EMPLOYMENT YES ☐ NO ☐ B. ACCIDENTAL INJURY AUTO ☐ OTHER ☐	8a. INSURED'S GROUP NO. (Or Group Name) 11. INSURED'S ADDRESS (Street, city, state, ZIP code)
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE MEDICARE, CHAMPUS & MEDICAID (Read back before signing.) I Authorize the Release of any Medical Information Necessary to Process this Claim and Request Payment of Benefits in Accordance with Program Policy For Federal Benefits I Request Payment Either to Myself or to the Person who Accepts Assignment Below. SIGNED DATE	Relationship: Check if other than patient ☐ Husband/Wife ☐ Dependent ☐ Other	13. I Authorize Payment of Medical Benefits to Undersigned Physician or Supplier for Service Described Below. SIGNED (Insured or Authorized Person)

PHYSICIAN OR SUPPLIER INFORMATION

14. DATE OF ILLNESS (FIRST SYMPTOM) OR INJURY (ACCIDENT) OR PREGNANCY (LMP)	15. DATE PATIENT FIRST CONSULTED YOU FOR THIS CONDITION	16. HAS PATIENT EVER HAD SAME OR SIMILAR SYMPTOMS? YES ☐ NO ☐	16a. IF AN EMERGENCY CHECK HERE ☐
17. DATE PATIENT ABLE TO RETURN TO WORK	18. DATES OF TOTAL DISABILITY FROM THROUGH	DATES OF PARTIAL DISABILITY FROM THROUGH	
19. NAME OF REFERRING PHYSICIAN OR OTHER SOURCE (e.g. public health agency)	19a. I.D. NUMBER	20. FOR SERVICES RELATED TO HOSPITALIZATION GIVE HOSPITALIZATION DATES ADMITTED DISCHARGED	
21. NAME & ADDRESS OF FACILITY WHERE SERVICES RENDERED (If other than home or office)	21a. I.D. NUMBER	22. WAS LABORATORY WORK PERFORMED OUTSIDE YOUR OFFICE? YES ☐ NO ☐ CHARGES	

23A. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY, RELATE DIAGNOSIS TO PROCEDURE IN COLUMN E BY REFERENCE NUMBERS 1, 2, 3, ETC. OR DX CODE.

1.
2.
3.
4.

23B. WAS THIS SERVICE PERFORMED AS A RESULT OF AN EPSDT PROGRAM REFERRAL? YES ☐ NO ☐

PRIOR AUTHORIZATION NO.

24. A. DATE OF SERVICE FROM	TO	B. *PLACE OF SERVICE	C. * T.O.S	D. FULLY DESCRIBE PROCEDURES, MEDICAL SERVICES OR SUPPLIES FURNISHED FOR EACH DATE GIVEN (Explain Unusual Services Or Circumstances) PROCEDURE CODE (IDENTIFY)	E. DIAGNOSIS CODE	F. DAYS OR UNITS	G. CHARGES	H. CHECK IF FAMILY PLANNING	I. LEAVE BLANK

25. SIGNATURE OF PHYSICIAN OR SUPPLIER (I certify that the statements on the reverse apply to this bill and are made a part hereof.) SIGNED ☐ MD ☐ DO ☐ DPM ☐ OD ☐ DC ☐ PhD DATE	26. ACCEPT ASSIGNMENT YES ☐ NO ☐ (Medicare and CHAMPUS Only See Back)	27. TOTAL CHARGE	28. AMOUNT PAID	29. BALANCE DUE
32. PATIENT'S ACCOUNT NO.	33. EMPLOYER I.D. NO.			
34. REMARKS:	30. PROVIDER SOCIAL SECURITY/I.D. NO.	31. PHYSICIAN'S OR SUPPLIER'S NAME, ADDRESS & ZIP CODE TELEPHONE NO.		

* PLACE OF SERVICE AND TYPE OF SERVICE (T.O.S.) CODES ON THE BACK

1500 N.J. ED.11-82

APPROVED BY AMA COUNCIL ON MEDICAL SERVICES
APPROVED BY THE HEALTH CARE FINANCING ADMINISTRATION, N.J. MEDICAID, AND CHAMPUS.

HEALTH INSURANCE CLAIM FORM

REFERS TO GOVERNMENT PROGRAMS ONLY

MEDICARE AND CHAMPUS PAYMENTS: A patient's signature requests that payment be made and authorizes release of medical information necessary to pay the claim. If item 9 is completed, the patient's signature authorizes releasing of the information to the insurer or agency shown. In Medicare assigned or CHAMPUS participation cases, the physician agrees to accept the charge determination of the Medicare carrier or CHAMPUS fiscal intermediary as the full charge, and the patient is responsible only for the deductible, coinsurance, and non-covered services. Coinsurance and deductible are based upon the charge determination of the Medicare carrier or CHAMPUS fiscal intermediary if this is less than the charge submitted. CHAMPUS is not a health insurance program and renders payment for health benefits provided through membership and affiliation with the Uniformed Services. Information on the patient's sponsor should be provided in items 3, 6, 7, 8, 9, and 11.

MEDICAID PAYMENTS: Authorization to Release Information, and Payment Request. I certify that the service(s) covered by this claim has been received, and request that payment for these services be made on my behalf. I authorize any holder of medical or other information about me to release to the State Agency or its authorized Agents any information needed for this or a related claim.

SIGNATURE OF PHYSICIAN OR SUPPLIER (MEDICARE AND CHAMPUS)

I certify that the services shown on this form were medically indicated and necessary for the health of the patient and were personally rendered by me or were rendered incident to my professional service by my employee under immediate personal supervision, except as otherwise expressly permitted by Medicare or CHAMPUS regulations.

For services to be considered as 'incident' to a physician's professional service, 1) they must be rendered under the physician's immediate personal supervision by his/her employee, 2) they must be an integral, although incidental part of a covered physician's service, 3) they must be of kinds commonly furnished in the physician's offices, and 4) the services of non-physicians must be included on the physician's bills.

For CHAMPUS claims, I further certify that neither I nor any employee who rendered the services are employees or members of the Uniformed Services (refer to 5 USC 5536).

No Part B Medicare benefits may be paid unless this form is received as required by existing law and regulations (20 CFR 422.510).

NOTICE: Anyone who misrepresents or falsifies essential information to receive payment from Federal funds requested by this form may upon conviction be subject to fine and imprisonment under applicable Federal laws.

NOTICE TO PATIENT ABOUT THE COLLECTION AND USE OF MEDICARE AND CHAMPUS INFORMATION

We are authorized by HCFA and CHAMPUS to ask you for information needed in the administration of the Medicare and CHAMPUS programs. Authority to collect information is in section 205(a), 1872 and 1875 of the Social Security Act as amended and 44 USC 3101, 41 CFR 101 et seq. and 10 USC 1079 and 1086.

The information we obtain to complete Medicare and CHAMPUS claims is used to identify you and to determine your eligibility. It is also used to decide if the services and supplies you received are covered by Medicare or CHAMPUS and to insure that proper payment is made.

The information may also be given to other providers of services, carriers, intermediaries, medical review boards, and other organizations or federal agencies as necessary to administer the Medicare and CHAMPUS programs.

For example, it may be necessary to disclose information about the benefits you have used to a hospital or doctor.

With the one exception discussed below, there are no penalties under Social Security law for refusing to supply information. However, failure to furnish information regarding the medical services rendered or the amount charged would prevent payment of Medicare or CHAMPUS claims. Failure to furnish any other information such as name or claim number, would delay payment of the claim.

It is mandatory that you tell us if you are being treated for a work related injury so we can determine whether worker's compensation will pay for treatment. Section 1877(a) (3) of the Social Security Act provides criminal penalties for withholding this information.

MEDICAID PAYMENTS (PROVIDER CERTIFICATION)

I hereby agree to keep such records as are necessary to disclose fully the extent of services provided to individuals under the State's Title XIX plan and to furnish information regarding any payments claimed for providing such services as the State Agency may request.

SIGNATURE OF PHYSICIAN (OR SUPPLIER): I certify that the services covered by this claim were personally rendered by me or under my direct personal supervision (as defined by Program regulations); that the foregoing information is true, accurate and complete; and that the services covered by this claim and the amount charged therefore are in accordance with the regulations of the Medicaid Program; and that no part of the net amount payable under this claim has been paid; and that payment of such amount will be accepted as payment in full without additional charge to the patient or to others on his behalf, with the exception of authorized deductibles and coinsurance. I also certify that services have been furnished in full compliance with the non-discrimination requirements of Title VI of the Federal Civil Rights Act and Section 504 of the Rehabilitation Act of 1973.

I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statements, or documents, or concealment of a material fact, may be prosecuted under applicable Federal or State laws, or both.

PLACE OF SERVICE CODES:

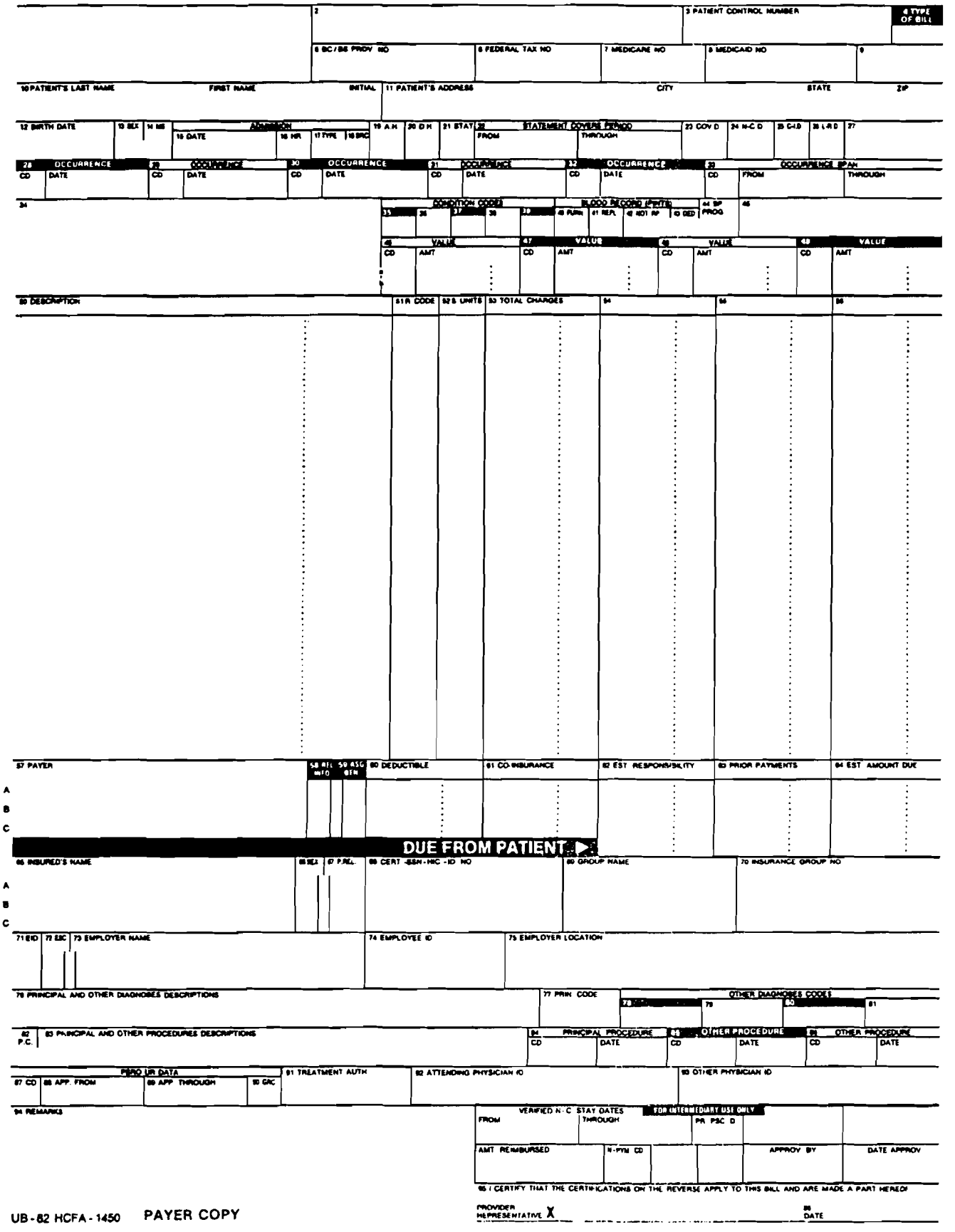
(IH) - Inpatient Hospital
(OH) - Outpatient Hospital
(O) - Doctor's Office
(H) - Patient's Home
(DCF) - Day Care Facility (PSY)
(NCF) - Night Care Facility (PSY)
(NH) - Nursing Home
(SNF) - Skilled Nursing Facility
(A) - Ambulance
(OL) - Other Locations
(IL) - Independent Laboratory
(OMS) - Other Medical/Surgical Facility
(RTC) - Residential Treatment Center
(STF) - Specialized Treatment Facility
(KC) - Independent Kidney Care Treatment Center
(CL) - Clinic
(ER) - Emergency Room
(BH) - Boarding Home

TYPE OF SERVICE CODES:

1 - Medical Care
2 - Surgery
3 - Consultation
4 - Diagnostic X-Ray
5 - Diagnostic Laboratory
6 - Radiation Therapy
7 - Anesthesia
8 - Assistance at Surgery
9 - Other Medical Service
0 - Blood or Packed Red Cells
A - Used DME
M - Alternate Payment for Maintenance Dialysis
Y - Second Opinion on Elective Surgery
Z - Third Opinion on Elective Surgery

APPENDIX F

APPROVED OMB NO. 0938-0279



UB-82 HCFA-1450 PAYER COPY

UNIFORM BILL NOTICE: ANYONE WHO MISREPRESENTS OR FALSIFIES ESSENTIAL INFORMATION REQUESTED BY THIS FORM MAY UPON CONVICTION BE SUBJECT TO FINE AND IMPRISONMENT UNDER FEDERAL AND/OR STATE LAW.

Certifications relevant to the Bill and Information Shown on the Face Hereof: Signatures on the face hereof incorporate the following certifications or verifications where pertinent to this Bill:

1. If third party benefits are indicated as being assigned or in participation status, on the face thereof; appropriate assignments by the insured-beneficiary and signature of patient or parent or legal guardian covering authorization to release information are on file. Determinations as to the release of medical and financial information should be guided by the particular terms of the release forms that were executed by the patient or the patient's legal representative. The hospital agrees to save harmless, indemnify and defend any insurer who makes payment in reliance upon this certification, from and against any claim to the insurance proceeds when in fact no valid assignment of benefits to the hospital was made.

2. If patient occupied a private room or required private nursing for medical necessity, any required certifications are on file.

3. Physician's certifications and re-certifications, if required by contract or Federal regulations, are on file.

4. For Christian Science Sanitoriums verifications and if necessary re-verifications of the patient's need for sanitorium services are on file.

5. Signature of patient or his representative on certifications, authorization to release information, and payment request, as required by Federal law and regulations (42 USC 1935f, 42 CFR 405.1663, 10 USC 1071 through 1086, 32 CFR 199) and, if required by other contract regulations, is on file.

6. This claim, to the best of my knowledge, is correct and complete and is in conformance with the Civil Rights Act of 1964 as amended. Records adequately disclosing services will be maintained and necessary information will be furnished to such governmental agencies as required by applicable law.

7. For Medicare purposes:

   If the patient has indicated that other health insurance or state medical assistance agency will pay part of his medical expenses and he wants information about his claim released to them upon their request, necessary authorization is on file.

8. For Medicaid purposes:

   This is to certify that the foregoing information is true, accurate, and complete.

   I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statements, or documents, or concealment of a material fact, may be prosecuted under applicable Federal or State laws.

9. For CHAMPUS purposes:

   This is to certify that:

   (a) the foregoing information is true, accurate, and complete.

   (b) the patient has represented that by a reported residential address greater than 40 miles distance he or she does not live within 40 miles of a military or U.S. Public Health Service medical facility, or if the patient resides within 40 miles of such a facility, a copy of a Non-Availability Statement (DD Form 1251) is on file, or the physician has certified to a medical emergency in any instance where a copy of a Non-Availability Statement is not on file;

   (c) the patient or sponsor has responded directly to the provider's request to identify all health insurance coverages, and that all such coverages are identified on the face of the claim except those that are exclusively supplemental payments to CHAMPUS-determined benefits;

   (d) the amount billed to CHAMPUS has been billed after all such coverages have been billed and paid, excluding Medicaid, and the amount billed to CHAMPUS is that remaining claimed against CHAMPUS benefits;

   (e) the beneficiary's cost share has not been waived by consent or failure to exercise generally accepted billing and collection efforts; and,

   (f) any hospital-based physician under contract, the cost of whose services are allocated in the charges included in this bill, is not an employee or member of the Uniformed Services. For purposes of this certification, an employee of the Uniformed Services is an employee, appointed in civil service (refer to USC 2105), including part-time or intermittent but excluding contract surgeons or other personnel employed by the Uniformed Services through personal service contracts. Similarly, member of the Uniformed Services does not apply to reserve members of the Uniformed Services not on active duty.

ESTIMATED CONTRACT BENEFITS

APPENDIX G

Instructions for the completion of the MC-3C3.

Item 1: Patient's Last Name: Copy the patient's last name and first ame, exactly as they appear on the Medicaid Eligibility Identifiation Card/Validation Form.

Item 2: Case Last Name: Copy the Case last name and first name, xactly as they appear on the Medicaid Eligibility Identification 'ard/Validation Form.

Item 3: Sex: Indicate patient's sex by entering "X" in the appropriate block.

Item 4: Birthdate: Use six digits to enter the patient's birthdate for example, May 6, 1977 is written 05/06/77). If only the year is nown, enter the year. If birthdate is unavailable, submit claim /ithout birthdate.

Item 5: Start Care Date: Use six digits to indicate the date when pproved home health care was initiated (for example, 02/01/81).

Item 6: Claim From Date: Use six digits to indicate the date of he first service for which you are billing on this claim (for example,)2/20/81).

Item 7: Claim Thru Date: Use six digits to indicate the date of he last service for which you are billing on this claim (for example,)3/25/81).

Item 8: Visits: Enter the number of visits being billed.

Item 9: Provider Name and Address: This information is usually preprinted. If not preprinted, write in provider name and address.

Item 10: Medical Record No: Enter the patient's Medical Record Number.

Items 11 and 12: HSP (Medicaid) Case No. and Patient Persons No.: Copy the patient's HSP (Medicaid) Case Number and Person Number exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form. The complete number consists of a ten-digit case number and a two-digit individualized person number.

Item 13: Provider No.: This information is usually preprinted. If the information is not preprinted enter your agency's six-digit provider number.

Item 14: Patient's Address: Enter the patient's address.

Item 15: Telephone No.: Enter patient's telephone number.

Item 16: Referring Physician's Individual Medicaid Practitioner Number: If the patient was referred by a physician from another setting, you must indicate the nine-digit Individual Medicaid Practitioner (IMP) Number of the referring practitioner.

Item 17: Referring Physician's Name: If the patient was referred by a physician from another setting, enter referring practitioner's name.

Item 18: Patient Certification: See N.J.A.C. 10:49-1.26.

Item 19: Attending Physician's Individual Medicaid Practitioner Number: Enter the nine-digit Individual Medicaid Practitioner (IMP) Number of the attending physician. If the attending physician is a "non-participating" physician (in the Medicaid Program), the Home Health Agency must write "NON PAR" in the space indicated. This item must be completed on all claim forms.

Item 20: Attending Physician's Name: Enter attending physician's name.

Item 20a: Physician Case Manager: Enter the Physician Case Manager's name and nine-digit IMP Number if the recipient is enrolled in the Medicaid Personal Physician Plan (MP Plan).

If an IMP Number of a physician is not known, the Home Health Agency may call the physician and obtain the number or it may call the Fiscal Agent's toll free number for this information (see N.J.A.C. 10:60-3.3).

This item must be completed on all claim forms if the recipient is enrolled in the MP Plan.

Item 21: Prior Authorization Number: Prior authorization is required for services following the initial visit. A claim for the initial evaluation visit must be submitted to the appropriate Fiscal Agent on the Home Health Claim form (MC-3C3), with the comment in the "Remarks" section "initial visit only". If a prior authorization number is designated by the Medicaid District Office, indicate it on the FD-139 form. Attach FD-139 to claim when submitting for payment.

Item 22: Type of Service: Enter date of each service opposite the code which appropriately describes the service. Use only two dates per line item if the services were not given on consecutive days; if the services were provided on consecutive days, for example: 10/8; 10/9; 10/10; more than two, but not more than five, dates per line item can be submitted for reimbursement:

02 . . . Skilled Nursing Code Care 10/7; 10/9
03 . . . Homemaker—Home Health Aide
10 . . . Physical Therapy
11 . . . Speech-Language Therapy
12 . . . Occupational Therapy

Item 23: Was this service performed as a result of an EPSDT Program Referral: Complete this item for patients under 21 years of age.

Ask the patient and/or referring physician or clinic whether the illness requiring services was detected during an EPSDT screening.

Indicate if this patient is such a referral by checking the appropriate block.

Item 24: Check if Family Planning: Check the block, if services indicated on the claim are ascribable to "Family Planning". These should include Home Health visits related to contraception or subsequent to family planning related surgical procedures.

Item 25: Third Party Liability Action: Indicate the source of Third Party Payment, by entering the appropriate digit in the block. Do not leave blank: if none, enter "0".

Item 26: Patient Status: Indicate the patient's status by entering the appropriate digit in the block. If plans for home health care extend beyond this billing period, enter "1", still patient.

Item 27: Discharge Date: Using six digits, enter the date of the last visit under the plan of treatment, or the date of admission to the hospital, skilled nursing facility or intermediate care facility.

Item 28: Discharge or Current Diagnosis: Using standard medical terminology, enter all the diagnoses which relate to the condition requiring the current services. The primary diagnosis is the illness or condition which was the primary reason for the services. Other diagnoses should be shown under secondary.

Enter the primary and secondary diagnosis codes as obtained from the International Classification of Diseases, ICD-9-CM. If the code contains less than five digits add trailing zeros to the code. For example, Meningitis code 320 is written 32000.

Item 29: Statement of Charges: Enter the number of visits and charges for the period covered by the claim in the appropriate column.

Use type of service charges line 27 and 28 to list additional services.

Enter the total charges on line 98.

Item 30: Other Coverage—Remaining Charges: Reserved solely for other insurance coverage.

Items 29 and 30: Cannot be completed on the same claim form.

If the patient is covered under Medicare (See N.J.A.C. 10:60-3.1(c)).

If the patient does not have Medicare coverage, enter charges not covered by other insurance on line 32 of item 30.

The amount received from the other insurer must be entered on the bottom line, "Third Party Payment Amount".

Item 31: Claim Related to Employment: Check as appropriate.

If patient's illness or injury is work-related, enter name and address of employer.

Indicate whether injury resulted from an automobile accident.

If the injury or illness is related to an auto accident, enter the auto insurance carrier and policy number in item 32 below.

Item 32: Other Insurance or Liability Coverage: Check appropriate block to indicate whether the patient has other health insurance, liability coverage, or No Fault Auto Coverage.

If yes, you must attach a copy of the denial notice or a copy of the explanation of payment from the carrier.

Enter the name of the carrier and policy number under which other health insurance benefits are available.

Item 33: Provider Certification: Read the Provider Certification carefully.

An authorized representative of the Home Health Agency must sign the MC-3C3 before the claim can be considered for payment.

Indicate the billing date which is the date the claim is mailed. The billing date cannot be earlier than the "Claim Thru Date", item

REMARKS: Use this space to enter additional information.

Items 34-38: Leave blank; for Fiscal Agent use only.

APPENDIX H

Instructions for the completion of the MC-14.

Item 1: Patient's Name: Enter patient's name exactly as it appears on the Medicaid Eligibility Identification Card/Validation Form.

Item 2: Patient's Address and Telephone Number: Enter patient's address and telephone number exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form.

Item 3: HSP (Medicaid) Case No.: Enter HSP (Medicaid) Case Number exactly as it appears on the Medicaid Eligibility Identification Card/Validation Form.

Item 4: Patient Person No.: Enter the Patient Person Number exactly as it appears on the Medicaid Eligibility Identification Card/Validation Form.

Item 5: Age: Enter patient's age.

Item 6: Sex: Check appropriate box.

Item 7: Other Health Insurance or Liability Coverage: Check the appropriate block to indicate whether the patient has other health insurance, liability coverage or No Fault Auto Coverage. If you are aware that the other coverage will not cover the services provided, please indicate so on the claim form. If yes, attach a copy of the decline notice or a copy of the explanation of payment from the Carrier.

Item 8: Was this service performed as a result of an EPSDT Program Referral: Leave Blank.

Item 9: Provider Service Information: If not preprinted, write in the provider's name, address, provider number and the telephone number.

Item 10: Was Patient's Illness or Injury connected with employment: Check as appropriate. If patient's illness or injury is work related, enter the name and address of employer. Indicate whether injury resulted from an automobile accident.

Item 11: Prior Authorization Number: Leave Blank.

Item 12: Do not write in this space; for Division use only.

Item 13: Report of Services:

13A: Dates of Service: Enter date(s) of each visit.

13B: Procedure Code: Enter procedure code. The procedure cod are listed in N.J.A.C. 10:60-3.1(g) and also in your approval lette

13C: Nature of Illness or Injury Requiring Services: Ent diagnosis. If diagnosis code is available from the International Clas fication of Diseases, ICD-9-CM, enter that code.

13D: Fully describe surgical or medical procedures and other se vices or supplies furnished for each date listed: Describe procedu or service.

13E: Check if Family Planning: Personal Care Assistant Servi providers are to utilize this item to indicate the place where the servi was provided. Applicable codes are:

2—Patient's Home;

4—Boarding Home;

9—Other (Rooming House).

13F—Charge: Enter your standard charge for the appropria service.

Item 14: Referring Practitioner's Name: Leave blank.

Item 15: Attending Practitioner's Name: Enter provider numbe

Item 16: Operating Practitioner's Name: Leave Blank.

Item 16a: Physician Case Manager: Leave Blank

Item 17: Patient Certification: See N.J.A.C. 10:49-1.26.

Item 18: Provider Certification: Read the Provider Certificatio carefully. The provider must sign the MC-14 before the claim ca be considered for payment. Indicate the billing date which is the dat the claim is mailed.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Medical Day Care Services Manual
Scope of Service, Provider Participation, Basis of Payment

Adopted Repeal and New Rules: N.J.A.C. 10:65

Proposed: November 5, 1990 at 22 N.J.R. 3327(b).

Adopted: January 25, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: January 25, 1991 as R.1991, d.87, **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-6b(16), 7, 7a, b and c; 30:4D-12.

Agency Control Number: 90-A 17.

Effective Date: February 19, 1991.

Operative Date: March 1, 1991.

Expiration Date: February 19, 1996.

Summary of Public Comments and Agency Responses:

Comments have been received from two associations representing adult day care providers and two freestanding providers of medical day care services.

Two commenters noted the difference in reimbursement in respect to the lower rates for freestanding facilities, as compared to facilities affiliated with nursing homes or hospitals. While the Division is aware of the difference, and is considering the development of a cost based reimbursement methodology for State Fiscal Year 1992 for medical day care, no revision to the reimbursement methodology will be undertaken at this time.

Two commenters questioned the requirement for professional dietar assessment/consultation upon the admission of a recipient, and monthl thereafter. The Division intends to retain the language in the propose rules as it is important that the nutritional status and dietary needs o each recipient be evaluated by a qualified dietician upon admission an subsequently when a dietary problem is identified (see N.J.A.C 10:65-1.4(a)2).

A commenter observed that, because both the Department of Healt and the Division of Medical Assistance and Health Services conduct on site reviews of facilities, the elimination of duplication of inspection would constitute a cost saving measure. The Division's response is tha the New Jersey Department of Health is responsible for insuring tha medical day care centers meet the standards for licensure of Adult Day Care Facilities, N.J.A.C. 8:43F. These standards include, but are no limited to, evaluating the physical plant, staffing ratios and qualifications fire plans, disaster plans, etc. On the other hand, the Medicaid staf (within the Division of Medical Assistance and Health Services) ensures: (1) the appropriate use of Medicaid services required within the Medical Day Care, that (2) there is documentation establishing that services were provided adequately and effectively and that (3) recipients and caregivers are satisfied with the manner in which services are delivered. Prior authorization has been eliminated to remove regulatory barriers to medical day care. However, at least until experience indicates otherwise, it is prudent to monitor programs to assure that the health and safety of Medicaid recipients are protected and that Medicaid benefits are being used appropriately and efficiently. A future review of the need for continued direct inspections and/or increased use of alternative approaches will be conducted by the Division.

Summary of Changes Between Proposal and Adoption

As noted above, the Division is making no changes to the proposed rules in response to public comments.

The following technical changes have been made to correct minor errors in the proposal as printed.

In proposed N.J.A.C. 10:65-1.1, the word "medicaid" has been ıanged to "Medicaid."

In proposed N.J.A.C. 10:65-1.2, the spelling of "Division's" has been ›rrected.

In proposed N.J.A.C. 10:65-1.4, technical changes have been made to ›rrect typographical errors, tense of a verb, pluralization, upper case › lower case, and to insert the word "to."

In proposed N.J.A.C. 10:65-1.5, the word "State" has been inserted ı "New Jersey Board," and a prepositional phrase, "For staff-recipient ıtio," has been removed.

In proposed N.J.A.C. 10:65-1.7, "caregiver's" has been changed to caregivers'."

In proposed N.J.A.C. 10:65-1.8, the phrases "For Medicare/Medicaid ›verage," and "For third party liability," have been deleted.

In proposed N.J.A.C. 10:65-2, the section heading, "Relevant HCPCS 'odes" has been changed to "HCPCS Codes."

In proposed N.J.A.C. 10:65-2.2, explanatory language has been added › the procedure code "Z1816."

Full text of the adoption follows (additions to the proposal in-icated in boldface with asterisks ***thus***; deletions from the proposal ıdicated in brackets with asterisks *[thus]*):

CHAPTER 65
MEDICAL DAY CARE SERVICES MANUAL

UBCHAPTER 1. GENERAL PROVISIONS

0:65-1.1 Purpose and scope

The Medical Day Care Program is concerned with the fulfillment ›f the health needs of *[medicaid]* ***Medicaid*** recipients and/or hose who are served under the Division's Home Care Expansion ›rogram and who could benefit from a health services alternative o total institutionalization. Medical day care is a program of medi-ally supervised, health related services provided in an ambulatory :are setting to persons who are non-residents of the facility, who do ıot require 24-hour in-patient institutional care and yet, due to their ›hysical and/or mental impairment, need health maintenance and :estorative services supportive to their community living.

0:65-1.2 Definitions

The following words and terms, when used in this chapter, shall ıave the following meanings, unless the context clearly indicates ›therwise.

"Administration-medical day care center" means the medical day :are center shall provide an identifiable administrative unit, headed ›y a Director, responsible for the overall conduct of all day care ›rogram activities.

"Division" means the Division of Medical Assistance and Health Services within the New Jersey Department of Human Services.

"Medicaid District Office" means one of the *[Diivision's]* ***Division's*** county-based offices located throughout the State admin-stering the New Jersey Medicaid Program. See MDO Directory at the end of N.J.A.C. 10:49, Administration.

"Medicaid Eligibility" means, for the purpose of this manual, that in order to obtain Medical Day Care Services, the recipient shall be determined eligible to receive Medicaid services in the community under the existing programs of Aid to Families with Dependent Children, Supplemental Security Income, Medicaid Only, certain Home Care Programs, for example, Community Care Program for the Elderly and Disabled (CCPED), Model Waivers, the AIDS Community Care Alternatives Program (ACCAP), Medically Needy and/or New Jersey Care . . . Special Medicaid Programs. (For information on how to identify a Medicaid recipient (an eligible person), please refer to N.J.A.C. 10:49-1.2.)

1. Medical day care services are available to:

i. Pregnant women*[,]**;*

ii. The aged, blind and disabled Medicaid recipient enrolled in the Medically Needy program; and

iii. the beneficiaries enrolled in the *[Divison's]* ***Division's*** Home Care Expansion Program (HCEP).

"Medical day care center" means an identifiable part of a nursing facility, or a hospital affiliated facility, or a freestanding ambulatory care facility, or such other facility which is licensed by the New Jersey State Department of Health in accordance with its Manual for Standards for Licensure of Adult Day Health Care Facilities, N.J.A.C. 8:43F-2, which possesses a valid and current provider agreement from the New Jersey Division of Medical Assistance and Health Services and which provides services as described in this manual at N.J.A.C. 10:65-1.4.

"Medical day care recipient" means a person who is a Medicaid recipient, or a recipient who is served under the Division's Home Care Expansion Program, and who is eligible for services and is diagnosed as having an identifiable medical condition, lacks sufficient social support which impacts negatively on this condition and whose assessed physical and psychosocial needs:

1. Do not require services 24 hours a day on an in-patient basis in a hospital or nursing facility, except under special circumstances;

2. Cannot be met totally in any other ambulatory care setting, such as a physician's office, hospital out-patient department or in a partial care/partial hospitalization program;

3. Require and can be met satisfactorily by a seven-hour, including portal-to-portal travel time, day-long active medical day care program not to exceed five days per week, provided by licensed and non-licensed personnel;

4. Are such that current health status would deteriorate without the direct services and health monitoring available at the center; and

5. Cannot be met while a resident of a residential health care facility (RHCF) setting except as follows:

i. If a resident of an RHCF was in medical day care prior to admission to the RHCF, medical day care services can continue for a limited period to allow for the adjustment into the RHCF;

ii. If a resident of an RHCF requires medical day care to encourage transition into a less structured residential setting such as a boarding home or an independent living arrangement, medical day care can be provided for a limited period;

iii. If a resident of an RHCF has been recently discharged from an acute care facility (general hospital, psychiatric hospital), medical day care services can be available for the purpose of "short term" (as determined by the Division) clinical monitoring; or

iv. If a resident of an RHCF shows evidence of an unstable clinical status which requires a short term structured therapeutic environment, medical day care services are available for a limited period.

v. Since individuals who reside in residential health care facilities are not eligible for CCPED or HCEP, medical day care services are not available to these residents.

"Prior authorization" means the approval process by the Medicaid District Office prior to the provision of services. In the context of medical day care, prior authorization shall only be used as outlined in N.J.A.C. 10:65-1.3(c)1 or upon Division discretion with new medical day care centers.

"Volunteer" means a person who gives his or her time and services regularly without remuneration.

10:65-1.3 Program participation

(a) A medical day care center operated by a public or private agency or organization, either proprietary or non-profit, or a subdivision of such an agency or organization, shall meet the following requirements in order to participate in the New Jersey Medicaid Program and the Home Care Expansion Program:

1. Licensure and approval by the New Jersey State Department of Health in accordance with the Manual of Standards for Licensure of Adult Day Health Care Facilities of the New Jersey State Department of Health, (N.J.A.C. 8:43F-2);

2. Approval as a medical day care center provider by the Division. This includes, at a minimum, the completion of the New Jersey Medicaid Provider Application FD-20 (Appendix A, incorporated herein by reference), the Participation Agreement FD-218 (Appendix B, incorporated herein by reference), and a written narrative Statement on the Proposed Medical Day Care Center (Appendix C, incorporated herein by reference). On-going participation as a Division provider is contingent upon continued approval by the Division of Medical Assistance and Health Services;

3. Completion, on a quarterly basis of a Medical Day Care Participant Profile, FD-321, (Appendix E, incorporated herein by reference) and a Quarterly Discharge Form, FD-322, (Appendix F, in-

corporated herein by reference) on each recipient who attends medical day care for five or more days during the quarter;

4. Preparation of a cost study, annually detailing expenditures of the medical day care center. Medical day care center costs shall be segregated from other operational costs. (Division reimbursement rates may be based on cost study information or on a percentage of nursing facility per diem rates.)

i. All direct and indirect costs associated with hospital affiliated medical day care centers shall be reported separately by the hospital on New Jersey State Department of Health cost findings for payment purposes and shall not be considered an allowable cost under the Diagnosis Related Group (DRG) program.

(b) The Division shall conduct an on-going evaluation of the center's Day Care Program by on-site visits to the medical day care center. A Medical Day Care On-Site Report MCNH-89 (Appendix D, incorporated herein by reference) shall be completed by Division staff and a copy shall be forwarded to the center.

(c) Division staff may request a plan of correction if the center is evaluated as providing sub-standard services and/or inadequate documentation of these services. The plan of correction shall address deficiencies noted by Division staff, and shall be submitted to the Division by the center by the requested date.

1. If a follow-up on-site visit reveals that the plan of correction is not being implemented, a ban on new admissions to the center or other such action as the Division deems necessary may be considered. For example, prior authorization of services may be imposed. Continued non-compliance with the Division's standards may result in the termination of the provider agreement, with a 30-day notice of termination sent to the facility by the Division. Providers wishing to request hearings under this section are referred to N.J.A.C. 10:49-1.16 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) Caregivers of medical day care recipients may be contacted by Division staff to determine appropriateness of care and satisfaction with services provided.

10:65-1.4 Required services

(a) At a minimum, the following services shall be provided by the center for participation in the Medical Day Care Program.

1. Consultative services as follows:

i. If the Division staff identifies that the recipient has significant, unresolved or recurring problems, the center shall be required to arrange for and/or provide appropriate consultation in any service area, as identified by the Division, until problems are corrected.

2. Dietary services as follows:

i. The nutritional status and dietary needs of each recipient shall be evaluated by a qualified dietitian upon admission to the program. Those recipients on a physician-ordered special diet, or those identified as having specific nutritional needs, shall have an evaluation of their nutritional status every 90 days. Results of the assessment and evaluation shall be documented in each recipient's record.

(1) The center shall provide each recipient with a minimum of one meal per day, as well as nutritionally appropriate snacks. The food served each day shall supply at least one-third of each recipient's daily nutritional requirement as recommended by the Nutrition Board of the National Academy of Sciences, National Research Council.

(2) All food served shall be stored and prepared in accordance with acceptable professional standards and be of appropriate temperatures.

(3) Recipients shall receive assistance to eat when necessary. Adaptive feeding devices shall be available to those who need them.

ii. Special diets and supplemental feedings shall be available as ordered by the recipient's physician. These dietary requirements shall be included in the participant's individualized multidisciplinary plan of care.

iii. On-going communication shall be established between the center's staff and the dietitian.

iv. Dietary and nutritional counseling and education shall be provided for each recipient and those involved with their care. Documentation of this education shall include the content of the program and a list of recipients.

3. Medical services as follows:

i. The center's administrator/director, with the medical direct of the center, shall establish written medical and administrative po cies governing the provision of medical services to the recipients. Tl medical director shall be responsible for, but not be limited to, tl following:

(1) Developing and amending these medical policies as neede

(2) Supervising the provision of medical services;

(3) Advising the center director regarding medical and relate problems;

(4) Establishing procedures for medical matters, such as medic supervision, storage of medication, emergency coverage, emergen services, records, use of consultants, patient review, rehabilitati services, medication and discharge planning. Procedures shall b located in the center director's office and at the nurses' statio readily available to staff;

(5) Establishing relationships with appropriate personnel in oth institutions, such as general or special hospitals, rehabilitatio centers, home health agencies, clinics, laboratories, and related con munity resources. This would include, but not be limited to, arrang ments for emergency room services unavailable within the center; an

(6) Providing staff with training and consultation on medicall related topics.

ii. The medical day care center shall provide:

(1) A medical evaluation of all recipients, provided or arrange for by the medical director as needed, but at least every six month (Note: Physician services for the Community Care Program for th Elderly and Disabled/Home Care Expansion program recipients ar not reimbursed by the New Jersey Medicaid Program.)

(A) Any medical services required (including podiatry services, se N.J.A.C. 10:57-1.11) shall be coordinated by the recipient's attendin physician.

(B) If the recipient has no attending physician, the medical directc shall assist the recipient to secure one.

(C) In the event that an attending physician cannot be obtaine to regularly care for the recipient, the recipient may choose th medical director as his or her attending physician, provided th medical director becomes the recipient's attending physician with a the responsibilities attendant to such a role over a 24-hour perio on a continuing basis.

(D) It is only in this new role as attending physician that th medical director can bill the New Jersey Medicaid Program on th Health Insurance Claim Form, 1500-N.J., (Appendix G, in corporated herein by reference) for services provided to the Medicai recipient.

(E) The medical director shall not bill the New Jersey Medicai Program separately for any service performed for any Medicai recipient in a medical day care center while serving solely in his o her capacity as medical director.

(2) An individual medical record on each recipient.

(3) Medical orders for treatment of recipients which shall includ medication, diet, activities permitted, and therapies, such as physica therapy, occupational therapy, and speech-language patholog services.

4. Nursing services as follows:

i. A registered professional nurse shall be available on the premise of the medical day care center at all times when the center is operat ing. Additional registered professional nurses shall be present ir centers where the daily attendance exceeds 60 participants. The regis tered professional nurse is responsible for the supervision of ancillar nursing staff.

ii. The registered professional nurse shall be responsible for, bu not be limited to, the following:

(1) Interviewing the recipient and caregivers in order to evaluat the recipient's health status and health care needs;

(2) Maintaining the standards of nursing practice including, bu not limited to: monitoring of identified medical conditions, adminis tration and supervision of prescribed medications and treatments coordination of rehabilitative services; development of a restorativ nursing plan; monitoring of clinical behavior and nutritional status assisting with the maintenance or redevelopment of the activities o daily living skills; communicating findings to the attending physician.

(3) Managing medical emergencies (see N.J.A.C. 10:65-1.4(a)3(4);
(4) Documenting the nursing services provided, including the initial assessment and evaluation of the recipient's health care needs, evelopment of the nursing component in the individualized plan of are, evaluation of the recipient's progress in reaching established oals and defining the effectiveness of the nursing component in the ndividualized plan of care;
(5) Overseeing the development of the initial individualized multiisciplinary plan of care;
(6) Alerting others involved with the recipient's care about changes n status and the need to change the individualized multidisciplinary lan of care;
(7) Developing community medical referral resources and *[mainains]* ***maintaining*** on-going communication with those providers;
(8) Linking the *[recipeint]* ***recipient*** to necessary health care ervices outside the program;
(9) Coordinating the services provided by other staff to meet the nutually identified health care and psychosocial needs of each ecipient;
(10) Providing inservice training to center staff about the recipint's health care needs;
(11) Developing and implementing a quality assurance program n conjunction with the multidisciplinary team;
(12) Providing health education for a recipient's family or primary aregiver; and
(13) Serving as an advocate to assist the recipient/caregiver to esolve problems.
iii. The center's nursing staff shall assure that nursing services rovided to recipients are coordinated with health services currently eceived at home, as well as with existing community health agencies nd services available to recipients in time of need.
5. Personal care services as follows:
i. To insure quality personal care, the center staff shall make daily hecks to assure that recipients are maintaining personal hygiene, receiving medications as prescribed (which includes assuring the renewal of prescriptions as necessary and the disposition of outdated or discontinued drugs), and participating in appropriate social and recreational activities.
ii. Personal care services shall include education in and assistance with activities of daily living (for example, walking, eating, toileting, grooming) and supervision of personal hygiene.
6. Pharmaceutical services as follows:
i. The center shall designate a pharmaceutical consultant who shall be responsible for the following:
(1) Establishing written policies and procedures to insure the safe use, storage, integrity, administration, control and accountability of all drugs stored or administered in the facility;
(2) Reviewing the records of all recipients at least every 90 days to assure that the medication records are accurate, up-to-date and that these records indicate that medications are administered or self-administered in accordance with physician's orders;
(3) Reviewing records at least every 90 days to assure drug regimen, laboratory tests, special dietary requirements, and foods used or *[adminstered]* ***administered*** concomitantly with other *[medication]* ***medications*** to the same recipients, are monitored for potential adverse reaction, allergies, drug interaction, contraindications, rationality, drug evaluation, and test modification; and that all irregularities or recommended changes are documented on the recipient's record and reported to the medical director or attending physician;
(4) Providing and documenting inservices and consultation with staff and recipients of the center as required to assure compliance with phamaceutical compliance and utilization; and
(5) Devoting a minimum of four hours a month to carry out these responsibilities; maintaining a written record of activities, findings and recommendations.
7. Rehabilitative services as follows:
i. Rehabilitative services, which include physical therapy, occupational therapy, and speech-language pathology services, shall be provided by the center to those recipients whose need for these services has been definitely described in the individualized plan of care and ordered by the attending physician.
ii. Physical therapy and speech-language pathology services provided by the center are not included in the per diem rate for *[Medical Day Care]* ***medical day care***. However, they are reimbursable and may be billed separately.
iii. Occupational therapy shall be included in the per diem rate paid for *[Medical Day Care]* ***medical day care***.
8. Social services as follows:
i. A social worker shall be responsible for the development and implementation of the social services component. In addition to clinical services, this includes policy development and the integration of social services with health services.
ii. The social work staff shall provide, but not be limited to, the following social services:
(1) Interviewing the recipients and caregivers to obtain a clinical and social assessment and evaluation of needs and problems;
(2) Providing individual and group counseling in reference to psychological, social, financial, legal, vocational, and educational needs;
(3) Assisting with obtaining concrete services; for example, housing, shopping, clothing etc.;
(4) Developing support groups and educational programs for caregivers and recipients;
(5) Providing crisis intervention;
(6) Providing family outreach;
(7) *[Coordianting]* ***Coordinating*** recipient's treatment plans with other community resources;
(8) Providing inservice training to staff on recipient/caregiver psychosocial needs;
(9) Developing and implementing a quality assurance program;
(10) Participating in professional organizations and seminars;
(11) Participating in all recipient case conferences; for example, pre-admissions and post-admissions, problem-oriented cases; and
(12) Documenting assessments, treatment plans, evaluations and clinical notes.
9. Therapeutic activities as follows:
i. The center staff, under the direction of the activities coordinator, shall provide a planned program of social, physical, spiritual, psychological and cognitive activities. These activities shall reflect and be adapted to the needs, interests and capabilities of the recipients.
(1) The center may involve volunteers in the implementation of the therapeutic activities program.
(2) The current monthly schedule of activities shall be posted at a location convenient to recipients, staff and families.
(3) Therapeutic activities shall include, but not be limited to:
(A) Discussion groups (reality orientation, *[removitation]* ***remotivation***);
(B) Arts and crafts;
(C) Specialty groups;
(D) Exercise groups;
(E) Educational programs;
(F) Participant council;
(G) Special events (parties, entertainment);
(H) Excursions or outings;
(I) Community service projects; and
(J) Individualized programs.
(4) The activities program shall be coordinated with occupational and physical therapy programs so that a total plan of care is provided ***to*** each recipient.
(5) The recipients and their families, when possible, shall be involved in the planning and implementation of the activities program.
(6) The activity staff shall:
(A) Participate in all recipient conferences;
(B) Participate in professional organizations and seminars;
(C) Document assessments, treatment plans, evaluations and clinical notes; and
(D) Develop and implement a quality assurance program.
10. Transportation services as follows:
i. The center shall provide transportation for recipients to and from their homes as well as to and from services provided indirectly by the center. No recipient's total daily commutation time shall exceed two hours.

ii. The cost of transportation services provided by the *[Center]* ***center*** shall be included in the per diem reimbursement for medical day care services. Medical day care transportation shall not be reimbursed as a separate service by the Division.

10:65-1.5 Staff

(a) The center shall have adequate staff capability to provide services and supervision to the recipients at all times. The composition of the staff shall depend in part on the needs of the recipients and on the number of recipients the program is serving. At a minimum, the center shall have a medical day care center administrator/director, a registered professional nurse, a social worker, an activities coordinator and a medical director. If the freestanding facility has no medical director, a licensed physician shall be appointed to serve in this capacity. Staff position requirements are as follows:

1. The activities coordinator shall meet the requirements of the New Jersey State Department of Health, N.J.A.C. 8:43F-1.13, for a patient activities director.

i. An activities consultant shall possess:

(1) A master's degree in any one of the following: recreation therapy, creative arts therapy, occupational therapy, health care administration, human services, or a related field and two years of experience in patient activities in a health care setting; or

(2) A bachelor's degree from a college or university, approved by a state department of education with a major in recreation therapy, creative arts therapy, occupational therapy or a related field and two years of paid full time experience in a clinical, residential, or community-based therapeutic recreation program, and three years experience as a consultant in a health care setting.

2. The administrator/director shall be responsible for the overall conduct and management of all program activities and staff on a full-time basis. The administrator/director shall:

i. Be a qualified health professional, such as a nursing home administrator, physician, social worker, licensed nurse, licensed physical therapist, occupational therapist, or speech-language pathologist;

ii. Be experienced in the care of the elderly and disabled and knowledgeable regarding their physical, social and medical health needs; and

iii. Meet the minimum staff requirements defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.4).

3. A dietitian shall be responsible for the direction, provision and quality of dietary services. Each dietitian shall be registered or eligible for registration by the Commission on Dietetic Registration (see N.J.A.C. 8:43F-1.6).

4. The medical director shall provide the medical consultation and supervision of the total health care program provided to the recipients. The medical director shall be licensed as a physician to practice medicine in the State of New Jersey (see N.J.A.C. 8:43F-1.11 and 1.16).

5. The registered professional nurse shall be licensed by the New Jersey ***State*** Board of Nursing pursuant to N.J.S.A. 45:11-26 et seq. and shall have at least one year full-time or full-time equivalent experience in nursing supervision and/or nursing administration in a licensed health care facility, as defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.7).

6. A pharmaceutical consultant shall be licensed by the New Jersey State Board of Pharmacy with a current license to practice in the State of New Jersey in accordance with N.J.A.C. 8:43F-1.14 and certified by the Joint Board for Certification of Consultant Pharmacists.

7. A social worker shall possess a bachelor's or master's degree from a college or university approved by a state department of education with a major in one of the following: social work, psychology, sociology, or counseling as defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.18). For those persons without a master's degree in social work, at least one year of full-time or full-time equivalent social work experience in a licensed health care facility is required.

i. A social work consultant shall possess a master's degree in social work from a graduate school of social work accredited by the Council on Social Work Education and at least one year of full-time social work experience in a health care facility.

(b) ***For staff-recipient ratio, adequate*** *[Adequate]* staff is d fined as a ratio of one regular full-time, or full-time equivalent, sta person to nine recipients, calculated on the basis of the daily censu The ratio shall include the center administrator/director and all oth personnel (except the medical director) who are involved in dire patient care, excluding volunteers.

1. Without compromising the above required staff-recipient rati of one to nine, various staff positions could conceivably combir functions within one person, that is the center administrator/directc may be a social worker or activities coordinator, performing du functions of the director/social worker or director/activities coord nator. New programs for start-up purposes, or programs with le than 10 recipients, may have no fewer than two full-time staff pe sons. The registered nurse shall occupy one of the two positions. I programs of 36 or more recipients, the director may not serve a du function.

10:65-1.6 Recipient review, evaluation and identification

(a) Each recipient in the Medical Day Care Program shall be see by his or her attending physician as needed but at least every si months. A record of the physician's visit, findings, and recommer dations shall be documented on the recipient's chart.

(b) Every 90 days the recipient's individualized plan of care sha be updated by the medical day care center staff to reflect the neec of the recipient for medical day care. This plan shall become pa of the recipient's permanent record at the center.

(c) Medical Day Center staff shall verify that the recipient is covered person on the first visit and at least monthly thereafter. Th is done by viewing the Medicaid eligibility identification card (se N.J.A.C. 10:49-5.4).

10:65-1.7 Records

(a) As a minimum, the recipient's chart shall contain the followin information:

1. An application for admission form;

2. A home visit assessment;

3. A medical history, record of physical examination, and medi cation record as recorded initially by the attending physician an updated every six months thereafter, citing general medical condition disabilities and limitations. Also included shall be any consultations reports of laboratory studies, and progress notes from therapies.

4. A nursing assessment/history, which shall be completed afte the first five days of attendance or within a period of one montl (whichever is less), and daily nursing observations for the first fiv days of attendance. A nursing summary and evaluation shall follov every 90 days thereafter, providing appropriate input into the Indi vidualized Multidisciplinary Plan of Care;

i. This requirement does not preclude the completion, by th nurse, of clinical documentation as often as necessary to assur consistent follow-up to care needs.

5. A social assessment history, which shall be completed after th first five days of attendance or within a period of a month (whicheve is less), and social summary and evaluation notes every 90 days;

6. An activity assessment and plan, which shall be completed afte the first five days of attendance or within a period of a montl (whichever is less), and activity summary and evaluation notes ever 90 days;

7. Physical therapy, occupational therapy, speech-languag pathology services and dietary progress notes as indicated;

8. A dietary assessment, which shall be completed within the firs five days of attendance or within a period of one month (whichevei is less). When the recipient's nutritional status requires dietary inter vention, there shall be ongoing monitoring and 90-day summary anc evaluation notes;

9. A multidisciplinary individualized plan of care, which shall be completed after the first five days of attendance or within a perioc of one month (whichever is less) and updated every 90 days, with input from each discipline;

10. Clinical notes, which shall be required from each discipline These notes shall be event-triggered and shall be written, signed and dated, when significant physical, emotional, mental, behavioral oi social changes occur to the recipient, when problems arise and/oi

ervices are provided on an intensive basis. These notes shall include description of signs, symptoms, treatments, services and the recipient's reactions. Clinical notes shall be written in the recipient's medical chart the day service is provided; and

11. An attendance record.

(b) The multidisciplinary individualized plan of care shall be written for each recipient, with input from the recipient, family, and interested community agencies. The plan shall state medical needs of the recipient as evaluated by the attending physician, with nursing, social service, activity and other service needs as determined by the center staff, with input from community agencies. Overall goals and services to be provided by the center to fulfill the needs expressed shall be indicated;

1. The multidisciplinary individualized plan of care shall:

i. Be signed by all center staff preparing or revising the plan;

ii. Be updated at least every 90 days by each discipline;

iii. Identify psychosocial, medical and nursing needs and problems of the recipient and/or caregiver(s). Each discipline shall attend the multidisciplinary care conference held on each recipient and assess the specific area of expertise; and

iv. In addition to the problem/need identification, include goals specifically related to each problem/need and interventions that the specific discipline shall utilize to achieve the goals. Short-term goals shall be measurable, observable and include a target date not to exceed 90 days. Long-term goals shall also be measurable, observable and include a target date not to exceed one year.

(c) Summary and evaluation shall:

1. Be completed, signed and dated by each discipline every 90 days; and

2. Be a comprehensive review of the recipient's overall adjustment to the center which includes the following:

i. Attendance record;

ii. Physical, emotional, mental, behavioral and social functioning;

iii. Significant changes in the home situation;

iv. Services provided;

v. Referrals made; and

vi. Contacts with the caregivers*[;]* ***and***

3. Be an appraisal of the effectiveness of the intervention identified on the care plans. Each discipline shall assess the recipient's and *[caregiver's]* ***caregivers'*** responses to these interventions, including responses to physician ordered treatments; for example, dressing changes, medications, etc. If the goals were not achieved, barriers shall be cited.

10:65-1.8 Basis of payment

(a) The center participating in the Medical Day Care Program shall agree to accept the reimbursement rate established by the Division as the total reimbursement for services provided to the Medicaid recipient and to the beneficiary enrolled in the Home Care Expansion Program (HCEP). In a nursing facility, the medical day care per diem rate is 45 percent of that nursing facility's per diem rate. In freestanding centers, the medical day care per diem rate is based on an average of the rates paid to nursing facility medical day care providers or a percentage of nursing facility rates in effect as of January 1 and July 1 of each year. For hospital-affiliated centers, the medical day care rate is a negotiated per diem rate which shall not exceed the maximum medical day care per diem rate paid to nursing facility-based providers. The reimbursement rates set for any Medicaid recipient in medical day care centers may not exceed charges for non-Medicaid participants. The per diem reimbursement shall cover the cost of all services listed in N.J.A.C. 10:65-1.4 with the following exceptions:

1. Exception: Retroactive to October 1, 1990, a one-time adjustment shall be made to Medical Day Care providers for those medical day care services paid at the rate of 43 percent of the NF rate. This adjustment shall be calculated to pay the difference between 43 percent and 45 percent of the NF rate multiplied by the days of service paid at the 43 percent of the NF rate.

2. Physical therapy and speech-language pathology services shall not be included in the per diem rate and when provided by the center. These services must be billed separately on the Health Insurance Claim Form, 1500 N.J.

(b) The Division shall not reimburse for medical day care services and partial care/partial hospitalization program services provided to a recipient on the same day.

(c) ***For Medicare/Medicaid coverage, the*** *[The]* only services that are considered for payment under Medicare are physical therapy and speech-language pathology services since medical day care service is not a covered Medicare service. When the medical day care recipient is covered under both programs, only the Medicare Form UB-82/HCFA—1450 shall be completed showing the Health Services Program Case and Person Number *[(Medicaid Case Number)]*.

(d) ***For third party liability, some*** *[Some]* insurance companies currently offer medical day care as a benefit. The center shall review the recipient's and family's insurance plans before submitting Medicaid claims to assure that insurance companies are billed before submitting to the Fiscal Agent.

10:65-1.9 Disaster plan

The facility disaster plan shall be posted at the nurses' station and other conspicuous locations throughout the medical day care center.

SUBCHAPTER 2. *[RELEVANT]* HCPCS CODES

10:65-2.1 Introduction

(a) The New Jersey Medicaid Program adopted the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). THE HCPCS codes as listed in this subchapter are relevant to certain Medicaid and HCEP medical day care services.

(b) These codes are used when requesting reimbursement for certain Medical Day Care Services and when a Health Insurance Claim Form, 1500 N.J., (Appendix G) is required.

10:65-2.2 HCPCS Codes

(a) HCPCS Codes for medical day care services are as follows:

HCPCS	Description
Z0300	Initial visit, speech-language pathology services
Z0310	Initial comprehensive speech-language pathology evaluation
Z0270	Initial visit, physical therapy
92507	Speech-language pathology services
97799	Physical therapy
90050	Medical day care visit
Z1816	Medical day care visit ***for the AIDS Community Care Alternatives Program*** (ACCAP)

APPENDIX A

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
CN-712
TRENTON, NEW JERSEY 08625

MEDICAID PROVIDER APPLICATION

1. _____ 2. _____
Legal and/or Trade Name of Organization Type of Business or Facility

3. _____
Address Street City County State Zip Code

4. _____ 5. _____ 6. _____
SSA and/or Employer ID Number Telephone Number Length of Time at Above Address

7. _____ 8. _____
Billing Address, If Different Name of Administrator, Chief Executive Officer, Director or Other Official

9. List the specific service(s) for which you are requesting approval for reimbursement under the Medicaid Program
_____
_____

10. Do you operate from more than one location? [ ] Yes [ ] No If yes, list all other subsidiary or affiliated organization below: (Name and address)
1. _____ _____
2. _____ _____
3. _____ _____
Please attach additional sheet if necessary.

11. Please indicate your preference to receive central or local reimbursement:
[ ] Reimbursement to each Satellite Location
[ ] Reimbursement to Central Location

Billing through a central location is allowable and left to the provider's discretion. However, if the provider chooses to bill centrally, pre-addressed claims MUST be utilized since they reflect the proper address and provider number for that location.

12. Do you require a Certificate of Need under the Health Facilities Planning Act from the New Jersey Department of Health? [ ] Yes [ ] No If yes, have you applied for the Certificate? Attach copy of Certification of Need. If no, explain why you don't require a Certificate.

13. If your business or facility requires a license(s), list type of license(s), license number(s), effective date of license(s), and attach a non-returnable copy.

14. CERTIFICATION, ACCREDITATION OR APPROVAL - - Specify type and attach copy. For Example JCAH (Hospitals); New Jersey Department of Health (Clinics); Office of Community Services (Mental Health Clinics); State Board of Dentistry (Dental Clinics); State Board of Pharmacy (Providers offering Pharmaceutical Services); American Board for Certification in Orthotics and Prosthetics (Prosthetist and/or Orthotist) See also question 15.

15. Approved by Medicare? [ ] Yes [ ] No If yes, attach copy of your approval, if applicable. If no, have you applied for Medicare approval? [ ] Yes [ ] No attach documentation.

FD-20 C2 (Rev. 3-77) Medicaid 3026-M Ed. 8-81

1. Are you currently or have you ever been an approved provider of services under the New Jersey Medicaid (Title XIX) Program? If yes, list type of service(s) provided and current status. If you were approved at one time and no longer participate, explain the reason(s).

2. Indicate legal status of your organization: Profit Corporation [ ], Non-Profit Corporation [ ], Partnership [ ], Sole Proprietor [ ], Government [ ], Other [ ]. If other please specify:

3. Do you or does your organization have any legal or professional relationships with any other health care organization(s) or facility(ies)? [ ] Yes [ ] No If yes, list all such relationships below:

9. Does any member of your organization have a ten percent or greater financial interest in any other organization or practice of an individual providing services under the New Jersey Medicaid Program? If yes, list name of individual and/or organization.

10. Do you charge for goods and/or services? TO ALL [ ], TO NONE [ ], TO CERTAIN GROUPS ONLY [ ]. If you charge to all or only certain groups, please explain your arrangements and attach copy of your fee schedule.

11. List days and hours of operation.

12. List the Names, SSA Number, License Number and Degree(s) for all Professional Staff in the Organization. Include Physicians, Dentists, Psychologists, Registered Physical Therapists, Optometrists, etc. If more space is needed attach additional sheets.

Name	SSA NO.	License No.	Degree, e.g., MD, DO, DDS, RPT, PhD, CPO, OD, etc.

13. FOR THE PURPOSE OF ESTABLISHING ELIGIBILITY TO RECEIVE DIRECT PAYMENT FOR SERVICES TO RECIPIENTS UNDER THE NEW JERSEY MEDICAID (TITLE XIX) PROGRAM: I CERTIFY THAT THE INFORMATION FURNISHED ON THIS APPLICATION IS TRUE, ACCURATE, AND COMPLETE.

14. _____ _____ _____
Signature of Provider Title Date

FOR DIVISION USE ONLY

[ ] Approve [ ] Disapprove [ ] Other _____ Initial _____ Date

[ ] Approve [ ] Disapprove [ ] Other _____ Initial _____ Date

APPENDIX B

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PARTICIPATION AGREEMENT
NEW JERSEY HEALTH SERVICES PROGRAM
MEDICAL DAY CARE PROGRAM

NAME OF FACILITY_____
ADDRESS_____
STATE LICENSE NO._____MEDICAID PROVIDER NO.: NF_____
MDC_____
HMDC_____

This Contract, made and entered into by and between the Department of Human Services through the Division of Medical Assistance and Health Services, hereinafter designated as the Department, and the above-named facility, a provider of services, whose address is as stated above, hereinafter designated as the Facility, Witnesseth:

Whereas, various persons eligible for benefits under the New Jersey Health Services Program (Medicaid) are in need of medical day care, as more specifically set forth in Program regulations and guidelines; and,

Whereas, Section 1902(a)(27) of Title XIX of the Social Security Act requires states to enter into a written agreement with every person or institution providing services under the State Plan for Medical Assistance (Title XIX); and,

Whereas, pursuant to N.J.S.A. 30:4D-1 et. seq., the Department is responsible for the administration of the Medicaid Program and is authorized thereunder to take all necessary steps for the proper and efficient administration of the New Jersey Medicaid Program; and,

Whereas, to participate in the New Jersey Medicaid Program, a Medical Day Care Facility must: (1) be licensed under the laws of New Jersey as a non-residential Adult Day Health Care Center by the Department of Health; (2) be currently meeting on a continuing basis standards for licensure; (3) be administered by a qualified health professional; (4) meet on a continuing basis Federal and State standards for participation and more specifically Medical Day Care standards in Title XIX; (5) accept the terms and conditions of participation set out herein.

A. FACILITY AGREES:

1. That it will render all services which are required for participation in the Medical Day Care Program, including as a minimum: medical services, nursing services, social services, transportation, personal care services, dietary services, theraputic activities, pharmaceutical and rehabilitative services;

2. That it will accept the Medical Day Care rate approved under the Medicaid Program as payment in full and will not make any additional charges to the participant or others on his behalf for Medicaid covered services, except for authorized physical therapy and speech-language therapy which are not included in the per diem reimbursement and must be billed separately. Medical Day Care Centers will be reimbursed in accordance with methods and procedures set forth in State regulations either on the basis of cost study information or a percentage of the nursing facility per diem rate, except for the hospital affiliated Medical Day Care Center which will be reimbursed at a negotiated per diem rate not to exceed the maximum Medical Day Care rate paid to nursing facility based providers;

3. That it will promptly initiate and terminate billing procedures, pursuant to applicable regulations, when individuals covered under this Program enter or leave the Facility or are assessed at a different level of care;

4. That it will limit billing procedures under this Program to those eligible and authorized participants and for those days on which Medical Day Care services have been received;

5. That it will make available to the appropriate State and/or Federal personnel or their agents, at all reasonable times and places in New Jersey, all necessary records, including but not limited to the following:

    a. Medical records as required by Section 1902(e)(28) of Title XIX of the Social Security Act, and any amendments thereto;

    b. Records of all treatment, drugs, and services for which vendor payments are to be made under the Title XIX Programs, including the authority for and the date of administration of such treatments, drugs, or services;

    c. Documentation in each participant's record which will enable the Department to verify that each charge is due and proper prior to payment;

    d. Financial records of the Facility, including data necessary to determine appropriate reimbursement rates;

    e. All other records as may be found necessary by the Department in compliance with any Federal or State law, rule or regulation promulgated by the United State Department of Health and Human Services or by the Department;

6. That it will comply with the disclosure requirements specified in 42CFR 455.100 through 42CFR 455.106;

7. That the maximum number of daily participants will be in accordance with the Department's regulations and the licensure standards of the Department of Health;

8. That it will cooperate fully in permitting and assisting representatives of the Department to make assessments and evaluations of services needed by and provided to participants in general, and of individual participants who are recipients of Medical Day Care services;

9. That it will secure and arrange for other health services as may be available for Medicaid patients pursuant to Program regulations;

10. That it will comply with State and Federal Medicaid laws, rules and regulations promulgated pursuant thereto;

11. That it will cooperate fully in permitting and assisting representatives of the Department in determining continuing conformity with the Federal and State standards applicable to non-residential Medical Day Care Facilities;

12. That it will notify the Department, within five working days, of any change in the status of its license to operate as issued by the Department of Health;

13. That it will notify the Department, within five working days, of any professional staff changes;

14. That it will notify the Medical Day Care participants, in writing, thirty days prior to the Facility's termination as a Medicaid Provider;

15. That it will immediately provide the Medicaid Program with written notice of any change in ownership and/or operation of the Facility, including changes in leases, officers and directors, stock ownership or sale of the Facility when:

Corporation (Profits)

a. There is acquisition by or transfer of ownership through purchase, contract, donation, gift, stock option, etc., of 25% or more of a corporation's outstanding stock (preferred or common).

b. There is acquisition of the physical assets of the Facility by a newly formed or existing corporation.

Partnership

a. There is acquisition by or transfer of ownership of 10% or more of the existing partnership's total capital interest.

b. There is acquisition of the physical assets of the Facility by a newly formed or existing partnership.

Proprietorship

a. There is purchase of the physical assets of the Facility.

Corporation (Non-Profit)

a. There is a change in the officer, trustee, directors or board members of the Facility.

16. To comply with the requirements of Title VI of the Civil Rights Acts of 1964 and Section 504 of the Rehabilitation Act of 1973 and any amendments thereto; and Section 1909 of P.L. 92-603, Section 242 (c) which makes it a crime and sets the punishment for persons who have been found guilty of making any false statement or representation of a material fact in order to receive any benefit or payment under the Medical Assistance Program. (The Department of Human Services is required by Federal regulation to make this law known and to warn against false statements in an application/agreement or in a fact used in determining the right to a benefit, or converting a benefit to the use of any person other than one for whom it was intended.)

17. That breach or violation of any one of the above provisions shall make this entire agreement subject to immediate cancellation at the Department's discretion, in keeping with the procedures adopted by the Division in accordance with the New Jersey Administrative Procedures Act.

B. DEPARTMENT AGREES:

18. That it will pay for authorized services provided by the Facility in keeping with the availability of State appropriations, on the basis of care required by the eligible individual as determined by the Department acting under the applicable regulations, but in no event will payment be made for any individual determined not to require Medical Day Care services;

19. That it will reimburse the Medical Day Care Center through the appropriate fiscal agent in accordance with methods and procedures set forth in State regulations, either on the basis of cost study information or a percentage of the nursing facility per diem rates; reimbursement for the hospital affiliated Medical Day Care Center will be at a negotiated per diem rate not to exceed the maximum Medical Day Care Center rate paid to nursing facility based providers;

20. That it will make such payments in accordance with applicable laws and regulations as promptly as is feasible after a proper claim is submitted and approved;

21. That it will give, subject to paragraph 17, the Facility 30 days' notice of any impending changes in its status as a participating Medical Day Care Facility;

22. That it will notify the Facility of any change in Title XIX rules and regulations as it relates to the Facility's program, and will work with the individual Facility with the view toward providing the best care available within the limitations of the law and available money;

23. That the Facility may terminate its participation in the Medicaid Program at the expiration of this agreement upon a minimum of 60 days' written notice to the Department.

C. DEPARTMENT AND FACILITY MUTUALLY AGREE:

24. That, in the event the Federal and/or State laws should be amended or judicially interpreted so as to render the fulfillment of this agreement on the part of either party infeasible or impossible, or if the parties to this agreement should be unable to agree upon modifying amendments which would be needed to enable substantial continuation of the Title XIX Program as a result of amendments or judicial interpretations, then, and in that event, both the Facility and the Department shall be discharged from further obligation created under the terms of this agreement, except for equitable settlement of the respective accrued interests up to the date of termination.

25. That this agreement shall be transferable and assignable upon a change in ownership and/or operation;

26. That, in the event the participating Facility is sold, the Department shall make no division of the reimbursable proceeds for services rendered to Medicaid recipients between buyer and seller, but rather will reimburse the provider of record as of the billing month for all services rendered. Said Provider shall make the necessary adjustments;

27. This agreement shall be effective on_____ and will continue unless terminated or amended prior thereto (1) by mutual consent of the parties, (2) for cause under applicable clauses herein, or (3) because of Federal and/or State government withdrawal from Program participation.

28. To be completed by the Facility.

_____
Facility

_____
Address

_____
Authorized Signature

_____
Title

29. _____
Division of Medical Assistance and Health Services
Department of Human Services

APPENDIX C

MEDICAL DAY CARE

OUTLINE FOR WRITTEN NARRATIVE STATEMENT ON PROPOSED MEDICAL DAY CARE CENTER

1. Describe the philosophy, goals and objectives for providing medical and ancillary health services to a non-resident population on a day care basis.

2. Describe the physical facilities to be used for the proposed Medical Day Care Center (diagram acceptable).

3. Describe the proposed Medical Day Care Program, including hours of operation; services to be provided, in-house and/or arrangement and staff who will be implementing the program.

4. Provide staff position descriptions and state qualifications of personnel selected for each position.

5. State total number of participants who will be served by Medical Day Care and give anticipated daily population.

6. Submit a projection of costs to be incurred by the Medical Day Care Program. State the period of projection and provide the basis of cost allocation if applicable.

7. Will the Medical Day Care Center be funded by other than Title XIX; i.e., Title XX and Title III?

8. Is the proposed Medical Day Care Program a new service of your facility or an expansion of an existing Day Care Program?

9. Additional comments relevant to the application for Medical Day Care under the New Jersey Medicaid Program.

APPENDIX D

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

MEDICAL DAY CARE ON-SITE REPORT

Name of Program _____ Survey Date _____

Address _____ Telephone Number _____

Facility Administrator _____ Initial Approval Date _____

Medical Day Care Center Director _____ Latest Contract Renewal Date _____

Current Total Enrollment _____ Avg. Daily Attendence _____ Medicaid Census _____

Number of Paid Staff _____ Number of Volunteers _____
(full-time)

Registered Nurse: Yes ( ) No ( ) Social Worker: Yes ( ) No ( )

Activity Coordinator: Yes ( ) No ( ) Medical Director: Yes ( ) No ( )

Check Each Item if Applicable:

Service Provided	Yes	No		Yes	No
1. Medical	___	___	15. Current Lab. Reports	___	___
2. Nursing	___	___	16. Nurses Notes	___	___
3. Social	___	___	Daily 1st. 5 days	___	___
4. Transportation	___	___	Every 30 days	___	___
5. Personal Care	___	___	17. Social History	___	___
6. Dietary	___	___	18. Social Progress Notes	___	___
7. Social Activities	___	___	Every 90 days	___	___
8. Rehabilitatative Services	___	___	19. Initial Activity Plan	___	___
9. Dental	___	___	20. Activity Progress Notes	___	___
10. Podiatry	___	___	Every 90 days	___	___
Records			21. Therapy Progress Notes	___	___
11. Admission Form	___	___	22. Discharge Plan	___	___
12. Individualized Plan or Care	___	___	23. Emergency Provisions	___	___
Updated Every 90 Days	___	___	24. Disaster Plan	___	___
13. Initial Physicial Exams	___	___			
Every 90 Days	___	___			
14. Medical Orders	___	___			

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Comments: Indicate deficient areas according to item number in preceding section.

Team Recommendations to Facility:

Projected Revisit: _____

Facility Staff Present:

_____

_____ _____
Medical Consultant

_____

_____ _____
RSN/RNS

_____

_____ _____
ASWS

_____

APPENDIX E

State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

Medicaid Participant Profile—Medical Day Care

1. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐ ☐☐☐☐☐☐☐☐☐☐
Last Name First Name

2. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services
Medicaid Participant Profile -- Medical Day Care
Instructions for Participant Profile Sheet

PLEASE COMPLETE THIS FORM FOR MEDICAID PARTICIPANTS ONLY.

Please print all information, using blocks designated. Complete all applicable information. Print N/A in any blocks that are not applicable.

1. Name - Fill in last name and first name. If name is longer than blocks allowed, fill in as much as possible.

2. Participant's Street Address or Mailing Address - Indicate as much of the street or mailing address as possible.

3. City -- Indicate City of residence

4. County -- Indicate County of residence

5. Zip Code -- Indicate participant's zip code.

6. Date of birth -- Indicate date of birth, giving month first, then day, then year.

7. Sex -- Indicate M for male; F for female

8. Marital Status -- Indicate martial status by using appropriate code:
   01. Married
   02. Never Married
   03. Divorced
   04. Separated
   05. Widowed

9. Race -- Indicate race by using appropriate code:
   01. American Indian
   02. Asian or Pacific Islander
   03. Black, Non-Hispanic Origin
   04. Hispanic
   05. White/Non-Hispanic
   06. Other

10. Veteran Status: Indicate Y for Yes, N for No.

11. Medicaid HSP # - Indicate the Medicaid Identification # assigned to the participant.

12. Social Security # -- Indicate participant's own social security number.

13. Waiver Program Participants: Indicate if participant is in a Medicaid waiver program. Check the appropriate program, or N/A.

13a. The level of care assigned to the waiver program participant will be filled in by the Division of Medical Assistance and Health Services (Medicaid).

13b. Did participant attend Medical Day Care before acceptance into the waiver? Indicate yes or no.

13c. If participant was in medical day care before participation in a waiver program, how did the participant pay?

01. private pay
02. Private insurance. Please write in name of provider on blank line.
03. United Way
04. Social Service Block Grants (Title XX)
05. Older Americans Act (Title III)
06. Scholarship from center
07. Other. Specify.

14. Living Arrangement -- Indicate the individual's living arrangement by using the appropriate code:

01. Alone
02. With parents or adult children
03. With spouse
04. With other relatives
05. With non-relative
06. Residential Home or Boarding Home or Rooming House or Supervised Apartments
07. Foster Care
08. Residential Health Care Facility
09. Other (specify)

15. Primary Caregiver -- Indicate who the primary caregiver is:

01. Spouse
02. Child
03. Sibling
04. Other relative
05. Friend
06. Neighbor
07. Parent
08. Foster Care
09. None
10. Boarding home sponsor in regular boarding home, or Supervisor of supervised apartments.
11. Residential Health Care Facility
12. Other. Specify. (Includes attendant care).

16. Prior Status -- Indicate the location of the participant prior to enrolling in Medical Day Care

01. In community (includes any non-residential facilities and boarding homes)
02. In nursing home
03. In-patient hospital
04. In-patient rehabilitation
05. Residential drug treatment center
06. Residential health care facility
07. Residential facility for mental retardation or mental illness
08. Other, specify.

16a. The prior nursing home HSP#, where applicable, will be supplied by Medicaid.

17. Primary Diagnosis -- Indicate the one primary diagnosis for the participant at the point of entry into program, as stated by the attending physician. (Detailed explanations of diagnoses are attached).

01. Musculoskeletal System and Connective Tissue Diseases
02. Fractures
03. Other Orthopedic
04. Diabetes
05. Anemia
06. Other Nutritional and Metabolic Diseases
07. Cancer
08. Cardiovascular
09. Cerebrovascular Accidents (Stroke)
10. Traumatic brain injuries
11. Hearing Impaired
12. Eye disorders
13. Cerebral Palsy
14. Multiple Sclerosis
15. Other Neurosensory
16. Alzheimer's and other Organic Brain Syndrome
17. Mental Illness
18. Mental Retardation
19. Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Complex (ARC)
20. Gastrointestinal
21. Alcoholism and Alcoholism Related Diseases
22. Genitourinary
23. Respiratory
24. Skin Diseases
25. General physical deterioration, frailty
26. Other (specify) _____

18. Secondary Diagnoses: Indicate the secondary diagnoses for the participant at the point of entry into the program, as stated by the attending physician. Check as many as are required, using the same list as for number 17.

19. Services required - Indicate the services required by the participant's plan of care. Check all that apply.

01. Physical Therapy and Rehabilitation
02. Respite Care
03. Assistance Shopping
04. Personal Care
05. Supervision/ administration of Medications
06. Education in ADLs/IADLs
07. Socialization
08. Requires supervision during day
09. Speech therapy
10. Occupational Therapy (including sheltered workshops)
11. Reality Orientation
12. Therapeutic nutrition/nutritional education
13. Bowel and bladder training (or assistance with toileting)
14. Health monitoring
15. Skilled Nursing (direct care)
16. Psychotherapy/counseling/support groups
17. Therapeutic recreation
18. Case management and/or resource referrals
19. Foot care/podiatry
20. Transportation to doctor/therapies
21. Translator (to Spanish, sign language, etc).
22. Other (specify)

19a. If client is receiving therapies (service #1, 9 or 10 above), check appropriate payment mechanism.

19b. If the payor is private insurance, name carrier.

20. Date of Enrollment -- Indicate first date of attendance in Medical Day Care using numbers. (This would be the effective date on the prior authorization form FD-140).

21. Reason for Attendance -- Indicate the most important reason(s) the participant attends Medical Day Care. Why does the client need the services you provide?

01. Recent deterioration of medical status
02. Loss of primary caregiver
03. Accident/Injury
04. Primary caregiver needs relief
05. Increased dependency in ADLs and IADLs
06. Caregiver employed outside home
07. Social isolation
08. Chronic physical health problems
(includes "requires nursing daily")
09: Psychiatric problems or depression
10. Mental retardation
11. Disorientation or confusion
12. Other, specify.

22. Source of referral. Who contacted the center to refer the client?

01. Hospital (in or outpatient)
02. Doctor
03. Social Day Care Center or Psychiatric Day Treatment or Senior Center
04. Self
05. Family or Relative or Friends or Other client or boarding home operator or other primary caregiver
06. Nursing home
07. Home Health or Homemaker Agency
08. Social Service Agency or mental health agency or meals on wheels
09. Church or clergy
10. Medicaid District Office
11. Your center or any center staff member actively recruited
12. Other Medical Day Care Centers
13. Community Care Program for the Elderly and Disabled (CCPED)
14. Other state offices
15. Other (specify)_____

23. Days in attendance: Indicate the maximum number of days/week that were approved by the Medicaid District Office for the participant to attend, as of the participant's date of enrollment.

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Diagnoses

01. Musculoskeletal System and Connective Tissue Diseases-- Includes diseases such as arthritis, Rheumatoid and allied conditions, Osteomyelitis, other diseases of joints, and Lupus.

02. Fractures -- Includes all fractures, simple or compound, long or shorter term, and joint replacements.

03. Other Orthopedic -- Includes such diseases as scoliosis, dislocations, sprains, congenital deformities of the bones and organs of movement, traumatic and congenital amputations of limbs, except amputation due to diabetes.

04. Diabetes -- includes diabetes and its complications such as diabetic ulcer and amputation due to diabetes.

05. Anemia

06. Nutritional and Metabolic Diseases -- Includes diseases such as Addison's disease, Cushing's disease, hypothyroidism, malnutrition and obesity, but not anemia or diabetes.

07. Cancer -- includes malignant neoplasms of all sites

08. Cardiovascular -- includes disease of the heart and blood vessels such as cardiovascular-renal diseases, hypertension, arteriosclerotic heart disease, congestive heart failures, pacemaker use and other heart diseases.

09. Cerebrovascular Accidents (Stroke)

10. Traumatic brain injuries -- includes traumas with resulting brain injury, such as aneurism, lobotomy, gunshot wounds and car accidents, among others.

11. Hearing Impaired

12. Eye disorders -- Cataracts, Glaucoma, blindness, etc.

13. Cerebral Palsy

14. Multiple sclerosis

15. Neurosensory -- Includes diseases such as paraplegia, quadriplegia, hemiplegia, Parkinson's disease, epilepsy, ALS, neuralgia, seizure disorders, polio, spina bifida, and spinal cord injuries, among others.

16. Alzheimer's, Organic Brain Syndrome and other dementia.

17. Mental Illness -- includes all mental illness, such as schizophrenia and depression.

18. Mental retardation -- mental retardation from whatever cause, including Downs Syndrome

19. Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Complex (ARC)

20. Gastrointestinal -- includes all non-alcohol related gastrointestinal diseases, such as ulcers, hernias, gastritis, colitis, fecal impaction; and other disease of the buccal cavity, esophagus, stomach, intestines, peritoneum, liver (except alcohol related cirrhosis), gall bladder and pancreas.

21. Alcoholism and Alcoholism related diseases (such as cirrhosis)

22. Genitourinary -- Includes all genitourinary diseases, such as infections of the kidney, ureters, bladder and urethra; prostatitis, and other diseases of the prostate or male genital organs; diseases of the breast, ovaries, fallopian tubes and other female genital organs.

23. Respiratory -- Includes all respiratory diseases, such as tuberculosis, COPD, emphysema, bronchitis, and pneumonia.

24. Skin Diseases

25. General physical deterioration, frailty

26. Other (specify)

APPENDIX F

State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

Quarterly Discharge Information
Medical Day Care

Please list each Medicaid client discharged during the quarter dated __/__/__ __ - __/__/__ __. For each client include HSP#, the date discharged, and where discharged to, using the code number from the list below, or specifying other where appropriate.

Name	HSP (Medicaid) Case No.	Date Discharged	Discharged to

Discharged to:
- 01 Nursing Home
- 02 Psychiatric Institute
- 03 Residential Health Care Facility
- 04 Hospital
- 05 Social Day Care Program
  - Community:
    - 06 No Longer Needs
    - 07 Unable to attend
    - 08 No Longer Interested
- 09 Moved
- 10 Died
- 11 Other. Please specify.

****

Center provider number 3700___ County _____

Date:_____ Completed by:_____

FD-322 (6/87)

APPENDIX G

HEALTH INSURANCE CLAIM FORM

READ INSTRUCTIONS BEFORE COMPLETING THIS FORM

MEDICARE ☐ MEDICAID ☐ CHAMPUS ☐ OTHER ☐ OMB No. 0938-0008

PATIENT & INSURED (SUBSCRIBER) INFORMATION

1. PATIENT'S NAME (First name, middle initial, last name)	2. PATIENT'S DATE OF BIRTH	3. INSURED'S NAME (First name, middle initial, last name)
4. PATIENT'S ADDRESS (Street, city, state, ZIP code) Telephone No	5. PATIENT'S SEX MALE ☐ FEMALE ☐ 7. PATIENT'S RELATIONSHIP TO INSURED SELF ☐ SPOUSE ☐ CHILD ☐ OTHER ☐	6. PATIENT'S MEDICARE/CHAMPUS NO. (Include any letters) 8. PATIENT'S MEDICAID I.D. NO.
9. OTHER HEALTH INSURANCE COVERAGE— YES ☐ NO ☐ Enter Name of Policyholder and Plan Name and Address and Policy Number	10. WAS CONDITION RELATED TO: A. PATIENT'S EMPLOYMENT YES ☐ NO ☐ B. ACCIDENTAL INJURY AUTO ☐ OTHER ☐	8a. INSURED'S GROUP NO. (Or Group Name) 11. INSURED'S ADDRESS (Street, city, state, ZIP code)
12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE MEDICARE CHAMPUS & MEDICAID (Read back before signing) I Authorize the Release of any Medical Information Necessary to Process this Claim and Request Payment of Benefits in Accordance with Program Policy For Federal Benefits I Request Payment Either to Myself or to the Person who Accepts Assignment Below SIGNED DATE	Relationship: Check if other than patient ☐ Authorized Rep ☐ Relative ☐ Other	13. I Authorize Payment of Medical Benefits to Undersigned Physician or Supplier for Service Described Below. SIGNED (Insured or Authorized Person)

PHYSICIAN OR SUPPLIER INFORMATION

14. DATE OF ILLNESS (FIRST SYMPTOM) OR INJURY (ACCIDENT) OR PREGNANCY (LMP)	15. DATE PATIENT FIRST CONSULTED YOU FOR THIS CONDITION	16. WAS PATIENT EVER HAD SAME OR SIMILAR SYMPTOMS? YES ☐ NO ☐	16a. IF AN EMERGENCY CHECK HERE ☐
17. DATE PATIENT ABLE TO RETURN TO WORK	18. DATES OF TOTAL DISABILITY FROM THROUGH	DATES OF PARTIAL DISABILITY FROM THROUGH	
19. NAME OF REFERRING PHYSICIAN OR OTHER SOURCE (e.g. public health agency)	19a. I.D. NUMBER	20. FOR SERVICES RELATED TO HOSPITALIZATION GIVE HOSPITALIZATION DATES ADMITTED DISCHARGED	
21. NAME & ADDRESS OF FACILITY WHERE SERVICES RENDERED (If other than home or office)	21a. I.D. NUMBER	22. WAS LABORATORY WORK PERFORMED OUTSIDE YOUR OFFICE? YES ☐ NO ☐ CHARGES	

23A. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY. RELATE DIAGNOSIS TO PROCEDURE IN COLUMN E BY REFERENCE NUMBERS 1, 2, 3, ETC OR DX CODE

1
2
3
4

23B. WAS THIS SERVICE PERFORMED AS A RESULT OF AN EPSDT PROGRAM REFERRAL? YES ☐ NO ☐

PRIOR AUTHORIZATION NO.

24. A. DATE OF SERVICE FROM TO	B. *PLACE OF SERVICE	C. * T.O.S.	D. FULLY DESCRIBE PROCEDURES, MEDICAL SERVICES OR SUPPLIES FURNISHED FOR EACH DATE GIVEN (Explain Unusual Services Or Circumstances) PROCEDURE CODE (IDENTIFY)	E. DIAGNOSIS CODE	F. DAYS OR UNITS	G. CHARGES	H. CHECK IF FAMILY PLANNING	I. LEAVE BLANK

25. SIGNATURE OF PHYSICIAN OR SUPPLIER (I certify that the statements on the reverse apply to this bill and are made a part hereof.)	26. ACCEPT ASSIGNMENT YES ☐ NO ☐ (Medicare and CHAMPUS Only See Back)	27. TOTAL CHARGE	28. AMOUNT PAID	29. BALANCE DUE
SIGNED ☐ MD ☐ DO ☐ DPM ☐ OD ☐ DC ☐ PhD DATE	30. PROVIDER SOCIAL SECURITY/I.D. NO.	31. PHYSICIAN'S OR SUPPLIER'S NAME, ADDRESS & ZIP CODE		
32. PATIENT'S ACCOUNT NO.	33. EMPLOYER I.D. NO.			
34. REMARKS:		TELEPHONE NO.		

* PLACE OF SERVICE AND TYPE OF SERVICE (T.O.S.) CODES ON THE BACK

1500 N.J. ED.11-82

APPROVED BY AMA COUNCIL ON MEDICAL SERVICES
APPROVED BY THE HEALTH CARE FINANCING ADMINISTRATION, N.J. MEDICAID, AND CHAMPUS.

HEALTH INSURANCE CLAIM FORM

REFERS TO GOVERNMENT PROGRAMS ONLY

MEDICARE AND CHAMPUS PAYMENTS: A patient's signature requests that payment be made and authorizes release of medical information necessary to pay the claim. If item 9 is completed, the patient's signature authorizes releasing of the information to the insurer or agency shown. In Medicare assigned or CHAMPUS participation cases, the physician agrees to accept the charge determination of the Medicare carrier or CHAMPUS fiscal intermediary as the full charge, and the patient is responsible only for the deductible, coinsurance, and non-covered services. Coinsurance and deductible are based upon the charge determination of the Medicare carrier or CHAMPUS fiscal intermediary if this is less than the charge submitted. CHAMPUS is not a health insurance program and renders payment for health benefits provided through membership and affiliation with the Uniformed Services. Information on the patient's sponsor should be provided in items 3, 6, 7, 8, 9, and 11.

MEDICAID PAYMENTS: Authorization to Release Information, and Payment Request. I certify that the service(s) covered by this claim has been received, and request that payment for these services be made on my behalf. I authorize any holder of medical or other information about me to release to the State Agency or its authorized Agents any information needed for this or a related claim.

SIGNATURE OF PHYSICIAN OR SUPPLIER (MEDICARE AND CHAMPUS)

I certify that the services shown on this form were medically indicated and necessary for the health of the patient and were personally rendered by me or were rendered incident to my professional service by my employee under immediate personal supervision, except as otherwise expressly permitted by Medicare or CHAMPUS regulations.

For services to be considered as 'incident' to a physician's professional service, 1) they must be rendered under the physician's immediate personal supervision by his/her employee, 2) they must be an integral, although incidental part of a covered physician's service, 3) they must be of kinds commonly furnished in the physician's offices, and 4) the services of non-physicians must be included on the physician's bills.

For CHAMPUS claims, I further certify that neither I nor any employee who rendered the services are employees or members of the Uniformed Services (refer to 5 USC 5536).

No Part B Medicare benefits may be paid unless this form is received as required by existing law and regulations (20 CFR 422.510).

NOTICE: Anyone who misrepresents or falsifies essential information to receive payment from Federal funds requested by this form may upon conviction be subject to fine and imprisonment under applicable Federal laws.

NOTICE TO PATIENT ABOUT THE COLLECTION AND USE OF MEDICARE AND CHAMPUS INFORMATION

We are authorized by HCFA and CHAMPUS to ask you for information needed in the administration of the Medicare and CHAMPUS programs. Authority to collect information is in section 205(a), 1872 and 1875 of the Social Security Act as amended and 44 USC 3101, 41 CFR 101 et seq. and 10 USC 1079 and 1086.

The information we obtain to complete Medicare and CHAMPUS claims is used to identify you and to determine your eligibility. It is also used to decide if the services and supplies you received are covered by Medicare or CHAMPUS and to insure that proper payment is made.

The information may also be given to other providers of services, carriers, intermediaries, medical review boards, and other organizations or federal agencies as necessary to administer the Medicare and CHAMPUS programs.

For example, it may be necessary to disclose information about the benefits you have used to a hospital or doctor.

With the one exception discussed below, there are no penalties under Social Security law for refusing to supply information. However, failure to furnish information regarding the medical services rendered or the amount charged would prevent payment of Medicare or CHAMPUS claims. Failure to furnish any other information such as name or claim number, would delay payment of the claim.

It is mandatory that you tell us if you are being treated for a work related injury so we can determine whether worker's compensation will pay for treatment. Section 1877(a) (3) of the Social Security Act provides criminal penalties for withholding this information.

MEDICAID PAYMENTS (PROVIDER CERTIFICATION)

I hereby agree to keep such records as are necessary to disclose fully the extent of services provided to individuals under the State's Title XIX plan and to furnish information regarding any payments claimed for providing such services as the State Agency may request.

SIGNATURE OF PHYSICIAN (OR SUPPLIER): I certify that the services covered by this claim were personally rendered by me or under my direct personal supervision (as defined by Program regulations); that the foregoing information is true, accurate and complete; and that the services covered by this claim and the amount charged therefore are in accordance with the regulations of the Medicaid Program; and that no part of the net amount payable under this claim has been paid; and that payment of such amount will be accepted as payment in full without additional charge to the patient or to others on his behalf, with the exception of authorized deductibles and coinsurance. I also certify that services have been furnished in full compliance with the non-discrimination requirements of Title VI of the Federal Civil Rights Act and Section 504 of the Rehabilitation Act of 1973.

I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statements, or documents, or concealment of a material fact, may be prosecuted under applicable Federal or State laws, or both.

PLACE OF SERVICE CODES:

(IH) - Inpatient Hospital
(OH) - Outpatient Hospital
(O) - Doctor's Office
(H) - Patient's Home
(DCF) - Day Care Facility (PSY)
(NCF) - Night Care Facility (PSY)
(NH) - Nursing Home
(SNF) - Skilled Nursing Facility
(A) - Ambulance
(OL) - Other Locations
(IL) - Independent Laboratory
(OMS) - Other Medical/Surgical Facility
(RTC) - Residential Treatment Center
(STF) - Specialized Treatment Facility
(KC) - Independent Kidney Care Treatment Center
(CL) - Clinic
(ER) - Emergency Room
(BH) - Boarding Home

TYPE OF SERVICE CODES:

1 - Medical Care
2 - Surgery
3 - Consultation
4 - Diagnostic X-Ray
5 - Diagnostic Laboratory
6 - Radiation Therapy
7 - Anesthesia
8 - Assistance at Surgery
9 - Other Medical Service
0 - Blood or Packed Red Cells
A - Used DME
M - Alternate Payment for Maintenance Dialysis
Y - Second Opinion on Elective Surgery
Z - Third Opinion on Elective Surgery

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Manual of Requirements for Children's Group Homes

Adopted New Rules: N.J.A.C. 10:128

Proposed: September 17, 1990 at 22 N.J.R. 2916(a).
Adopted: January 16, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: January 17, 1991 as R.1991 d.66, **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. 30:12-15 and N.J.S.A. 30:4C-4.

Effective Date: February 19, 1991.
Expiration Date: February 19, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:

There are four substantive changes in the text upon adoption. The first change involves adding the phrase "and/or current" at N.J.A.C. 10:128-6.1(c) to indicate that the child's current school district should be invited to participate as members of the treatment team. This was simply an error in typing as this phrase is routinely included in other areas of the text to reflect this option.

The second change involves adding the phrase "or other placing agency" at N.J.A.C. 10:128-6.2(a) to indicate that they should also be sent a copy of a child's discharge plan. This was also an error in typing as this phrase is routinely included in other areas of the text to reflect this option.

The third change involves language being added at N.J.A.C. 10:128-10:21(a)2 to clarify that the self-made solution for disinfecting shall not be used to disinfect sheets, blankets or other coverings.

The fourth substantive change in the text is language being added at N.J.A.C. 10:128-10:22(c)2 to clarify that non-disposable diapers that are laundered by a commercial laundry service do not have to be stored and laundered separately for each child.

The Division has made several typographical corrections and other technical changes, and has also corrected citations in N.J.A.C. 10:128-3.8(b), 3.8(c) and 3.8(d). The Division has eliminated part of the heading at N.J.A.C. 10:128-10.18.

Full text of the adopted new rules follows (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. GENERAL PROVISIONS

10:128-1.1 Legal authority

(a) This manual is promulgated pursuant to N.J.S.A. 30:1-14 and 15 and N.J.S.A. 30:4C-4.

(b) Under N.J.S.A. 30:1-14 and N.J.S.A. 30:4C-4, the Department of Human Services is authorized to inspect, evaluate, and approve publicly or privately operated homes that provide board, lodging, care and treatment services for children who are placed and/or financed by the Division of Youth and Family Services or any other New Jersey State agency.

(c) Under N.J.S.A. 30:1-14, the following homes shall be subject to inspection, evaluation, and approval by the Department of Human Services, Division of Youth and Family Services:

1. New Jersey-based children's group homes, as defined in this manual, except homes that are licensed, approved or regulated pursuant to State law by the Division of Developmental Disabilities or the Division of Mental Health and Hospitals, both of the Department of Human Services, by the State Department of Health, by the State Department of Education, by the State Department of Corrections or by any other New Jersey State agency; and

2. Out-of-State children's group homes, as defined in this manual, that serve children under the supervision of the Division of Youth and Family Services. As a condition of approval by the Department, such group homes shall be licensed, certified, or otherwise approved to operate in the state where the home is located.

(d) In order to be approved, a children's group home shall demonstrate to the satisfaction of the Department of Human Services or its duly authorized agent that it complies with all applicable provisions of this manual.

(e) Responsibility for ensuring that these homes comply with the provisions of the statutes cited in (a) above and of this manual is delegated by the Department of Human Services to the Division of Youth and Family Services, Bureau of Licensing. The Division is authorized to visit and inspect such homes, as described in N.J.A.C. 10:128-1.2(a) and (b), to determine the extent of their compliance with such provisions.

(f) Under N.J.S.A. 30:1-15, the Department of Human Services is also authorized to visit and inspect publicly or privately maintained institutions or other institutions and noninstitutional agencies that:

1. Provide board, lodging or care for children who are not placed or financed by the Division of Youth and Family Services or any other New Jersey State agency; and

2. Are not subject to licensing or regulation by any New Jersey State agency.

(g) The Division of Youth and Family Services is authorized to visit and inspect such homes as described in (f) above to assess the general health, safety, and well-being of the children and the care and treatment they are receiving, but cannot require their compliance with this manual and must secure an order from a court of competent jurisdiction, pursuant to N.J.S.A. 30:1-16, to compel correction of serious deficiencies.

10:128-1.2 Definition and types of children's group homes

(a) "Children's group home" or "home" means any public or private establishment other than a foster home that provides board, lodging, care and treatment services on a 24-hour basis to 12 or fewer children in a home-like, community-based setting.

(b) Children's group homes that are subject to the provisions of this manual are classified as follows:

1. Group home, which serves from six to 12 children with emotional, social, physical and/or behavioral needs who do not require a more restrictive facility for their own protection or that of others;

2. Supervised transitional living home, which serves 12 or fewer children who are 16 years of age or older, require minimum guidance from staff members in preparation to live independently, and demonstrate maturity to function with minimal adult supervision;

3. Teaching family home, which serves 12 or fewer children with emotional, behavioral or other disabilities and which is certified or in the process of being certified as a teaching family home in accordance with the standards of the National Teaching Family Association. Teaching family homes are used for children who require strong professional support and guidance to participate in the life of the community, but who do not require a more restrictive facility for their own protection or that of others; and

4. Treatment home, which is an agency-operated residence serving five or fewer children who are capable of community living but who need a small group environment and intensive supervision by staff members in order to ameliorate emotional, social and/or behavioral difficulties.

10:128-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Adventure activity" means a planned activity of a wilderness or athletic nature that requires specially trained staff members and/or special equipment that is utilized with children to assist in their development of self-confidence and insight.

"Agency" means an organization which has received a certificate of approval from the Bureau to operate more than one group home, treatment home, and/or supervised transitional living home.

"Bureau" means the Bureau of Licensing of the Division of Youth and Family Services, New Jersey Department of Human Services.

"Child" means any person who is under 18 years of age and/or any person between the ages of 18 and 21 who is under the supervision of the Division in placement in a children's group home.

"Denial of a certificate" means the withholding by the Bureau of an initial certificate of approval for which a home or agency has applied.

"Department" means the New Jersey Department of Human Services.

"Director" means the on-site staff member responsible for the daily operation and management of a home.

"Division" means the Division of Youth and Family Services, New Jersey Department of Human Services.

"Exclusion" means removing a child to an area or room in the home where there is limited stimulation. This removal should be a therapeutic intervention and a time for the child to reflect on his or her behavior in order to gain control so he or she can return to the other children.

"Infant" means any person who is under the care of his or her adolescent mother in a home serving adolescent mothers.

"Manual of Requirements for Children's Group Homes" or "manual" means the provisions contained in N.J.A.C. 10:128-1.1 to 10.25. These provisions constitute minimum baseline requirements below which no home that is subject to the authority of N.J.S.A. 30:1-14 and N.J.S.A. 30:4C-4 is legally permitted to operate.

"Parent" means a birth or adoptive parent, legal guardian, or any other person having responsibility for, or custody of, a child.

"Person" means any individual, agency, corporation, company, association, organization, society, firm, partnership, joint stock company, the State or any political subdivision thereof.

"Placing agency" means an agency that assumes responsibility for payment of room and board for a child placed in a group home, teaching family home, supervised transitional living home, or treatment home.

"Refusal to renew a certificate" means the non-issuance of a certificate of approval by the Bureau to a home after its existing certificate has expired.

"Regular certificate of approval" or "regular certificate" means a document issued by the Bureau to a home, indicating that the home is in full compliance with all applicable provisions of this manual.

"Restraint" means the holding of a child so that he or she can not move all or part of his or her body.

"Restrictive behavior management practice" means the use of physical restraint and exclusion as part of a comprehensive treatment plan to help the child develop self-control, to reduce maladaptive behavior or to protect the child and others from harm.

"Revocation of a certificate" means a permanent removal of a home's current certificate of approval to operate.

"Shall" denotes a provision of this manual that a home or agency must meet to qualify for a certificate of approval.

"Should" denotes a recommendation reflecting goals towards which a home or agency is encouraged to work.

"Staff member" or "staff" means any person employed by or working for or at a home on a regularly scheduled basis. This includes full-time, part-time, substitute, volunteer, student intern, contract or consulting personnel, whether compensated or not.

"Suspension of a certificate" means a temporary removal of a home's current certificate of approval to operate.

"Temporary certificate of approval" or "temporary certificate" means a document issued by the Bureau, to a home that is in substantial compliance with all applicable provisions of this manual, provided that no serious or imminent hazard affecting the children exists in the home.

SUBCHAPTER 2. APPROVAL PROCEDURES

10:128-2.1 Application for a certificate of approval

(a) No person shall operate a children's group home that provides board, lodging, care and treatment services for children who are placed or financed by the Division or by any other New Jersey State agency without first securing a certificate of approval from the Bureau, except for homes that are subject to licensing or regulatory approval pursuant to State law by any other New Jersey State agency.

1. Each group home and supervised transitional living home serving six or more children and each teaching family home regardless of capacity shall obtain an individual certificate of approval.

2. Each agency operating more than one treatment home or more than one supervised transitional living home serving five or fewer children shall secure and maintain a single certificate for all such homes in its program. The Bureau-approved agency shall ensure and document that individual treatment homes and supervised transitional living homes serving five or fewer children comply with the provisions of this manual.

3. A single treatment home or supervised transitional living home serving five or fewer children and that is not part of a network or agency shall receive approval from the Division's Regional Office in the region in which the home is located.

(b) A home or agency applying to the Bureau for an initial certificate of approval shall submit a completed application form to the Bureau, including the documentation specified in N.J.A.C. 10:128-4.1(a), (b) and (c), at least 45 calendar days prior to the anticipated opening of a home.

(c) A home or agency applying to the Bureau for a renewal of its certificate of approval shall submit a completed application form to the Bureau, including the documentation specified in N.J.A.C. 10:128-4.1(d), at least 45 calendar days prior to the expiration of its existing regular certificate.

10:128-2.2 Issuance of a certificate of approval

(a) The Bureau shall issue a regular certificate of approval to a home or agency that has achieved full compliance with all applicable provisions of this manual.

(b) If the Bureau determines that a home or agency is in substantial compliance with, but does not meet all applicable provisions of, this manual, and provided that there is no serious or imminent hazard to the education, health, safety, well-being or treatment needs of the children, the Bureau shall issue a temporary certificate to the home or agency and indicate in writing the steps the home or agency must take to secure a regular certificate of approval.

(c) A temporary certificate may be issued for a period not to exceed six months. The Bureau may issue as many temporary certificates as it deems necessary.

(d) Each certification period, which may include the issuance of one or more temporary certificates or one regular certificate, shall be two years.

1. In determining the expiration date of the first regular certificate of approval, the Bureau shall compute the two-year approval period from the date of issuance of the first temporary or regular certificate.

2. In determining the expiration date of a renewed regular certificate, the Bureau shall compute the two-year approval period from the date on which the previous regular certificate expired. If, however, the home or agency has ceased to operate for a period of one year following the expiration date of its previous regular certificate, the Bureau shall compute the date of expiration from the date of issuance of a new certificate.

(e) The certificate of approval shall be issued to a specific home or agency and shall not be transferable.

(f) The home shall maintain its certificate of approval on file.

(g) No home or agency shall make claims either in advertising or in any written or verbal announcement or presentation contrary to its approval status.

10:128-2.3 Denying, suspending, revoking or refusing to renew a certificate of approval

(a) The Bureau may deny, suspend, revoke or refuse to renew a certificate of approval for good cause, including, but not limited to, the following:

1. Failure to comply with the provisions of this manual;

2. Violation of the terms and conditions of a certificate of approval;

3. Fraud or misrepresentation in obtaining a certificate;

4. Refusal to furnish the Division with files, reports, or records as required by this manual;

5. Refusal to permit an authorized representative of the Division to gain admission to the home, agency or agency-approved home or to conduct an inspection or investigation;

6. Any activity, policy, or staff conduct that adversely affects or is deemed by the Bureau to be detrimental to the education, health, safety, well-being or treatment needs of children or that otherwise demonstrates unfitness by the owner or staff members of the home to operate a children's group home;

7. Failure of an out-of-state home, agency or agency-approved home to maintain a license, approval or certification in its own state; and

8. Failure by the agency or director to secure and maintain on file criminal conviction disclosures, as specified in N.J.A.C. 10:128-5.1(b)1.

(b) The Bureau shall provide written notice to the home or agency if it intends to deny, suspend, revoke or refuse to renew its application for a certificate. This notice shall specify the Bureau's reasons for such action.

(c) If the Bureau denies, revokes, or refuses to renew a certificate of approval, as specified in (a) above, the home or agency shall be prohibited from reapplying for a certificate of approval for one year from the date of certificate denial, revocation or refusal to renew. After the one-year period has elapsed, the home or agency may submit to the Bureau a new application for a certificate.

(d) If a certificate is suspended, the Bureau shall issue or reinstate the certificate once the home or agency achieves compliance with the provisions of this manual. In such a case, the Bureau shall not require the home or agency to submit a new application for a certificate unless such reapplication is expressly made a condition of the issuance or reinstatement of the certificate.

(e) Each certificate of approval issued by the Bureau to a home or agency remains the property of the State of New Jersey. If the Bureau suspends or revokes a certificate of approval, the home or agency shall return the certificate of approval to the Bureau immediately.

10:128-2.4 Administrative hearings

(a) If a home or agency fails to comply with all applicable provisions of this manual, the Bureau shall issue a directive ordering compliance. Prior to the Bureau's decision to deny, suspend, refuse to renew or revoke a home's or agency's certificate of approval, the home or agency shall have the opportunity to request an administrative hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) As long as the Division determines that children are not at risk and that no imminent dangers exist, the Bureau may permit a home or agency that has requested an administrative hearing, as specified in (a) above, to continue to operate until a final decision is rendered as a result of the hearing.

10:128-2.5 Complaints

(a) Whenever the Bureau receives a report questioning the approval status or compliance of a home or agency or alleging a violation of this manual, the Bureau shall ensure that the allegation is promptly investigated to determine whether the complaint is substantiated.

(b) After the report of the investigation has been completed, the Bureau shall notify the home or agency in writing of the results of the investigation within 15 days, pursuant to the State Public Records Law, N.J.S.A. 47:1A-1 et seq., with the exception of any information not permitted to be disclosed pursuant to the Child Abuse and Neglect Law, N.J.S.A. 9:6-8.10a, or any other State law.

(c) Whenever the Division, through its Bureau of Licensing, Institutional Abuse Investigation Unit or District Offices, conducts complaint investigations, the home or agency shall cooperate with all Division investigators.

10:128-2.6 Public access to the Bureau's licensing records

Licensing files maintained by the Bureau are public records and shall be readily accessible for examination by any person, under the direction and supervision of the Bureau, except when public access to records is restricted, in keeping with the State Public Records Law, N.J.S.A. 47:1A-1 et seq., or other applicable statutes.

SUBCHAPTER 3. ADMINISTRATION

10:128-3.1 Statement of purpose

(a) The home or agency shall maintain on file a written statement of purpose that shall identify the following:

1. The home's philosophy, goals, and objectives;

2. Characteristics of the children to be served;

3. Types of treatment services provided to the children, including those provided directly by the home and those provided in cooperation with community agencies or outside individuals;

4. Procedures for implementing those services; and

5. Criteria for successful completion of the program.

(b) The home or agency shall give this statement of purpose to the parents of the children applying for services, to all staff members and to all persons who request this information.

(c) The home or agency shall secure and maintain on file a record of the parents' and staff members' signatures attesting to their receipt of the statement of purpose.

10:128-3.2 Rights of children

(a) The home or agency shall prepare a list of children's rights and shall post it in a prominent location in each home or give it to the children and document such in each child's record. At a minimum, the list shall specify the children's right to:

1. Receive prompt medical treatment;

2. Have access to an appropriate education;

3. Live in a safe, clean and healthy environment;

4. Be free of physical or sexual harassment or abuse and corporal punishment;

5. Attend religious services of their choice; and

6. Have unimpeded communication to the Division.

(b) The home or agency shall give this list of children's rights to the parents of the children applying for admission, to all staff members and to all persons who request this information.

(c) The home or agency shall secure and maintain on file a record 'the parents' and staff members' signatures attesting to their receipt ' the list of children's rights.

(d) If the home or agency chooses to develop a search and seizure)licy, the home or agency shall give all children, staff and parents copy of this policy, as specified in N.J.A.C. 10:128-6.15.

(e) The home or agency shall prepare, post or give to all staff embers and children a written grievance procedure governing how ıe children may raise questions about or voice disagreements with ıd concerns about procedures, care, and specific incidents. The)me or agency shall not take or threaten to take retaliatory or isciplinary action of any kind against a child who uses the grievance rocedure or files a grievance. The home shall provide a procedure) explain the above to children who are developmentally disabled.

):128-3.3 Information to parents and staff members

(a) The home or agency shall provide to every parent within five 'orking days of his or her child's placement, and to every person pon becoming a staff member, a written document indicating that ıe home or agency is required to:

1. Secure a certificate of approval to operate from the Bureau of .icensing;

2. Comply with all applicable provisions of the manual;

3. Retain a current copy of the manual and make it available for eview by parents of resident children;

4. Indicate how parents may secure a copy of the manual by ontacting the Bureau of Licensing, Division of Youth and Family ervices, CN 717, Trenton, New Jersey 08625-0717;

5. Afford parents the opportunity and time to review and discuss /ith the home or agency director any questions or concerns about olicies, requirements, provisions, or alleged violations of the ıanual;

6. Advise parents that if they believe or suspect that the home or gency is in violation of any provision of the manual, they may report uch alleged violations to the Bureau;

7. Make available, upon request, for parents' review the Bureau's nspection/Violation and Complaint Reports on the home or agency, ıs well as any letters of enforcement or other actions taken against he home or agency during the current certificate of approval period;

8. Inform parents that they may request a copy of the home's or ıgency's behavior management policy, including policies for search- :s, as specified in N.J.A.C. 10:128-6.13, 6.14, and 6.15;

9. Inform parents that the home or agency is required to provide he child's parents with copies of the home's or agency's visitation ınd communication policies, a copy of the procedure for expressing :oncern or registering complaints regarding their child's placement, ınd a description of its religious policies, including a statement that he child has a right to practice his or her religion;

10. Indicate through this document that any person who has 'easonable cause to believe that a child residing in the home has been)r is being subjected to any form of hitting, corporal punishment, ıbusive language, ridicule, or harsh, humiliating, or frightening treat- ıent, or any other kind of child abuse, neglect or exploitation by ıny person, whether working at the home or not, is required by State ıaw to report such allegations to the Division's Office of Child Abuse Control, TOLL FREE at 1-800-792-8610, or any District Office ımmediately, and indicate that such reports may be made ınonymously;

11. Indicate through this document how parents and staff mem- bers may secure information about the prevention and reporting of :hild abuse and neglect by contacting the Division;

12. Inform parents that the home or agency must secure written consent from the child's parents before the home or agency may involve the child in fund-raising, publicity, or audiovisual activities related to the home or agency; and

13. Inform parents that the home will develop a visitation schedule for parents and children, as specified in N.J.A.C. 10:128-6.6, 9.19 and 10.13.

(b) The home or agency shall comply with the requirements specified in (a) above by:

1. Securing the parent's and staff member's signature on a record attesting to receipt of the document; and

2. Maintaining the record on file; or

3. Documenting in the record the attempts made to secure the parent's signature.

10:128-3.4 Community participation

(a) Every agency, group home and supervised transitional living home shall develop a governing board that offers advice and counsel to the home on its policies, staff recruitment and selection, physical environment, and program activities. Such a committee shall include representatives from the civic, business or educational community.

(b) The governing board shall establish policies that encourage and enhance community relations, such as having the home sponsor an open house.

(c) The director of the home shall ensure that community activities have been scheduled or completed and provide updates on community involvement to the governing board on a quarterly basis.

(d) The governing board shall meet at least quarterly. The home shall keep on file a list of current membership of the governing board and a record of its meetings.

10:128-3.5 Conflict of interest

(a) Any home or agency receiving funds from the Division shall adopt a written conflict of interest policy, as required by the home's or agency's contract with the Department of Human Services.

1. The home or agency shall ensure that a copy of the adopted policy, with its effective date, is forwarded to all governing board members and staff members and is posted in a prominent location or kept on file at the home or agency.

2. The governing board shall ensure that the conflict of interest policy is adhered to by home or agency directors through the governing board's review of the home's or agency's policies involving the purchasing of goods or services and hiring practices.

10:128-3.6 Intake and admissions

(a) The home or agency shall ensure that the child and his or her parents have an opportunity to visit the home prior to the child's placement.

(b) For all placements, the home or agency shall have the following information on file in the child's record upon the child's admission:

1. The child's full name, nicknames, if any, gender, date of birth, religion, and race;

2. The name, address, telephone number, and relationship to the child of the persons with whom the child was living at the time of admission;

3. The name, address, and telephone number of father, mother, foster parents, or legal guardians, if different from (b)2 above;

4 The name, address, and telephone number of the case manager of the Division's District Office or other placing agency;

5. The name, address, and telephone number of the person to notify in an emergency;

6. The names of siblings, their ages, and gender;

7. The reason for placement of the child;

8. A Medicaid card, if applicable; and

9. A statement signed by the parents or legal guardian, granting consent for emergency medical or surgical care, semi-annual dental care and annual physical examinations for the child.

(c) For non-emergency placements and emergency placements, in addition to (b) above the home or agency shall have the following information on file in the child's record within 30 calendar days of the child's admission:

1. Schools attended, grade level, and employer, if any;

2. Discharge summaries from previous placements, if any;

3. The child's medical history, including chronic conditions, past serious illnesses, allergies, medications, immunizations and special diet; and

4. A discharge plan, including the estimated duration of care.

(d) If the home or agency is unable to obtain the information specified in N.J.A.C. 10:128-3.6(c) within 30 calendar days of the child's admission, the home shall document in the child's file its efforts to obtain such information.

(e) Immediately following the child's admission, the home shall:

1. Give each child a secure place to store valuables;
2. Ask the child to sign or otherwise verify that a staff member explained house rules and regulations, children's rights as specified in N.J.A.C. 10:123-3.2, discipline policy and search and seizure policy, if any; and
3. Inform each child of fire exits and evacuation procedures.

10:128-3.7 Reporting requirements

(a) The director or any staff member shall notify verbally the Office of Child Abuse Control immediately whenever there is reasonable cause to believe that a child has been or is being abused or neglected by staff members, children or any other person, as required by the New Jersey Child Abuse and Neglect Law, N.J.S.A. 9:6-8.9, 8.10, 8.13 and 8.14. Copies of the law and information about it are available from the Division, upon request.

(b) The home or agency shall notify the Bureau verbally of any of the following changes or events by the next working day after the home or agency learns of their occurrence, to be followed by written notification to the Bureau within five working days:

1. Injury, accident or illness that results in the admittance of a child to a hospital;
2. The death of a child while the child was on the premises of the home or in the care of a home staff member or volunteer;
3. Temporary or permanent closing of a home or agency; and
4. Any convictions or guilty pleas of any agency or home staff members that involve or affect any child or the operation of the home or agency, as specified in N.J.A.C. 10:128-5.1(b).

(c) The home or agency shall notify the Bureau verbally of any of the following changes or events by the next working day after the home or agency learns of their occurrence:

1. The occurrence of a reportable disease, as specified in Chapter 2 of the State Sanitary Code, N.J.A.C. 8:57;
2. Proposed relocation of the home to a site not approved by local municipal officials and the Bureau, as specified in N.J.A.C. 10:128-4.1;
3. Damage to the premises of the home or agency-approved home, caused by fire, accident or the weather; and
4. Proposed use of space involving rooms not approved by the Bureau, as specified in N.J.A.C. 10:128-4.1(a)5.

(d) The home or agency shall notify the Bureau in writing at least 30 calendar days before any of the following proposed changes or events:

1. The anticipated closing or relocation of a home, agency or agency-approved home for any reason other than temporary closings for holidays and vacations;
2. A change of director or administrator of the home;
3. A change of type of children served; or
4. A change of services offered, including the opening of a new treatment home or supervised transitional living home serving fewer than six children.

(e) The home or agency shall notify the Division and the child's parents within 24 hours of any unauthorized absence of a child from a home.

10:128-3.8 Records

(a) The home's or agency's records shall be open for inspection by authorized representatives of the Bureau, the Division's Institutional Abuse Investigation Unit (IAIU), the Division's contracting units and, provided that they may only secure information about children under the Division's supervision, Division case managers.

(b) The home or agency shall maintain on file the following administrative records until the expiration of its regular certificate of approval:

1. The following records shall be maintained in files located either at an agency's administrative office or at the home:

i. A record of comprehensive general liability insurance, as specified in N.J.A.C. 10:128-3.9;

ii. A record of performance of required monthly fire drills and/or evacuation drills, as specified in N.J.A.C. 10:128-4.5(c);

iii. A record of training sessions for staff members on evacuation procedures, the use of fire extinguishers, the location of fire alarms, and emergency medical procedures, as specified in N.J.A.C. 10:128-5.4(a)3;

iv. A copy of the home's or agency's vehicle insurance policy, specified in N.J.A.C. 10:128-8.2; and

v. Transportation records, if transportation is provided to children residing in the home, as specified in N.J.A.C. 10:128-8.4.

2. The following records shall be maintained in files located at the home:

i. A current manual;

ii. A statement of purpose, as specified in N.J.A.C. 10:128-3.1 and 9.2;

iii. The Life/Safety and Program Inspection/Violation reports and Complaint Investigation Summary reports if applicable from the Bureau, as well as letters of enforcement or other actions taken against the agency or home if applicable, that cover the current certificate of approval period;

iv. The document providing information to parents, as specified in N.J.A.C. 10:128-3.3(a);

v. A record of each parent's signature attesting to the receipt of the information to parents document, as specified in N.J.A.C. 10:128-3.3(b)1;

vi. Documentation of the use of extermination services, if applicable, as specified in N.J.A.C. 10:128-4.3(a)7;

vii. Policies and procedures regarding behavior management, as specified in N.J.A.C. 10:128-6.13, 6.14 and 10.14;

viii. A record of in-service training conducted for staff members as specified in N.J.A.C. 10:128-5.4 and 10.3;

ix. A record of all incidents and accidents, recorded on incident and accident report forms, noting all details of the incident and accident and any actions taken by the staff members, as specified in N.J.A.C. 10:128-6.13, 7.3(b) and 9.3(a) and (b);

x. A copy of the comprehensive health plan, as specified in N.J.A.C. 10:128-7.1, 10.15 and 10.16;

xi. Copies of menus of food served to the children, including special diets, as specified in N.J.A.C. 10:128-6.11 and 10.24;

xii. Aggregate statistical information on children served, including the date of each admission, date of each discharge, and reason for each discharge, as specified in N.J.A.C. 10:128-5.2(a)10;

xiii. A record of signed parental consent for children's participation in fund-raising, publicity, photography, or audiovisual activities related to the home, as specified in N.J.A.C. 10:128-3.2(a)11;

xiv. A copy of the children's grievance procedures, as specified in N.J.A.C. 10:128-3.2(d);

xv. A record of signed parental consent for medical treatment for each child, as specified in N.J.A.C. 10:128-3.6(b);

xvi. A daily log book, in which an on-duty staff member shall comment on the activities and events of each day and staff member's response to those events, as specified in N.J.A.C. 10:128-5.2;

xvii. A daily log book, a separate log book or notation in the child's case record, in which all visits to the child shall be recorded as specified in N.J.A.C. 10:128-5.2;

xviii. A copy of the staff members' work schedules and time sheets as specified in N.J.A.C. 10:128-5.2;

xix. A medication log book, as specified in N.J.A.C. 10:128-7.4, 7.5 and 10.20;

xx. For group homes, a written daily schedule of planned recreational, leisure time and physical exercise activities, as specified in N.J.A.C. 10:128-6.8(b) and 10.11;

xxi. A record of pet vaccinations and the name and address of the licensed veterinarian providing care for the pets, as specified in N.J.A.C. 10:128-6.12;

xxii. A copy of the parenting education curriculum, as specified in N.J.A.C. 10:128-10.8;

xxiii. Documentation of the information received from the National Weather service and park service, as specified in N.J.A.C. 10:128-9.1(o) and (p);

xxiv. A copy of the plan for emergency evacuation procedures, as specified in N.J.A.C. 10:128-9.2(a);

xxv. A copy of the plan for search and rescue procedures, as specified in N.J.A.C. 10:128-9.2(b);

xxvi. Copies of biking permits, as specified in N.J.A.C.):128-9.4(a);

xxvii. Documentation that permission was obtained to enter a cave om the owner or public authority, as specified in N.J.A.C.):128-9.6(c);

xxviii. Documentation on the care of horses, as specified in I.J.A.C. 10:128-9.8(c);

xxix. Documentation on the safety of ropes used in climbing, as ɔecified in N.J.A.C. 10:128-9.9(d);

xxx. A copy of the plan for boating activities, as specified in I.J.A.C. 10:128-9.10;

xxxi. Copies of all permits, certificates or licenses for camping, as ɔecified in N.J.A.C. 10:128-9.15;

xxxii. A copy of the policy for treating snake, animal and insect ites and ingestion or contact with poisonous plants, as specified in I.J.A.C. 10:128-*[9.16(c)]**9.17(c)*;

xxxiii. A copy of the plan and procedures that enable children to ɛceive an emergency message, and send and receive mail, as specified ı N.J.A.C. 10:128-*[9.19(c)]**9.20(c)*;

xxxiv. Documentation that children were permitted to make free ɛlephone calls, as specified in N.J.A.C. 10:128-9.*[19]**20*(e);

xxxv. A copy of the policy for visiting and communication for ɜarents, as specified in N.J.A.C. 10:128-9.*[19]**20*(g); and

xxxvi. A copy of the feed plan for horses, as specified in N.J.A.C. 0:128-9.8 and *[9.20(c)]**9.16*.

(c) The home or agency shall maintain on file the following staff ecords throughout a staff member's employment and for one year fter the staff member has stopped working at the home.

1. The following records for the director and all staff members hall be maintained in files located either at an agency's adminis- rative office or at the home:

i. Applications for employment, as specified in N.J.A.C. 0:128-5.1(b) and *[9.17]**9.18*;

ii. References on the director and staff members, as specified in N.J.A.C. 10:128-5.1(b) and *[9.17]**9.18*;

iii. A record of each staff member's signature attesting to his or ıer receipt of the policy statement on the disciplining of children by ;taff members, as specified in N.J.A.C. 10:128-3.3(b);

iv. A record of each staff member's signature attesting to his or ıer receipt of the information to parents document, as specified in N.J.A.C. 10:128-3.3(b);

v. Health information, as specified in N.J.A.C. 10:128-7.8; and

vi. A copy of a home study, as specified in N.J.A.C. 10:128-5.1(b)3.

2. The following staff records shall be maintained in files located ɪt the home:

i. Current staff member attendance sheets;

ii. Reasons for discontinuance of employment, if applicable, as specified in N.J.A.C. 10:128-5.1;

iii. A full written disclosure of the director's and every staff member's background, previous work experience and criminal convictions, if any, as specified in N.J.A.C. 10:128-5.1(b) and *[9.17]* *9.18*;

iv. Documentation that every staff member received and reviewed a copy of the home's statement of purpose, grievance policy, children's bill of rights, fireplace policy and search and seizure policy, as specified in N.J.A.C. 10:128-3.1(b) and 3.3(b);

v. A written annual performance evaulation, as specified in N.J.A.C. 10:128-5.2; and

vi. Documentation of training received by staff members, as specified in N.J.A.C. 10:128-5.4 and 10.3.

(d) The home shall maintain on file the following children's records during the child's placement at the home or agency for at least three years following the discharge of the child.

1. The home or agency shall ensure the confidentiality of the following records for each child, in accordance with New Jersey State law:

i. Identifying information, as specified in N.J.A.C. 10:128-3.6(b) and (c);

ii. A copy of each treatment plan developed for the child, for group homes, teaching family homes or treatment homes as specified in N.J.A.C. 10:128-6.1; a copy of the case management plan for supervised transitional living homes, as specified in N.J.A.C. 10:128-6.3; and a copy of the case management plan for homes that serve pregnant and parenting adolescents, as specified in N.J.A.C. 10:128-10.4;

iii. Education records, as specified in N.J.A.C. 10:128-6.7;

iv. Reports of incidents, including, but not limited to, acts of aggression, violent or destructive behavior, discovery of contraband, suicidal threats, discovery of a weapon, inappropriate sexual behavior, involvement with the police and documentation of efforts made to locate runaways, as specified in N.J.A.C. 10:128-6.13, 6.14, 6.15 and 6.16;

v. Reports of accidents, as specified in N.J.A.C. 10:128-7.3 and 9.3(a) and (b);

vi. Documentation of the opening of a child's mail by a home staff member, as specified in N.J.A.C. 10:128-6.6;

vii. Medical records, as specified in N.J.A.C. 10:128-7.2 and *[9.16]**9.17*(a) and (b);

viii. Explanations of medical treatment, as specified in N.J.A.C. 10:128-10.19;

ix. A discharge summary, as specified in N.J.A.C. 10:128-6.2 and 10.5;

x. An aftercare plan, as specified in N.J.A.C. 10:128-6.2 and 10.5;

xi. An infant's feeding schedule, as specified in N.J.A.C. 10:128-10.24;

xii. Documentation that an adolescent mother received life skills development training, as specified in N.J.A.C. 10:128-10.25; and

xiii. Documentation that a child received information on adventure activities, as specified in N.J.A.C. 10:128-9.1(c).

2. The home or agency shall ensure that all entries in the child's record indicate the entry date and the name and signature of the person making the entry.

N.J.A.C. 10:128-3.9 Comprehensive general liability insurance

A home or agency shall secure comprehensive general liability insurance coverage and shall maintain on file a copy of the insurance policy.

SUBCHAPTER 4. PHYSICAL FACILITY REQUIREMENTS

10:128-4.1 Physical facility initial approval requirements for all homes located in New Jersey

(a) An applicant seeking an initial certificate of approval, as specified in N.J.A.C. 10:128-2.1, to operate a home shall comply with all applicable provisions of the New Jersey Uniform Construction Code, as specified in N.J.A.C. 5:23 and hereinafter referred to as the NJUCC.

1. For newly constructed buildings, for existing buildings whose construction code use group classification would change from that which it had been, or for existing buildings that require major alteration or renovation, the home or agency shall submit to the Bureau a copy of a Certificate of Occupancy (CO) issued by the municipality in which it is located, reflecting the home's compliance with provisions of the NJUCC, for one of the following use group classifications:

i. R-2 (Residential) for buildings accommodating children 2½ years of age and older for more than 30 calendar days and having a total occupancy of more than five and fewer than 13 children; or

ii. I-2 (Institutional) for buildings accommodating six or more children less than 2½ years of age.

2. For homes or agencies that are planning to construct a new building, the home or agency shall submit to the Bureau:

i. Preliminary architectural drawings for review and comment prior to beginning construction; and

ii. If applicable, revised architectural or final drawings containing all required items listed in the preliminary plan review for final approval from the Bureau before the home can open.

3. For buildings constructed after the adoption of the NJUCC (1977), whose construction code use group classification is already R-2 or I-2 and that have not had major alterations or renovations since receipt of the CO, the home or agency shall obtain the CO issued by the municipality in which it is located at the time the

building was originally constructed or approved for use in the NJUCC's R-2 or I-2 use group classification. The home or agency shall submit a copy of the building's CO to the Bureau.

4. For existing buildings, whose use prior to the adoption of the NJUCC (before 1977) was and continues to be for a home and that have not had major alterations or renovations, the home shall obtain a Certificate of Continued Occupancy (CCO) or a letter to this effect, issued by the municipality in which it is located, reflecting the building's compliance with provisions of the municipality's construction code requirements that were in effect at the time it was originally constructed or converted for use as a home. The home or agency shall submit a copy of the building's CCO or letter reflecting the building's compliance to the Bureau.

5. The home or agency shall obtain a new CO issued by the municipality in which it is located, reflecting the building's compliance with provisions of the applicable NJUCC use group classification, and submit a copy of the new CO to the Bureau whenever it takes any of the following actions:

i. Changes the building's use group classification to one other than the one prescribed on its original CO;

ii. Makes a major alteration or renovation, as defined by the NJUCC, of the building or premises where the home is located;

iii. Increases the floor area or the number of stories to the building or premises where the home is located; or

iv. Relocates to another site.

6. Whenever a municipality grants a home a written variation from any of the requirements of the NJUCC, the Bureau may accept such variations as meeting the applicable requirements of this manual.

(b) An applicant seeking an initial approval, as specified in N.J.A.C. 10:128-2.1, to operate a home shall comply with all applicable provisions of the New Jersey Uniform Fire Code, as specified in N.J.A.C. 5:18, 18A and 18B and hereinafter referred to as the NJUFC. The home or agency shall obtain the building's fire safety inspection certificate issued by the municipality in which it is located, based on a fire inspection conducted within the preceding 12 months, reflecting the home's compliance with all applicable provisions of the NJUFC. The home or agency shall submit a copy of the building's fire safety inspection certificate to the Bureau.

(c) An applicant seeking an initial approval, as specified in N.J.A.C. 10:128-2.1, to operate a home shall comply with all applicable provisions of the State Sanitary Code, as specified in N.J.A.C. 8:24. The home or agency shall obtain a certificate or statement of satisfactory health approval issued by the applicable municipal, county or State health agency, based on a health inspection conducted within the preceding 12 months, certifying that the home complies with applicable provisions of local, county and State health codes and poses no health hazard to the children served. The home or agency shall submit a copy of the certificate or statement of satisfactory health approval to the Bureau.

(d) An applicant seeking the renewal of a certificate of approval to continue operating a home shall obtain and submit to the Bureau, copies of:

1. A current fire safety inspection certificate for the building; and

2. A current certificate or statement of satisfactory health approval for the home.

10:128-4.2 Physical facility initial approval requirements for all homes located outside of New Jersey

(a) A home located in a state other than New Jersey shall submit with each application documentation that the home meets the provisions of all applicable codes governing building, fire, safety and health requirements in the state, county and municipality in which the home is located.

(b) All homes located in a state other than New Jersey shall also comply with the physical facility and life-safety requirements specified in N.J.A.C. 10:128-4, with the exception of N.J.A.C 10:128-4.4(c), (f)3, (g), (h), (i), and (l).

10:128-4.3 Maintenance and sanitation requirements for all homes

(a) The home shall maintain all indoor areas in a safe and sanitary manner by ensuring that:

1. The home is free of moisture resulting from water leaks (seepage;

2. All lally columns in areas used by the children have protecti padding from the floor to a height of at least 72 inches;

3. Floors, walls, ceilings and other surfaces are kept clean and good repair;

4. Stairways are free of hazards such as boxes, loose steps, to carpeting or raised strips;

5. Carpeting is secured to the floor;

6. Garbage and food receptacles are:

i. Made of durable, leakproof and nonabsorbent materials;

ii. Covered in a secure manner;

iii. Emptied to the outdoor garbage receptacle when filled; an

iv. Lined and maintained in a sanitary manner;

7. The home is free of rodent or insect infestation. If there evidence of rodent or insect infestation, immediate action shall b taken to remove such infestation. The home shall maintain on fi a record documenting the use of extermination services in the incidences;

8. Toilets, wash basins, kitchen sinks, and other plumbing a maintained in good operating and sanitary condition;

9. All corrosive agents, insecticides, bleaches, detergents, polishe any products under pressure in an aerosol can, and any tox substance are stored in a locked cabinet or in an enclosure locate in an area not accessible to children under six years of age;

10. Ventilation outlets are clean and free from obstructions, an filters are replaced when saturated;

11. Walls are painted or otherwise covered whenever there evidence of:

i. Excessive peeling or chipped paint; or

ii. Heavily soiled conditions; and

12. All shelving is secured and not overloaded.

(b) The home shall maintain all outdoor areas in a safe and san tary manner by ensuring that:

1. The building, land and outdoor play area are free from an hazards to the health, safety or welfare of the children;

2. The outdoor play area is graded or provided with drains t dispose of surface water;

3. The building structure is maintained to prevent:

i. Water from entering;

ii. Excessive drafts or heat loss; and

iii. Infestation from rodents and insects;

4. The railings of balconies, landings, porches, or steps are main tained in safe condition;

5. Garbage receptacles are:

i. Made of durable, leakproof and nonabsorbent materials; an

ii. Covered in a secure manner, maintained in a sanitary manne and located in an outdoor area; and

6. Homes that provide outdoor space maintain in proper conditio all fencing or other natural or man-made barriers or enclosures.

(c) The Bureau shall also require the home to take whatever step are necessary to correct any conditions in the home that may en danger in any way the health, safety and well-being of the childre served.

10:128-4.4 Additional maintenance and sanitation requirements fo all homes located in New Jersey

(a) The home shall meet the following lighting requirements:

1. All fluorescent tubes and incandescent light bulbs shall hav protective covers or shields.

2. During activities in the home, at least 20 foot-candles of natura or artificial light shall be provided in all rooms used by the children This illumination shall be measured three feet above the floor at th farthest point from the light source.

3. Parking areas, pedestrian walkways, or other exterior portion of the premises subject to use by home occupants at night shall b illuminated to provide safe entrance to and egress from the home

(b) The home shall meet the following heating requirements:

1. A minimum temperature of 65 degrees Fahrenheit shall b maintained in all rooms used by the children.

2. Working fireplaces, steam and hot water pipes, radiators and electric space heaters shall be protected by screens, guards, insulation or any other suitable, non-combustible protective device.

3. The home shall not use portable liquid fuel-burning or wood-burning heating appliances.

(c) The home shall ensure that fireplaces meet the following requirements:

1. The use of a fireplace for the children served by the home shall not pose a serious risk of fire safety to occupants of the home, as determined by the local fire official;

2. The fireplace shall be approved by the local government construction official and fire official, in accordance with applicable provisions of the NJUCC and the NJUFC, respectively;

3. The home shall obtain a copy of these certificates or statements of approval and submit them to the Bureau;

4. The home shall develop guidelines, in conjunction with the local fire official, that ensure proper use of the fireplace, safety procedures, and an action plan to be followed in the event of an emergency;

5. The guidelines noted in (c)4 above shall include, but not be limited to, staff member supervision, storage of wood, storage and safeguarding of matches, instruction in the use of fireplace implements, use of the screen, posting of emergency phone numbers for police and fire departments and hospitals, posting of emergency procedures and exits, and methods and safeguards for extinguishing the fire; and

6. The guidelines noted in (c)4 above shall be maintained on file by the home and reviewed by all staff members and children in the home.

(d) The home shall meet the following ventilation requirements:

1. Crawl spaces, attic spaces, and all doors and windows used for natural ventilation shall have insect screening;

2. All floor or window fans that are accessible to the children shall have a grille, screen, mesh or other protective covering designed to prevent a child from coming into contact with the blades of the fan; and

3. Ventilation outlets shall be cleaned and free from obstructions and filters shall be replaced when saturated.

(e) The home shall ensure that mirrors, dispensers, and other equipment are fastened securely.

(f) Homes that serve children with special needs shall ensure that:

1. For non-ambulatory children, the toilet facilities are located on the same floor where the children's bedrooms and activities are located;

2. The width and height of toilets and sinks accommodate the children served; and

3. Grab bars are provided in toilet and bathroom areas, as specified in N.J.A.C. 5:23-7 of the Barrier-free Subcode of the NJUCC.

(g) The home shall not use lead paint on and shall remove lead paint from any interior or exterior surfaces of a building used as a home, or on any furniture, toys, or other equipment used therein, in accordance with the provisions of the State Lead Paint Law, pursuant to N.J.S.A. 24:14A-1 et seq., and with the provisions of the State Sanitary Code, as specified in N.J.A.C. 8:51-7. When lead paint is found in areas of a home not specified in N.J.A.C. 8:51-7, the Bureau shall determine whether the lead paint is hazardous to the health, safety and well-being of the children served and, if considered to be hazardous, the home shall remove the lead paint hazard.

(h) The home shall not use spray coatings containing asbestos on any interior or exterior surfaces of the home or on any equipment used therein, in accordance with rules of the State Department of Environmental Protection, as specified in N.J.A.C. 7:27-17.2 and with applicable provisions of the Asbestos Hazard Abatement Subcode of the NJUCC, as specified in N.J.A.C. 5:23-8. If the New Jersey Department of Health determines the presence of sprayed-on asbestos-containing materials, and concludes that corrective action must be taken to minimize exposure potential, the home shall follow the recommendation of the State Health Department for enclosure, removal or other appropriate action to remove the threat or risk of asbestos contamination.

(i) The home shall ensure that swimming pools and natural bathing places used by the children:

1. Comply with applicable provisions of the Public Recreational Bathing Rules, as specified in N.J.A.C. 8:26, and with applicable provisions of the Building Subcode and Barrier-free Subcode of the NJUCC, as specified in N.J.A.C. 5:23; and

2. Provide for supervision of the children, in accordance with applicable provisions of the New Jersey Youth Camp Safety Act rules, as specified in N.J.A.C. 8:25.

(j) The home shall ensure that materials and furniture for indoor and outdoor use are of sturdy and safe construction, easy to clean and free of hazards that may be injurious to children.

(k) The home shall ensure that toilet facilities meet the following requirements:

1. At least one toilet, wash basin and bath tub or shower is provided for every six children in the home. These facilities shall not be located more than one floor from any bedroom; and

2. A supply of hot tap water not exceeding 110 degrees Fahrenheit and cold running water is provided.

(l) A home utilizing a kitchen facility or food preparation area shall ensure that the cooking equipment and kitchen facility are kept clean and sanitary and are operated in compliance with applicable provisions of Chapter 12 of the State Sanitary Code, as specified in N.J.A.C. 8:24.

(m) The home shall obtain prior approval from the Bureau for all space used by the children.

(n) The home shall not care for more children than the number specified in the certificate of approval.

(o) The home shall meet the following space requirements to ensure the safety, treatment, recreational, dining and sleeping needs of the children, including:

1. Adequate space for the implementation of treatment services, including individual, group and family counselling sessions and treatment team meetings;

2. A recreation room or area that can accommodate indoor individual or group activities;

3. A dining area large enough to accommodate tables and chairs for all the children; and

4. Rooms for sleeping:

i. Any bedroom used by a child shall have a minimum ceiling height of seven feet and six inches.

ii. Any bedroom containing a single bed occupied by one child shall provide a minimum of 70 square feet of floor space, including space that is occupied by furniture.

iii. Any bedroom containing two or more single beds and occupied by more than one child shall provide a minimum of 70 square feet of floor space for the first child and 50 square feet of floor space for each additional child, including space that is occupied by furniture.

iv. Any bedroom containing bunk beds or any combination of single beds and bunk beds shall provide 50 square feet of floor space for each child, including space that is occupied by furniture.

10:128-4.5 Emergency evacuation instructions, medical emergencies, fire prevention, first aid and equipment

(a) The home shall prepare and post on each floor written emergency evacuation instructions that include:

1. A diagram showing how the home is to be evacuated in the event of an emergency; and

2. The location of fire alarms and fire extinguishers.

(b) The home shall maintain the following information near a staff telephone or other accessible area for use in the event of medical emergency;

1. The name, address and telephone number of the physician retained by the home or of the health facility to be used in emergencies;

2. The location of written authorizations from parents for emergency medical care for each child;

3. The procedure for obtaining emergency transportation;

4. The procedure for obtaining substitute or on-call supervision, if needed;

5. The telephone numbers of the local police, fire department, ambulance service and poison control; and

6. The location of the first aid kit and any additional first aid supplies.

(c) The home shall prepare written fire prevention instructions, which delineate that:

1. The home shall conduct fire drills at least once a month, which shall include all staff members and children, and shall inform all staff members and children of the procedures for leaving the building in an emergency situation;

2. The home shall maintain on file a record of each fire drill, which shall include:

i. The date and time of day of the drill;

ii. The weather condition at the time of evacuation;

iii. The number of participating children and staff members;

iv. The total amount of time taken to evacuate the home; and

v. The signature of the staff members conducting the drill;

3. All fire extinguishers shall be serviced and tagged at least once a year and recharged, if necessary; and

4. The home shall ensure that all staff members are trained in the use and operation of fire extinguishers.

(d) The following equipment shall be placed in a location that is convenient and accessible to staff members:

1. A standard first aid kit, which is fully restocked within 24 hours of use; and

2. The American Red Cross First Aid Manual or its equivalent.

10:128-4.6 Special requirements for staff members, children, visitors or family members who use tobacco products

(a) If the home permits the smoking of tobacco products or the use of smokeless tobacco, the home shall designate one area or room within the home or an outside area where staff members, children, as identified in (d) below, visitors or family members may use tobacco products.

(b) The home shall prohibit the smoking of tobacco products or the use of smokeless tobacco in:

1. The presence of infants and toddlers;

2. Bedrooms used by children and staff members;

3. Dining areas when children are participating in meals;

4. Kitchen areas when meals are being prepared; and

5. Administrative and staff offices when children are present.

(c) The home shall ensure that staff members comply with the provisions of N.J.S.A. 2A:170-51, which prohibits any person from directly or indirectly selling, giving or furnishing to a minor under 18 years of age any cigarettes made of tobacco or any other matter or substance that can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco.

(d) The home may permit children who smoke tobacco products or use smokeless tobacco to continue to do so, provided that the following conditions exist:

1. The child shall only be permitted to smoke tobacco products or use smokeless tobacco in the designated area or room identified in (a) above;

2. The treatment team shall develop goals that will direct, guide and counsel the child to stop smoking tobacco products or using smokeless tobacco; and

3. The child shall be provided with written and verbal information that outlines the serious health hazards stemming from smoking tobacco products or using smokeless tobacco.

(e) The home shall not utilize tobacco products as a reward in its behavior management program or in any of its policies or practices.

SUBCHAPTER 5. STAFF REQUIREMENTS

10:128-5.1 General requirements for director and all staff members

(a) The director and every staff member shall:

1. Be of good character and reputation;

2. Be in sufficient physical, mental and emotional health to perform his or her job duties satisfactorily; and

3. Possess skills, attributes and characteristics conducive to and suitable for operating a home or dealing with children, as applicable.

(b) Prior to hiring or utilizing a director or a staff member who will be working at the home, the home or agency shall secure and maintain on file:

1. A signed application for employment from each individual, indicating the applicant's name, address and telephone number; education and work experience; and disclosure of the presence or absence of criminal convictions. The employment application sha be updated to indicate the reasons for discontinuance of employmen if applicable;

2. Two written or two verbal references on each individual. The references shall be secured from former employers or other persor who have knowledge of the individual's work experience or educatio and who can attest to the individual's suitability to work with chi dren. The verbal references shall be documented in writing by th home or agency.

3. A copy of a home study for each treatment home utilized b the agency for children supervised by the Division. The home stud shall include:

i. A description of the rooms in the home;

ii. A description of the child's bedroom;

iii. A description of the neighborhood;

iv. The names of all persons residing in the home, includin biological children, other children placed by the Division, boarde and frequent overnight guests;

v. References as specified in (b)2 above, on all persons identifie in (b)3iv above;

vi. A written health statement on all persons identified in (b)3i above; and

vii. A statement from the agency that verifies that the supply c hot tap water has been tested and does not exceed 110 degree Fahrenheit.

(c) Failure by any agency, director or other staff member to comp ly with the requirements as specified in (a) and (b) above, and/o any evidence demonstrating unfitness or unsuitability to fulfill th responsibilities and duties of his or her position or to serve or dea with children in an appropriate manner, shall constitute grounds fo one or more of the following actions:

1. Removal of the director or staff member from his or he position;

2. Reassignment to other duties that do not involve contact witl children;

3. Termination from the home; or

4. Denial, refusal to renew, suspension or revocation of the home' certificate of approval.

(d) Evidence of conviction for crimes of violence, antisocial behav ior or child abuse and neglect shall be among those actions that ar considered in determining an individual's suitability to serve as direc tor or staff member in a home.

(e) Evidence of conviction of a crime, in itself, shall not automati cally preclude an individual from serving as director or staff membe or from working in the home and shall not automatically result ir the removal or termination of a director or staff member. The hom shall submit a written justification to the Bureau, indicating anc documenting why it feels the individual at issue should not b precluded from working or holding a leadership position at the home the Bureau, after assessing the facts on a case by case basis, shal make the final determination, in keeping with the provisions of th State Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 e seq., which provides that a person convicted of a crime may not b disqualified or discriminated against by a licensing authority unles the conviction relates adversely to the occupation, trade, vocation profession or business for which the license is sought.

(f) The home shall disclose to the Bureau, in writing, information about and circumstances surrounding any previous denial, suspension, revocation or refusal to renew a certificate of approval or a license to operate a home either by the Bureau or by the licensing agency of another state. Evidence of a previous denial, suspension, revocation or refusal to renew a certificate of approval or license, shall not in and of itself result in an automatic disqualification of the prospective agency or home to secure a certificate of approval for another or the same home, but shall constitute grounds for the Bureau to investigate the circumstances that led to the original negative action and make a determination as to whether to reject or process the new application for a certificate of approval.

(g) Requirements to prevent child abuse or neglect are as follows:

1. The director or any staff member shall verbally notify the Division's Office of Child Abuse Control or District Office immediately whenever there is reasonable cause to believe that a child has

een subjected to abuse or neglect by a staff member, or any other erson, pursuant to the Child Abuse and Neglect Law (see N.J.S.A. :6-8.9, 8.10, 8.13 and 8.14). This provision shall also apply to homes ɔcated outside of New Jersey, notwithstanding the child abuse and eglect provisions of the State in which the home is located.

2. The home shall report any suspected abuse or neglect of the hild by his or her parents or other family members to the Division ase manager assigned to the family.

3. In addition to the reporting requirements specified in 1 above, ıe home shall notify the Division case manager and parents of any nusual incidents that occurred at the home and that might indicate ossible abuse or neglect involving the child. Such notification shall e made on the same day on which the incident occurred. Such ıcidents may include, but are not limited to: acts of aggression, iolent or destructive behavior, suicidal threats or behavior, omicidal threats, inappropriate sexual behavior, running away, /ithdrawal or passivity, drug or alcohol abuse, or significant changes ı the child's behavior or habits. The home shall maintain on file record of such incidents and documentation that parents and Division case managers have been informed of them.

4. The Division, during the course of investigating an allegation ıf child abuse and neglect, may determine that immediate, corrective ction is necessary to protect the children whenever:

i. The director or staff member has been found by the Division's nstitutional Abuse Investigation Unit (IAIU) to pose a risk of harm o children; or

ii. The director or staff member has committed an act of child buse or neglect, as substantiated by the IAIU; or

iii. The director or staff member has been convicted of such acts.

5. Whenever the IAIU makes such a determination, the agency ır director shall carry out the Division's recommendation for im- nediate remedial action and long term corrective action. Such re- nedial action may include, but not be limited to:

i. Removal or suspension of the affected director or staff members rom the home or reassignment to other duties that do not involve ontact with the children; or

ii. When the director or staff member resides at the home, removal ıf the affected employee from the premises.

6. Such suspension, removal or reassignment, as specified in (g)5 ıbove, shall remain in effect until the results of the Division's in- 'estigation have been determined, and a final decision in the matter ıas been rendered by the Bureau.

7. Substantiation of the child abuse and neglect allegation by the Division's IAIU shall not, in itself, automatically result in the termin- ıtion of the accused director or staff member from his or her position n the home, but shall constitute grounds for possible termination f the person's continued employment at the home would place the :hildren at risk. Such determination shall be made by the Bureau ıfter considering information provided by the agency, the director, he affected staff member, the IAIU and law enforcement authorities, ıs applicable and available.

(h) The home or agency shall utilize medical, dental, and psycho- ogical personnel serving children on either a staff or community ɔrovider basis who shall:

1. Be responsible for ensuring that the needs of the children for nedical, dental, and psychological services are met; and

2. Be licensed to practice in the state where the staff member or :ommunity provider is located, if required by the laws of that state.

10:128-5.2 Staff qualifications

(a) Group homes, supervised transitional living homes and treat- ıent homes shall have a full-time agency administrator or home director, social service workers and house parents or child care staff nembers, who shall meet the requirements in (c) through (e) below.

(b) Teaching family home programs shall have a full-time program ıdministrator, teaching family consultants and teaching family ɔarents, who shall meet the requirements in (g) through (j) below.

(c) The full-time agency administrator or home director shall:

1. Be at least 21 years of age;

2. Have one of the following qualifications:

i. A bachelor's degree in social work, psychology or a related field from an accredited college or university and four years of professional experience in the human services field, two of which shall have been in a supervisory or administrative position;

ii. A master's degree from an accredited graduate school in social work, psychology, or a related field and three years of professional experience in the human services field; or

iii. For publicly operated homes, meet the requirements of the State Department of Personnel for the position, if applicable;

3. Be responsible for implementing the overall planning, operation, and management of the home, including the home's recreational and food programs;

4. Designate staff members to be in charge at all times during his or her absence;

5. Be on call to assist the staff in admissions, emergencies, and personnel or other responsibilities;

6. Be responsible for ensuring that all staff members receive an annual performance evaluation;

7. Be responsible for ensuring that all staff member's work schedules and time sheets are maintained;

8. Be responsible for ensuring that a daily log book, separate log book, or the child's case record contains a written notation of all visits to children;

9. Be responsible for ensuring that on-duty staff members complete entries in the daily log book that reflect the activities and events of each day; and

10. Be responsible for maintaining aggregate statistical information on children served, including the date of each admission, date of each discharge, and reason for each discharge.

(d) The social service workers shall:

1. Be at least 21 years of age;

2. Provide at least two hours of service per week to each child, including, but not limited to, casework services, intake, treatment planning, family contacts, group work services, and maintenance of each child's record; and

3. Have one of the following qualifications:

i. A bachelor's degree in social work, psychology or a related field from an accredited college or university and one year of professional experience in the human services field;

ii. A master's degree from an accredited graduate school in social work, psychology or a related field; or

iii. Meet the requirements of the State Department of Personnel for the position, if applicable.

(e) The house parents or child care staff members shall:

1. Be at least 18 years of age;

2. Provide daily care and supervision of the children;

3. Inform the social service staff members or director of any incidents that may impact on the child's treatment planning, as specified in N.J.A.C. 10:128-6.1, 6.2 and 6.3; and

4. Have one of the following qualifications:

i. A high school or high school equivalency diploma and one year of experience working with children in a group setting;

ii. An associate's or bachelor's degree from an accredited college or university in a field that is unrelated to social work or psychology and six months experience working with children in a group setting;

iii. An associate's or bachelor's degree from an accredited college or university in social work, psychology or a related field; or

iv. Meet the requirements of the State Department of Personnel for the position, if applicable.

(f) Group homes and supervised transitional living homes may hire persons who do not meet the qualifications specified in (e)4 above, but who offer a background or life experience that demonstrate characteristics, skills and attributes that would enable them to work with children in a positive manner. The home or agency shall develop and maintain on file a policy that delineates the criteria for hiring staff members who do not meet the qualifications specified in (e)4 above. Such criteria shall include, but not be limited to, the following:

1. The person shall have life experiences that deal with raising a child, providing foster care, participating in volunteer activities with a child or adopting a child;

2. The person shall exhibit characteritics, skills and attributes that would enable him or her to work effectively and sensitively with

emotionally disturbed or handicapped children in a group setting; and

3. The person, after he or she is hired, shall work together with an experienced staff member for an initial probationary period of at least six months unless terminated for cause prior to completing the six-month probationary period. After this initial six month period has ended, the home or agency shall review the person's work performance, document his or her ability to continue work without being supervised by an experienced staff member and may either:

i. Appoint the probationary staff member to fill the position as a child care staff member;

ii. Extend the initial six-month period to further evaluate the performance of the probationary staff member and continue to have the probationary staff member supervised by an experienced staff member; or

iii. Terminate the probationary staff member after the initial six-month period or any extension of the initial six-month period for failing to perform the job duties and responsibilities of the position.

(g) The teaching family home program administrator shall:

1. Meet the qualifications specified in (c)1 and 2 above;

2. Provide the Bureau with current listings of teaching family consultants and the homes to which they are assigned;

3. Ensure that the teaching family homes comply with all applicable provisions of this manual;

4. Designate a staff member to be in charge at all times during his or her absence;

5. Be on call to assist the teaching family consultants in admissions, emergencies and personnel or other problems;

6. Be responsible for ensuring that all teaching family consultants receive an annual performance evaluation; and

7. Assist in the recruitment and training of teaching family parents.

(h) The teaching family consultants shall:

1. Be at least 21 years of age;

2. Meet the requirements of the State Department of Personnel for the position; and

3. Be responsible for ensuring that the teaching family parents perform the duties specified in (i) below.

(i) The teaching family parents and relief staff shall:

1. Be at least 18 years of age;

2. Implement the overall planning, operation and management of the home;

3. Maintain all staff members' work schedules, time sheets, and/or payment vouchers for relief staff;

4. Maintain a daily log book, separate log book or record in the child's case record of all visits to children;

5. Complete entries in the daily log book that reflect the activities and events of each day;

6. Maintain aggregate statistical information on children served, including the date of each admission, date of each discharge, and reason for each discharge; and

7. Meet all the requirements specified in (e) above.

(j) Teaching family home staff members shall meet staff training and certification requirements of the National Teaching Family Association.

10:128-5.3 Staff to child ratios

(a) Group homes and supervised transitional living homes shall meet the following staff to child ratios:

1. The home shall have at least one staff member present in the home or reachable by telephone when the home is in operation but the children are not in the home on a particular day.

2. The home shall have at least one staff member for every 12 or fewer children when the children are awake and present in the home and when the children are participating in an activity organized by the home.

3. The home shall have at least one staff member on duty when there are 12 or fewer children in the home and the children are asleep.

i. In a single-sex home, the staff member may be asleep.

ii. In a coed home, the staff member shall be awake.

iii. An additional staff member shall be available to provide emergency in-person coverage within 30 minutes.

(b) Teaching family homes, supervised transitional living hom serving six or fewer children and treatment homes shall have:

1. One staff member on duty whenever a child is scheduled to l present in the home;

2. One staff member as identified in (b)1 above who is accessib by telephone or beeper at all times when the home is in operatic and the children are not present; and

3. One staff member who can provide emergency in-person co erage within 30 minutes.

10:128-5.4 Staff training and development

(a) The home shall develop a training plan and the director sha ensure that all staff members, upon employment, are trained in:

1. The home's statement of purpose, as specified in N.J.A.(10:128-3.1;

2. The home's behavior management policy and search and seizu policy, if any, as specified in N.J.A.C. 10:128-6.14 and 6.15;

3. Emergency procedures, as specified in N.J.A.C. 10:128-4.5(a (b) and (c);

4. Protocols for medication, as specified in N.J.A.C. 10:128-7 and 5;

5. Infection control procedures, as specified in N.J.A.(10:128-7.8; and

6. The home's techniques for safe physical restraint, if applicabl as specified in N.J.A.C. 10:128-6.13(e)6.

(b) The home shall ensure that every new staff member is accon panied on his or her duties by an experienced staff member as pa of an orientation, until the new staff member is familiar with dai routines and operations of the home.

(c) The home shall document in each staff member's record th all social service and child care staff members, including full and par time staff members, receive a minimum of 12 hours of training eac year in the following areas:

1. The principles of behavior management;

2. Alcohol and substance abuse;

3. Human sexuality and AIDS; and

4. Suicide prevention.

(d) The home's training plan may include in-depth discussions staff meetings or attendance at workshops or conferences.

10:128-5.5 Volunteers and student interns

(a) The home may use volunteers or student interns to suppo the activities of regular paid staff members, but shall not use volu teers or student interns to substitute for paid staff members.

(b) The home shall ensure that volunteers and student interns a briefed fully on any special needs or problems they might encounte while working with the children.

(c) The home shall ensure that volunteers and student interns wh have contact with children or parents receive an orientation to th home's program and are supervised by paid staff members. Volu teers and student interns shall receive authorization from the hom prior to accompanying children off-grounds for trips, medical ap pointments and visits.

(d) The home shall require references, as specified i 10:128-5.1(b)2, for volunteers and student interns who provide ac tivities or transportation to a child by themselves.

SUBCHAPTER 6. PROGRAM REQUIREMENTS

10:128-6.1 Treatment plan for children in group homes, teaching family homes and treatment homes

(a) Group homes, teaching family homes and treatment home shall develop, implement and maintain on file a written individua treatment plan for each child. The plan shall delineate how to mee that child's needs and to remediate the problems and behavior tha led to the child's placement.

(b) Group homes, teaching family homes, and treatment home shall form a treatment team that is responsible for the developmen of a treatment plan for each child. The treatment team shall consis of each of the following:

1. For group homes and treatment homes:

i. Staff members representing the clinical component;

ii. Staff members representing the social work component;

iii. Staff members representing the child care component;
iv. Staff members representing the administration of the home, if ecessary;
v. Representatives from the child's responsible school district and/ current school district, if necessary;
vi. The Division's case manager; and
vii. The child's parents, if appropriate.
2. For teaching family homes:
i. Staff members representing the clinical component, if applicable;
ii. Teaching parents and any alternate teaching family staff embers;
iii. The teaching family consultant who shall attend the initial eatment planning meeting and shall attend at least one subsequent eeting every year;
iv. Representatives from the child's responsible school district id/or current school district, if necessary;
v. The Division's case manager; and
vi. The child's parents, if appropriate.
(c) Group homes, teaching family homes and treatment homes iall document in the child's record that the Division's case manager other placing agency, the child's therapist, parents or legal guardn and the child's responsible ***and/or current*** school district, if ppropriate, were invited to participate as members of the treatment am and assist in the development of the treatment plan and all ibsequent revisions.
(d) Group homes, teaching family homes and treatment homes iall develop the initial treatment plan within 30 calendar days folwing a child's admission, implement the treatment plan for three onths and review or revise the treatment plan at least every three onths thereafter.
(e) The treatment plan shall include the following information:
1. The name of the child;
2. The date of the child's admission;
3. Updated medical and dental examinations, as specified in .J.A.C. 10:128-7.2;
4. The date when the plan is developed or revised;
5. The names and titles of all persons attending the development review meeting;
6. The child's social, familial, emotional, behavioral, and academic rengths and weaknesses;
7. Family or friends' visiting schedule or reasons for not scheding visits;
8. Specific treatment goals in each program area and projected me frame for completing each goal;
9. The name of the staff member responsible for implementation each treatment goal;
10. Techniques to be used to achieve each treatment goal;
11. Criteria to be used to determine whether each treatment goal achieved;
12. A notation of progress made from the previous plan;
13. Documentation of efforts to achieve timely discharge, includg, but not limited to, services needed by parents or other persons whom the child will be discharged; and
14. For children who are 14 years of age and over, how the child being prepared for self-sufficiency. This documentation shall inude, but not be limited to, instruction in:
i. Food preparation;
ii. Budgeting and money management; and
iii. Vocational planning and employment search efforts.
(f) Group homes, teaching family homes and treatment homes iall send to the Division's case manager or other placing agency copy of the treatment plan and any revisions to it within 30 calendar ays after the treatment planning meeting and retain a copy of the lan in the child's record for at least three years after the child's ischarge.
(g) Group homes, teaching family homes and treatment homes iall ensure that the child's treatment plan and any revisions to it e explained to the child, his or her parents, and all staff members sponsible for the plan's implementation. If the home does not plain the child's treatment plan to the child's parents, the home iall document in the child's case record the reasons why the plan as not explained to the parents.

10:128-6.2 Discharge planning
(a) For discharges that can be anticipated, the home shall develop a plan with the Division's case manager or other placing agency staff at least 30 days before the child's discharge. The plan shall be sent to the Division's case manager ***or other placing agency*** and shall specify the following information:
1. The date of admission;
2. The anticipated or actual date of discharge;
3. Details of the events and circumstances leading to the decision to discharge;
4. The name and address of the individual or agency to whom the child will be discharged and the rationale for planning a discharge to that individual or agency; and
5. An assessment of the child's continuing needs, including, but not limited to, consideration of health care, behavior management and educational or vocational training.
(b) For discharges that were not anticipated at least 30 calendar days ahead of time, the home shall send the Division's case manager or other placing agency a written plan at least 10 working days prior to the child's discharge. This plan shall specify the following information:
1. The date of admission;
2. Details of the events and circumstances leading to the discharge;
3. Efforts made to locate a runaway, if relevant;
4. An assessment of the child's continuing needs including, but not limited to, health care, behavior management and educational and vocational training; and
5. Recommendations for providing follow-up services in the child's new environment.
(c) For emergency discharges that result in the immediate placement of the child in a facility such as a detention center, hospital, psychiatric facility or any other placement outside the home, the home shall notify the Division's case manager or other placing agency by the next working day by telephone. The home shall send a written discharge plan within 10 days after the child's discharge. This plan shall specify the information outlined in (b)1 through 5 above.

10:128-6.3 Case management plan for children in supervised transitional living homes
(a) The supervised transitional living home shall develop, implement and keep on file a written individualized case management plan for each child. The plan shall delineate how to meet the child's needs and to prepare the child for independent living in the community.
(b) The supervised transitional living home shall develop the initial case management plan within 30 calendar days following a child's admission and shall review or revise the initial case management plan at least every three months thereafter.
(c) The supervised transitional living home shall document in the child's record that the Division's case manager or other placing agency, and the responsible school district of the child, if applicable, were asked to participate in the meeting to develop the case management plan and all subsequent meetings to revise the plan.
(d) The supervised transitional living home shall invite the child's parents to the planning meeting. If the parents do not attend the meeting, the supervised transitional living home shall ensure that the child's case management plan and any revisions to it are explained to the child's parents, or document in the child's case record the reasons why the plan was not explained to the parents.
(e) The case management plan shall include the following information:
1. The name of the child;
2. The date of the child's admission;
3. Updated medical and dental examinations, as specified in N.J.A.C. 10:128-7.2;
4. The date of the meeting at which the plan is developed or revised;
5. The names and titles of all staff members and any other persons attending the development or review meeting;
6. The child's social history, including family background, emotional and behavioral problems and academic strengths and weaknesses;

7. The family visiting schedule or reasons why visits were not scheduled;

8. Specific case management goals and plan for achieving and monitoring progress;

9. A notation of progress made from the previous plan, if relevant;

10. Goals and recommendations for discharge and aftercare; and

11. A plan for helping the child become self-sufficient, including, but not limited to, instruction in:

i. Food preparation;

ii. Budgeting and money management; and

iii. Career planning and employment and skills training.

(f) The supervised transitional living home shall send to the Division's case manager or other placing agency a copy of the case management plan or any revisions to it within 30 calendar days after the meeting and shall retain a copy of the plan in the child's record.

10:128-6.4 Work and employment

(a) The home shall not allow a child to be responsible for duties assigned to staff members.

(b) The home may require children to perform work assignments in the home that have an instructive value, including normal household chores, so long as these assignments are not scheduled to interfere with a child's school program, other aspects of the treatment or case management plan, or any regularly scheduled program activity for the children in the home.

(c) The home's staff members shall encourage children to hold part-time employment outside the home, but shall ensure that the work does not interfere with the child's school program, or other aspects of the treatment or case management plan.

1. The home may require a child to maintain specific academic standards as a condition for seeking or maintaining employment.

2. The home may prohibit a child's employment, if a child does not maintain appropriate academic or behavioral standards, or if the job is determined to be detrimental to his or her health, safety or well-being.

10:128-6.5 Money and allowance

(a) Group homes, teaching family homes and treatment homes shall provide opportunities for all children to earn an allowance.

(b) The home shall not require a child to assume responsibility for expenses for his or her care and treatment, except for amounts needed to pay for intentional damage done to the home by the child.

1. When a child damages the home's property, the home shall identify the child who damaged the property in an incident report before requiring the child to pay restitution.

2. The restitution payments shall not exceed 50 percent of a child's weekly income from allowance.

3. Children who are working or have savings shall have the option to make a lump sum payment for intentional damages.

4. The home may offer the child the option of performing additional chores in lieu of restitution payments.

10:128-6.6 Visitation and communication

(a) The treatment team shall determine the family members and friends with whom the child may communicate and visit.

*[i.]**1.*** The treatment team shall identify visitors with whom the child may have contact at intake and may revise the list at subsequent treatment planning or case management meetings.

2. Between treatment planning or case management meetings, the home may curtail a child's contact with individuals after consultation with the Division or other placing agency if the home:

i. Informs the child of the conditions of and reasons for restriction or termination; and

ii. Documents in the child's record the reasons for curtailing contact with the specified individuals.

(b) The home shall develop a visiting policy and explain the visiting policy to the child and parents at intake. The visiting policy shall specify:

1. The hours for visiting family members and how alternative hours may be arranged;

2. That family visits shall not be denied for a child's infraction of rules, but may be denied if such visits would be contrary to the child's treatment plan;

3. That visitors who appear to be under the influence of drugs c alcohol shall not be allowed to visit or to transport the child;

4. That the child may visit his or her Division case manager c other placing agency worker upon request and that these visits sha not be denied for any reason; and

5. The hours when a child may visit with friends and whether child's visits with friends may be curtailed for a child's infraction c the rules.

(c) The home shall adhere to the following policies for the use c the telephone by children:

1. The home shall permit access to a telephone by the child fc telephone conversations with the Division's case managers or oth professional persons involved in the child's treatment planning.

i. The child shall not be charged a cost for these telephone call and

ii. The home shall provide adequate privacy for these telephor calls and all other calls but may locate the telephone in an area whe a staff member can observe the child's reactions.

2. The home shall permit reasonable access to the telephone b the child for telephone conversations with his or her parents. Th home may impose restrictions on these conversations if the followin conditions exist:

i. The cost of the telephone calls is prohibitive; or

ii. The home is complying with a court order which limits th child's contact with his or her parents.

3. When the home imposes restrictions on a child's access t telephone conversations with his or her parents, as specified in above, the home shall:

i. Explain the nature of any restrictions to the child; and

ii. Document the rationale for imposing restrictions in the child record.

4. The home shall develop and maintain on file a written polic governing the use of the telephone by children when they con municate with friends. The home may impose one or more of th following conditions:

i. Restricting the time and duration of telephone calls;

ii. Requiring the child to pay for telephone calls with friends;

iii. Denying the child use of the telephone for infraction of hou rules; and

iv. Requesting the child to identify telephone callers.

5. The home shall not use tapes or any other mechanical listenir devices to monitor a child's telephone calls.

(d) The home shall not restrict the amount of mail a child senc or receives, unless a court order stipulates such restriction.

1. The child shall receive a postage allowance and writing m terials for corresponding with family, friends and other persons wh have a positive impact on the child's treatment.

2. No staff member shall open the child's parcels or letters or rea the child's letters unless the child is physically incapable of doing s and then only in the presence of both the child and another sta member.

3. A staff member may ask a child to open parcels and letters i the staff member's presence along with at least one other staff men ber only if he or she suspects the contents to be contraband, specified in N.J.A.C. 10:128-6.15.

i. If the child refuses to comply with the staff member's reques the home shall store the parcel or letter in a secure place until th child complies or is discharged.

ii. The home shall document the rationale for and the outcor of all incidents when a staff member asks a child to open mail i a staff member's presence.

10:128-6.7 Education

(a) The home shall ensure that each school-age child receives a educational program pursuant to N.J.S.A. 30:4C-26(c) and N.J.S.A 18A:7B-12(a).

(b) The home shall make efforts to ensure that the child is enrolle in a local community school, if appropriate.

1. The home shall document efforts to locate a school setting fc the child and specify how the child's school progress will b monitored.

2. After the child is enrolled in a school program, the home shall ɔcument contacts with school personnel to discuss the child's pro-ess at each treatment planning meeting.
(c) If a child is receiving education through home instruction, the ɔme shall:
1. Provide space within the home for such home instruction; and
2. Document when home instruction was provided.
(d) If a school-age child is not receiving an educational program, e home shall:
1. Document in the child's record the reasons why educational ·ogramming is not feasible;
2. Maintain contact with the responsible school district and/or the cal school district to ensure that the school districts are actively ırsuing alternate educational programming; and
3. Document in the child's record what the child is doing during hool hours.
(e) The home shall provide appropriate instructional, educational ıd recreational activities for children not of school age who are in e home during school hours. These activities shall be reflected in e child's treatment plan.

):128-6.8 Recreation
(a) Group homes, teaching family homes and treatment homes ıall plan or provide a balanced on-grounds and off-grounds rec-ational program. The recreation program shall include planned dividual and group activities.
(b) Group homes shall have a written schedule of daily planned creational and leisure time activities.
1. The home shall ensure that this schedule is developed with input om staff members and children.
2. The home shall keep these schedules on file for 90 calendar days.
(c) Supervised transitional living homes shall encourage children use their leisure time productively by documenting their efforts :
1. Inform children of appropriate activities in the community;
2. Teach children how to manage time and money to be able to ırticipate in recreational activities; and
3. Teach children how to use public transportation.

):128-6.9 Religion
(a) If a home's program has a particular religious orientation, the ɔme shall maintain on file in the home a written description of its ligious orientation and any religious practices or restrictions that e observed. Before the child's admission, the home shall give this scription to the child and the parents and discuss its religious ientation, if any.
(b) The home shall ensure that every child is afforded the op-ɔrtunity to participate freely in religious activities and/or services accordance with his or her own faith or with that of his or her ırents.
(c) The home shall ensure that every child is permitted to attend ligious activities and services in the community and the home shall range for or directly provide transportation for any child who ishes to attend religious activities or services.
(d) The home shall not coerce or require children to participate religious activities.
1. The home shall not punish children who choose not to partici-ıte in religious activities.
2. The home shall not give special rewards to children for partici-ıting in religious activities.

):128-6.10 Rest, bedroom and sleep
(a) The home shall ensure that:
1. Every child is provided with a standard household bed or crib, age appropriate, in sanitary condition;
2. Every set of bunk beds is limited to two in height:
i. Have railings on top bunks that are no more than 3½ inches om the top of the bed frame; and
ii. Have mattresses that are least five inches from the top of the ıiling;
3. Every bed or crib is equipped with a firm, sanitary, fire tardant mattress and waterproof mattress cover;
4. Every child is provided with sanitary bed linens that are changed weekly, a blanket or other suitable covering that is cleaned or replaced, as necessary, and a pillow;
5. Two or more children do not share the same bed;
6. Children who are 18 months of age and older do not share the same bedroom with an adult, unless the adult is their mother and they are in placement in a home that provides services to pregnant and parenting adolescents;
7. A child does not sleep on the same bed or crib that another child has occupied unless the bed linen is changed;
8. Children who are five years of age or older occupy a bedroom only with members of the same sex;
9. Any bedroom occupied by children has natural light and ventilation provided by one or more windows opening directly to the exterior;
10. An unfinished attic or basement is not used for sleeping purposes;
11. All rooms used as bedrooms are not used for any other purpose;
12. Each child is provided with a chest of drawers or some other permanent arrangement for storage of clothing and other personal belongings, including closet space or the equivalent;
13. Each child is permitted reasonable freedom to express his or her personal tastes in the decoration of his or her bedroom or bedroom area;
14. Each child has the opportunity for at least eight hours of uninterrupted sleep each night. Schedules for waking and retiring each day shall be adapted according to the ages, physical condition and characteristics of the children in each group;
15. The facility does not permit more than four children to occupy a designated bedroom space for sleeping. If partitions are used to designate a bedroom space, the facility shall *[insure]* ***ensure*** that the arrangement and height of partitions shall provide privacy for the occupants of the space;
16. Every bedroom is provided with a reading lamp or other means of artificial light for quiet activities; and
17. Every bedroom window is equipped with curtains, blinds or shades.

10:128-6.11 Food and nutrition for children
(a) The home shall ensure that each child is provided with three nutritious meals daily, either in the home itself or in the community.
1. The home shall make daily snacks available for children who desire them, unless there is a medical reason not to provide them.
2. The home shall select, store, prepare, and serve food in a sanitary and palatable manner.
3. The home shall prepare and date menus and keep the menus on file at the home for a minimum of 90 calendar days.
4. The home shall provide table service for children.
5. The home shall serve meals in a manner that makes mealtime a pleasant social experience.
6. The home shall not force-feed or otherwise coerce a child to eat, except by order of a physician.
(b) The home shall ensure that the daily diet for each child includes a balance of foods from the four basic food groups.
1. The home shall ensure that each meal contains a sufficient amount of food for every child.
2. The home shall make available, as necessary, an alternate choice of food for each meal served for children on special diets or children who, because of religious beliefs, cannot eat particular foods.
3. The home shall follow individualized diets and feeding schedules that are submitted to the home by the child's physician or registered dietician.

10:128-6.12 Pets
(a) The home shall ensure that pets kept by or located in the home, regardless of ownership, shall be:
1. Domesticated and non-aggressive;
2. Free from disease;
3. Vaccinated, if applicable, as prescribed by law or as recommended by a licensed veterinarian. The record of the vaccinations shall be maintained on file at the home, along with the name and address of the licensed veterinarian providing care for the pet;

4. If sick, removed from the area occupied by children, until the pet has been examined by a licensed veterinarian;
5. Effectively controlled by leash, command or cage; and
6. Prohibited from toilet facilities for staff members and children.

(b) The home shall ensure that animal waste is disposed of in a manner that prevents the material from becoming a community health or nuisance problem. Accepted methods include:
1. Burial;
2. Disposal in sealed plastic bags; and
3. Utilization of:
i. A municipally approved trash removal system; or
ii. A sewage system for feces.

(c) The home shall ensure that all pet dishes, food and equipment used for pets are kept out of the home's food preparation and food serving areas when food is being prepared or served.

(d) If a pet poses a health hazard to children, the home shall take corrective action that is approved by the licensing agency.

(e) The home shall ensure that pregnant adolescents are not permitted to clean a cat's litter box.

10:128-6.13 Restrictive behavior management practices

(a) Homes that choose to utilize restrictive behavior management practices shall develop policies and procedures that assist children in gaining control of their behavior, protect the children from self-harm, protect other children or staff members, and prevent the destruction of property.

(b) The home shall:

1. Obtain written approval from the Bureau for any restrictive behavior management practice that the home plans to utilize prior to its implementation with children; and

2. Not utilize restrictive behavior management practices as a means of punishment, for the convenience of staff members, or as a substitute for a treatment program.

(c) Prior to the child's admission, the home shall:

1. Explain to the parents, the child, the Division's case manager or other placing agency any restrictive behavior management practice that is used, the circumstances under which it will be employed, and the possible risks involved; and

2. Obtain written consent for the use of each restrictive behavior management practice from the child's parents.

(d) The home shall ensure that the consent form is written in plain language and that either a translated version or an interpreter is available to explain it to non-English speaking parents.

(e) Whenever the parents refuse to consent to a restrictive behavior management practice, revoke their consent for the practice, or cannot be located to give consent, the home shall:

1. Refrain from utilizing the practice and apply other, non-restrictive interventions until such consent is obtained; and

2. Request that the Division's case manager and the placing agency obtain the necessary consent, either through administrative action pursuant to an agreement between the parent, the Division and other placing agency or through legal action, if necessary to protect the best interests of the child.

(f) The home shall maintain a copy of all signed consent forms in the child's records.

(g) At least 10 working days before each staffing or treatment planning meeting, the home shall send a certified letter to the child's parents and a regular letter to the Division's case manager and other placing agency, which shall:

1. Inform them of the frequency and duration of any restrictive behavior management practice that was used with the child;

2. Describe how the child responded to the treatment; and

3. Invite them to the treatment planning meeting to discuss the child's program and progress.

(h) The home shall develop and maintain on file in the home or home's administrative office a policy indicating which restrictive behavior management practices the home uses.

(i) Homes that utilize physical restraint with children shall:

1. Ensure that physical restraint is used only to protect a child from self-harm, or to protect other children or staff members, or to prevent the destruction of property when the child fails to respond to non-restrictive behavior management interventions;

2. Ensure that staff members use only therapeutic physical re straint techniques and holds, such as the basket hold or restrainin the child in the prone position. These techniques and holds shall nc be utilized if the child has:

i. Not received a medical examination that documents that he c she will not be adversely affected; or

ii. A documented respiratory ailment such as asthma;

3. Ensure that a child is released from restraint as soon as he c she has gained control;

4. Document each physical restraint incident in an incident repo that reflects the following:

i. The name of the child;

ii. The date and time of day the restraint occurred;

iii. The name(s) of all staff members involved in the restraint;

iv. Precipitating factors that led to the restraint;

v. Other non-restraint interventions attempted;

vi. The time the restraint ended;

vii. The condition of the child upon release; and

viii. A medical review by the nurse or physician if injury to th child is suspected;

5. Ensure that all restraint incidents are:

i. Reviewed by a supervisory staff member within one working da after the incident; and

ii. If needed, discussed with the staff member involved in th restraint incident within one working day after the incident.

6. Ensure that staff members who are involved in the restraint c a child receive training in safe techniques for physical restraint; an

7. Prohibit staff members from utilizing the following practice during a physical restraint:

i. Pulling a child's hair;

ii. Pinching a child's skin;

iii. Twisting a child's arm or leg in such a manner that would caus the child pain;

iv. Kneeling or sitting on the chest or back of a child;

v. Placing a choke hold on a child;

vi. Bending back a child's fingers; and

vii. Allowing other children to assist in the restraint.

(j) Homes that utilize exclusion shall:

1. Inform staff members through written policy of the circum stances when exclusion may be utilized as a behavior managemer intervention, such as:

i. Disruptive behavior, including fighting, name calling an pushing;

ii. Increased agitation on the part of the child;

iii. Non-compliant behavior or failure to participate in the pro gram; and

iv. Uncontrollable emotional outbursts such as crying, screamin and inappropriate laughter;

2. Ensure that the child being excluded has no record of suicid behavior;

3. Prohibit more than one child from being excluded in a roo or area at a time;

4. Ensure that at least one staff member is responsible to mak visual contact with the child every 10 minutes and is within hearin distance of a child when the child is removed from the group;

5. Ensure that the home does not utilize a closet, bathroom, u finished basement, unfinished attic or locked room when excludin a child from the group;

6. Ensure that the exclusion of a child from the other children do not exceed 30 minutes and a child is not excluded from the grou for more than a total of two hours in a 24-hour period;

7. Document each exclusion of a child in an incident report th reflects the following:

i. The name of the child;

ii. The date and time of day the exclusion occurred;

iii. The name(s) of all staff members observing the child;

iv. Precipitating factors that led to the exclusion;

v. Other intervention attempted;

vi. The time the exclusion ended; and

vii. The condition of the child upon release; and

8. Ensure that the child is reintroduced to the group in a sensitive d non-punitive manner as soon as he or she has gained control.
(k) The home shall not utilize mechanical restraint on any child, ch as:
1. A straight jacket;
2. Leg irons;
3. A papoose board;
4. A rope;
5. Metal handcuffs;
6. Body wraps;
7. Body tubes;
8. Teflon handcuffs;
9. Blanketing; and
10. Four and five point restraint.
(l) The home shall not have a behavior management room, which a room specifically designed and constructed for the isolation of ildren.

:128-6.14 Discipline and control
(a) The home shall develop house rules to help the children de- lop self-control and conform to acceptable patterns of social havior.
1. The home shall put the house rules in writing.
2. The house rules shall include a rationale for such rules and lineate the consequences for infractions.
3. The home shall explain its disciplinary practices individually th each child at the time the child is placed in the home.
4. The house rules shall be maintained on file in the home and ade available to parents, as specified in N.J.A.C. 10:128-3.3.
5. The house rules may be incorporated in the child's bill of rights, specified in N.J.A.C. 10:128-3.2.
(b) The home shall assign responsibility for the discipline, control, id supervision of children to staff members and shall not delegate at responsibility to other children.
(c) The home shall not threaten discipline or administer discipline a child for the misbehavior of another child or group of children.
(d) The home shall prohibit the following types of punishment om being used on a child:
1. Any type or threat of physical hitting or the use of corporal nishment;
2. Forced physical exercise or forcing a child to take an uncom- rtable position;
3. Subjection to verbal abuse, ridicule, humiliation, or other forms degradation;
4. Deprivation of meals, sleep, mail, clothing appropriate to the ason or time of day, or verbal communication;
5. Mechanical or chemical restraint;
6. Assignment of overly strenuous physical work;
7. Exclusion from any essential program or treatment service, such education or clinical treatment;
8. Refusal or entry to the residence;
9. Temporary suspension and return of a child from the home to parent, relative, foster home, or shelter, unless approved by the acing agency; and
10. Seclusion in a locked room.

:128-6.15 Search and seizure of weapons and contraband
(a) Homes may conduct searches for weapons or contraband, ovided that they maintain on file in the home written policies and ocedures that are consistent with the requirements of this manual.
1. The home shall define contraband to include illegal drugs, un- thorized property, stolen property or items otherwise obtained egally.
2. The home shall explain the policy and distribute copies of the ritten policy to children and their parents upon admission and at ast annually thereafter.
3. The home shall specify the actions that it will take when eapons or contraband are found.
(b) The home shall prohibit all staff members, consultants and lunteers from strip searching a child for any reason.
(c) The home shall permit frisk searches (surface searches of outer othing) of a child only where there is reasonable suspicion that the ild is in possession of a weapon.
1. The home shall prohibit staff members from reaching into a child's pockets unless the frisk search confirms the reasonable belief that the child is in possession of a weapon.
2. The home shall not frisk search a child who is suspected of possessing illegal drugs or contraband other than a weapon.
3. The home shall ensure that any frisk search is conducted:
i. In the presence of two staff members, one of whom has supervisory or administrative responsibilities in the home; and
ii. Only by staff members of the same sex as the child. If same sex staff members are not available, staff members shall provide one-to-one supervision of the child, until the search can be properly conducted.
(d) When the home has reasonable suspicion that a child is carrying illegal drugs or other contraband in a garment, pocket, purse, or other possession within the child's immediate control, the home shall ensure that the staff member:
1. Asks the child voluntarily to empty any garment, pocket, purse or other possession;
2. Inspects all such items that are in plain view; and
3. Summons a law enforcement officer to conduct a lawful search of the possessions within the child's immediate control whenever the child refuses a voluntary search by the home staff member.
(e) The home may conduct periodic, unannounced searches of a child's room and other possessions not within a child's immediate possession or control if:
1. The home has explained and documented this practice to the child and his or her parents, as specified in N.J.A.C. 10:128-3.3 and 3.6;
2. The search is conducted in the presence of two staff members, one of whom has supervisory or administrative responsibility; and
3. The home allows the child an opportunity to be present during a search. If the child declines the opportunity, the staff members may conduct the search in the child's absence.
(f) When unannounced room searches occur, as specified in (e) above, the home shall verify which child is responsible for any weapon or contraband brought into the home before imposing a consequence on the child.
(g) Before a home conducts a blood or urine screening on a child to determine substance abuse, the home shall ensure that:
1. Substance abuse screenings are conducted only under the following limited circumstances:
i. When screening is ordered by the court;
ii. When the home is specifically designated as a drug treatment facility; or
iii. When ordered by a physician who has determined that such screening is necessary; and
2. Substance abuse screenings are conducted only if:
i. The home has informed the child and parents, if available, beforehand about the screening;
ii. The home uses a licensed facility to conduct the screening, including drawing the sample and completing the analysis;
iii. The home ensures that the child has privacy when a urine sample is collected, unless the home documents that the child has a history of falsifying samples. If the child has such a history, the home shall request appropriate medical staff of the same sex as the child to witness or verify that the child is not falsifying samples; and
iv. The home verifies the accuracy of all positive tests through a second screening; and
3. Substance abuse screenings are discontinued whenever previous screenings result in three consecutive negative readings after the initial positive reading was documented, unless a court order requires continued screenings.
(h) The home shall maintain on file an incident report for every instance involving a frisk search of a child, a staff member's request for a child to empty a possession within the child's immediate control, a room search resulting in the discovery of weapons, illegal drugs or other contraband, and a blood or urine screening.

10:128-6.16 Firearms and weapons
(a) The home shall not maintain any firearm, chemical or other weapon within or on the grounds of the home.

(b) The home shall prohibit any staff member or child to possess any firearm, chemical or other weapon within or on the grounds of the home.

(c) As an exception to the requirements in (a) and (b) above, treatment homes and teaching family homes that are not State-owned may maintain a weapon, if they meet the following requirements:

1. The treatment home parents and teaching family home parents shall provide documentation that all weapons in the home that are required to be registered according to State law have the proper license;

2. The treatment home parents and teaching family home parents shall sign a statement that they will not share or expose the weapon to the children in the home; and

3. The treatment home parents and teaching family home parents shall store all weapons in a Bureau-approved, locked, steel gun vault.

SUBCHAPTER 7. HEALTH REQUIREMENTS

10:128-7.1 Comprehensive health plan for children

(a) The home shall prepare and implement a comprehensive health plan to ensure that each child's medical, dental, and other health needs are met adequately and promptly.

1. The home shall identify a physician or health care organization who will assume responsibility for routine medical care of each child.

2. The home shall arrange for emergency, routine and follow-up medical care for each child.

10:128-7.2 Health care and medical treatment for children

(a) Within 72 hours after admission, the home shall ensure that each child receives a medical examination, as defined in (d) below, unless the child had received such a medical examination within 30 calendar days prior to his or her placement.

(b) When the home suspects that a child is ill or carrying a contagious disease, the child shall be examined by a physician prior to admission.

(c) When the home suspects that a child has been abused or neglected the home shall ensure that the child is examined by a physician immediately upon admission.

(d) The home shall ensure that each child receives an annual comprehensive physical examination and maintain a copy of this physical examination in the child's record.

1. The physical shall include, but is not limited to:

i. A measurement of height and weight;

ii. A determination of blood pressure;

iii. An objective vision screening which uses a Titmus or Snellen test, or equivalent;

iv. A hearing screening using an audiometer and, if indicated, tympanometry;

v. A hematocrit or Hemoglobin test, if indicated; and

vi. A urinalysis, if indicated.

2. The home may use vision and screening tests completed at the child's school if these tests meet the requirements specified in (d)1iii and iv above.,

3. The home shall ensure that eye glasses, orthopedic apparatus or other equipment is available to each child who requires them.

4. The home shall ensure that all children 13 years of age and under receive a Mantoux test unless they have had tuberculosis, and ensure follow-up with the physician if test results are positive.

5. The home shall ensure that all children are appropriately immunized.

(e) The home shall ensure that each child receives a dental examination within three months following admission and at least semi-annually thereafter.

(f) The home shall ensure that children between two and six years of age receive developmental evaluations by a physician, nurse or other appropriate health official.

10:128-7.3 General medical practices

(a) The home shall ensure that any medical, dental, psychological and psychiatric treatment or medication administered to a child is explained to the child.

(b) When serious accidents or illnesses occur to a child, the home shall take *[necesary]* ***necessary*** emergency action and notify the parents and the Division's case manager or other placing agenc immediately. The home shall document these incidents in the child record.

(c) When a child or staff member has a communicable disease, i specified in the table below, the home shall:

1. Obtain a note from a licensed physician treating the child c staff member, confirming the diagnosis and indicating that there no risk to the child or staff member, or to others before the chi or staff member participates in group activities;

2. Isolate the child or staff member posing a risk to others; ar

3. Contact the New Jersey State Department of Health, the loc health department or other appropriate public health authority whe the child or staff member has a reportable disease, as specified the table below.

TABLE OF COMMUNICABLE DISEASES

Respiratory illnesses	Gastro-intestinal illnesses	Contact illnesses
Chicken pox	Giardia lamblia*	Impetigo
German measles*	Hepatitis A*	Lice
Hemophilus influenzae*	Salmonella*	Scabies
	Shigella*	
Measles*		
Meningococcus*		
Mumps*		
Strep throat		
Tuberculosis*		
Whooping cough*		

*Reportable diseases, as specified in N.J.A.C. 10:128-7.3(c)3.

10:128-7.4 Medication other than psychotropic medication

(a) The home shall administer prescription medication to a chi only when the medication is authorized by a physician.

(b) The home shall limit the dispensing of non-prescription ove the-counter medication to the following types of medicines, whic shall be dispensed in accordance with the recommended dosage, a or weight of the child, as indicated on the label:

1. Antihistamines or decongestants;

2. Acetaminophens (or other age-approved aspirin substitutes)

3. Cough suppressants; and

4. Topical ointments.

(c) The home may permit the dispensing of non-prescription med cation other than those listed in (b) above if the child's physicia authorizes it in writing.

(d) The home shall maintain a medication log book that sha contain the following information:

1. The name of child receiving medication, whether prescriptic or non-prescription;

2. The type of medication, dosage, and intervals between dosage

3. What to do if a dosage is missed;

4. The reason for medication;

5. The date and time medication was administered;

6. Possible side effects of the medication, if any; and

7. The signature and title of staff member dispensing medicatio

(e) In supervised transitional living homes, self-medicating chi dren may record this information specified in (d) above.

(f) The home shall encourage the self-administration of medicatic by properly trained and supervised children whenever their intelle tual, emotional and physical capabilities make such practice a propriate and feasible. This shall be documented in each child treatment plan.

(g) The home shall ensure that the following procedures f storage are followed:

1. Group homes, teaching family homes, and treatment hom shall keep all prescription and non-prescription drugs in a locke cabinet or container, or, as needed, in a locked box in a refrigerato The home shall ensure that the keys to the locked cabinets, containe and locked boxes are adequately safeguarded and maintained by sta members and are kept out of the reach of the children;

2. Supervised transitional living homes shall keep prescriptic drugs in a cabinet or container, or, as needed, in a refrigerator:

3. All outdated stocks and prescriptions no longer in use shall be ;posed of safely;
i. Liquid medication shall be poured down the drain, the bottles ısed out and then disposed of in the trash; and
ii. Pills, tablets and capsules shall be flushed down the toilet before ɜ bottle or packet is disposed of in the trash;
4. The telephone number of the regional poison control center all be posted at all medication-dispensing stations and by each ephone; and
5. Staff members shall have access to medical supplies at all times.
(h) In situations where the home determines that an adolescent is pable of self-administration of prescription birth control-related pplies, the home may allow the adolescent to maintain prescription ·th control-related supplies amongst her personal possessions ovided that the home:
1. Provides a locked cabinet or box for storage; and
2. Documents in the treatment plan the rationale and arrange-ɜnts for the adolescent to maintain prescription birth control-re-ed supplies.

:128-7.5 Psychotropic medication
(a) The home shall not administer medication to children as a nishment, for the convenience of staff members or as a substitute r a treatment program.
(b) The home shall ensure that a pre-treatment clinical assessment, sed on behaviors exhibited by the child and observed by staff ɜmbers, is conducted by a licensed physician before psychotropic ɜdication is prescribed. This pre-treatment clinical assessment shall ɜlude at least the following information:
1. A comprehensive drug history, including consideration of the ɜ of all prescription and non-prescription drugs by the child as well a history of cardiac, liver, renal, central nervous system or other ɜeases, a history of drug allergies and dietary information;
2. A laboratory work-up, including, but not limited to:
i. A complete blood count (If the medication prescribed requires utine follow-up blood work, this blood count test shall be adminis-·ed prior to the child's beginning his or her medication regimen. the medication prescribed does not require routine follow-up blood ɔrk, a new blood count test is not required as long as the child s had a blood count test within one year of admission, unless the ysician determines otherwise);
i. Urinalysis;
ii. Blood screening to include an assessement of liver and renal ıctions, if indicated; and
v. Cardiogram (EKG) and electroencephalogram (EEG), as in-ɜated, on children with previous histories of cardiac abnormalities central nervous system disorders; and
3. A written description of:
. Non-pharmacological interventions that were considered or at-ɲpted to address the child's behavior;
i. The purpose of the medication, the specific behavior(s) of the ild to be modified and ways in which progress towards the treat-ɜnt objectives will be measured;
ii. The dosage; and
v. How possible side effects will be monitored and reported to ɜ physician who prescribed the medication.
(c) Within two weeks after admission, the home shall ensure that children already receiving psychotropic medication receive a nical assessment by a physician, as specified in (b) above.
(d) The home may waive the regulations for a pre-treatment nical assessment and informed consent for psychotropic medi-tion other than long-acting drugs if the treating physician certifies the child's clinical record that an emergency exists.
1. The initial decision to administer emergency medication shall based on a personal examination of the child by a physician.
2. The initial administration of emergency medication may extend · a maximum period of 72 hours.
3. A physician may authorize the administration of medication for additional 72 hours upon determination that the continuance of ɜdication on an emergency basis is clinically necessary. This thorization may be given by telephone, provided that it is counter-ned by the physician and certified as to the necessity in the child's clinical record within 24 hours. If this medication is then deemed necessary for the child's treatment while in the home, the physician shall complete the pre-treatment clinical assessment as specified in (b) above.
4. The home's staff members shall document on a separate reporting form that the psychotropic medication was administered in an emergency situation. The documentation shall identify possible side effects to be monitored as described in (b)3iv above.
(e) Before administering psychotropic medication, the home shall obtain written informed consent from the child's parent(s) or legal guardian, and from all children 14 years of age and older unless the home documents that the child lacks the capacity for informed consent. In cases where both a parent and legal guardian exist, the home shall seek written informed consent from the legal guardian.
1. A physician, registered nurse or staff member trained in administering psychotropic medication shall obtain written informed consent.
2. The person requesting written informed consent shall ensure that parents, guardians and children are informed about:
i. The behavior or symptoms which the medication is intended to modify;
ii. The dosage; and
iii. How possible side effects of the medication will be treated.
3. When a request for written informed consent is made by a staff member, the staff member shall inform the parent that a physician is available for consultation regarding the proposed medication.
4. The home may obtain verbal informed consent by telephone from the child's parents when the home, physician, registered nurse or staff member is unable to obtain written informed consent, provided that:
i. The home documents the telphone call in the child's record; and
ii. The home obtains the written informed consent from the child's parents or legal guardian within 24 hours of receiving the verbal informed consent.
5. If the home cannot obtain written informed consent or verbal informed consent, the home shall use certified mail, return receipt requested, and shall send the request to the parent's or legal guardian's last known address at least 10 calendar days before the proposed date for the commencement of treatment. The written notice shall specify:
i. The proposed date for beginning of treatment; and
ii. That a failure to respond by the proposed date for the beginning of treatment shall empower the director, after consultation with the Division's case manager or other placing agency to grant consent for the medication.
6. The home shall document all methods for requesting written consent in the child's record.
(f) When a parent, legal guardian or child refuses or revokes consent for medication, the following procedures shall apply:
1. The treating physician or his or her designee shall speak to the child or the parent or both to respond to the concerns about the medication. This person shall explain the child's condition, the reasons for prescribing the medication, the benefits and risks of taking the medication, and the advantages and disadvantages of alternative courses of action;
2. If the child or parent continues to refuse or revokes consent to medication and the physician or his or her designee still believes that medication is a necessary part of the child's treatment plan:
i. The director of the home shall advise the child and the parent that the matter will be discussed at a meeting with the child's treatment team and shall invite the child and parent to attend such meeting;
ii. The director of the home may suggest that the child and parent discuss the matter with a person of their own choosing, such as a relative, attorney, physician, or mental health clinician;
iii. The treatment team shall meet to discuss the treating physician's recommendations and the response of the child or parent; and
iv. The treatment team shall attempt to formulate a viable treatment plan that is acceptable to the child and parent;
3. If, after the treatment team meeting, the child or parent continues to refuse or revoke consent to medication and the treating

physician still believes that medication is a necessary part of the child's treatment plan, the home shall obtain an independent psychiatric review. The psychiatrist conducting this independent assessment shall review the child's clinical record, conduct a personal examination of the child, provide a written report for the child's treatment team, and, if the parent or child is refusing or has revoked consent to medication, speak with the parent or child, respectively; and

4. If the child or parent continues to refuse or revoke consent to medication, and the home feels that the child can not be adequately treated without the medication, the home may initiate an emergency discharge, as specified in N.J.A.C. 10:128-6.2(b) and 10.5.

(g) The home shall administer psychotropic drugs in the following manner:

1. Psychotropic medication shall be dispensed only by licensed pharmacists and prescriptions shall always be labeled to reflect the following information:

i. The name and address of the dispensing pharmacy;

ii. The full name of the pharmacist;

iii. The full name of the child;

iv. Instructions for use, including the dosage and frequency;

v. The prescription file number;

vi. The dispensing date;

vii. The prescribing physician's full name;

viii. The name and strength of the medication;

ix. The quantity dispensed; and

x. Any cautionary information appropriate to the particular medication;

2. The home shall encourage the self-administration of medication by properly trained and supervised children whenever their intellectual, emotional, and physical capabilities make such practice appropriate and feasible. The child's capability for self-administration of psychotropic medication shall be documented in the child's treatment plan; and

3. The home shall ensure that psychotropic medication is stored as specified in N.J.A.C. 10:128-7.4(e).

(h) The home shall ensure that all children receiving psychotropic medication are monitored in the following manner:

1. Staff members directly involved with the child shall record daily progress towards treatment objectives and observed side effects which are identified in the pre-treatment clinical assessment;

2. Staff members shall notify the prescribing physician immediately, when side effects are observed;

3. The home shall ensure that:

i. The physician or his or her designee reviews the child's status, behavior, well-being and progress towards treatment objectives, side effects and reason for continuing the medication every 30 days;

ii. The review is documented in the child's medical record; and

iii. The home informs the child, parents, legal guardian, the Division's case manager or other placing agency about the outcome of the review.

(i) The home shall ensure that any staff member involved in administering psychotropic medication receive the following training:

1. Indications for drug use; and

2. Therapeutic and side effects.

(j) The home shall record all information about a child's psychotropic medication, as specified in N.J.A.C. 10:128-7.4(d), and the home shall ensure that the child's medication record is available to the physician for review when additional medication is prescribed.

10:128-7.6 Health education and physical care for children

(a) The home shall ensure that children receive training in personal care, hygiene, and grooming habits.

1. The home shall discuss the physiological changes experienced during adolescence with children in the home.

2. The home shall instruct children about sexually responsible behavior including how to protect themselves from pregnancy and sexually transmitted diseases including AIDS.

3. The home shall instruct all children about the health consequences of smoking tobacco products, smokeless tobacco, alcohol and drug abuse.

(b) The home shall ensure that children are provided with t following:

1. Individual towels and washcloths;

2. Soap and toilet paper; and

3. Hygiene supplies that are age appropriate for their needs, su as toothpaste, mouthwash, deodorant, razors, shaving cream a feminine hygiene articles.

(c) For children unable to provide for their own personal care a hygiene, the home shall bathe and groom them, and provide oth personal hygiene services that are necessary to meet their needs

(d) The home may permit residents to maintain over-the-coun cosmetics, acne preparations and personal hygiene supplies amo their personal possessions.

(e) The home shall take measures to ensure that each child h a personal supply of adequate, clean, well-fitting, and attracti clothing appropriate to his or her age, gender, individual nee community standards, and season.

1. The home shall ensure that each child's clothing is kept cle and in good repair; and the home may require children 13 years age and older to do their own laundry.

2. The home shall not require children to wear any article clothing that would explicitly identify them as a resident of the hon

10:128-7.7 Health requirements for staff

(a) Before working for a home, and every three years thereaft each staff member who comes in contact with the children for t equivalent of eight hours a week or more shall submit a writt statement from a licensed physician indicating that he or she is good health and poses no health risk to persons at the home. Su statement shall be based on a medical examination conducted with the six months immediately preceding such person's association w the home.

(b) Within one year prior to or upon beginning work or havi contact with the children for the equivalent of at least eight ho a week at the home, each staff member shall take a Mantoux tuber lin skin test with five TU (tuberculin units) of PPD tuberculin, exc that the staff member shall have a chest x-ray taken if he or she h had a previous positive Mantoux tuberculin test. The staff mem shall submit to the home written documentation of the results of t test or x-ray.

1. If the Mantoux tuberculin test result is insignificant (zero nine millimeters (mm) of induration), no further testing shall required. The Bureau, home or agency may at any time require staff member to retake the Mantoux tuberculin test, if there is reas to believe or suspect that the staff member may have contract tuberculosis or if the State Department of Health recommer retesting.

2. If the Mantoux tuberculin skin test result is significant (10 more mm of induration), the individual shall have a chest x-ray tak If the chest x-ray shows positive results, the home or agency sh require that the staff member obtain a written statement from physician certifying that he or she poses no threat of tuberculo contagion before allowing the staff member to come in contact w the children. The home shall ensure that the staff member adhe to the recommended follow-up testing, if any, by the physician

3. The home or agency shall prohibit any staff member who fa to submit satisfactory results from having contact with the child at the home.

(c) The home shall maintain on file the results of each st member's:

1. Mantoux tuberculin test or chest x-ray when indicated; an

2. *[Physician]* ***Physical*** examination.

(d) The home or agency shall exclude a staff member who appe to be physically, emotionally or mentally impaired or who appe to have a drug-induced or alcohol-induced condition that wo endanger the *[heath]* ***health***, safety and well-being of the child or other staff members. The home or agency shall document action taken to exclude the staff member and maintain su documentation in the staff member's personnel record. The home agency shall not permit the staff member to reassume duties u the condition is no longer present.

):128-7.8 Environmental sanitation and staff hygiene

(a) Staff members shall use disposable rubber gloves, which shall ; discarded after each use, when coming into contact with blood,)mit, urine, fecal matter or other body secretions.

(b) The home shall ensure that areas in the home, bedding, rniture, carpeting, and clothing, that come into contact with blood,)mit, urine, fecal matter or other body secretions are disinfected ith a commercially prepared disinfectant that indicates it kills acteria, viruses and parasites. This solution shall be used in ac-)rdance with label instructions.

(c) The following equipment items or surfaces shall be washed and isinfected after an incident, as specified in (b) above:

1. Toilet seats;
2. Sinks and faucets;
3. Mops that were used in the clean-up;
4. Washcloths, towels and sponges that were used in the clean-p; and
5. Thermometers.

UBCHAPTER 8. TRANSPORTATION REQUIREMENTS

):128-8.1 General requirements

(a) The provisions of this subchapter shall apply to any home or gency that provides or arranges transportation for children:

1. To or from their homes or other prearranged sites and the ome; or
2. In connection with an activity (such as a field trip) conducted y or through the auspices of the home or agency.

(b) Any home, person or agency, as defined in (a) above, also shall omply with applicable provisions of New Jersey Division of Motor 'ehicles law, pursuant to N.J.S.A. 39:1-1 et seq. and regulations romulgated thereunder, as specified in N.J.A.C. 13.

(c) The home or agency may authorize staff members to utilize heir own private passenger vehicles to transport children from the ome, to and from scheduled field trips or to transport children from he home to a hospital, clinic or office for medical treatment. How-ver, staff members may be authorized to do so only if:

1. The vehicle has a capacity of eight or fewer persons;
2. The driver possesses a valid automobile driver's license issued y the New Jersey Division of Motor Vehicles, hereinafter referred o as the DMV;
3. The vehicle has a valid motor vehicle inspection sticker issued y DMV;
4. The vehicle owner possesses liability insurance at least at the inimum amounts required by the New Jersey State insurance law, ursuant to N.J.S.A. 17:28-1.1a;
5. The home maintains transportation records on every vehicle tilized for the above, as specified in N.J.A.C. 10:128-8.4; and
6. The home or agency ensures that the staff members apply the afety practices, as specified in N.J.A.C. 10:128-8.1(d) and (e).

(d) The home or agency shall ensure that all vehicles used to ransport children:

1. Are maintained in clean and safe condition;
2. Have a maximum seating capacity that does not exceed the umber of seat belts;
3. Have seats and back rests securely fastened;
4. Have all seats that are facing sideways or backwards bolted lown;
5. Have seats upholstered with springs or foam rubber;
6. Have an operable heater capable of maintaining a temperature f 50 degrees Fahrenheit; and
7. Are equipped with:
   i. A triangular portable red reflector device;
   ii. All weather radials or snow tires from November 15 through April 1 (for New Jersey-based homes only); and
   iii. A removable, moisture-free and dust-proof first-aid kit, which shall be located in the vehicle.

(e) The home or agency shall ensure that the following safety practices are followed:

1. A staff person is always present when an adolescent, child or infant is in the vehicle;
2. All passengers who are over one and one-half years of age are secured in an operable seat belt or car seat while the vehicle is in motion;
3. All passengers, who are one and one-half years of age or less are secured in car seats (child passenger restraint systems) that meet Federal motor vehicle safety standards in accordance with provisions of the New Jersey Motor Vehicles Law, pursuant to N.J.S.A. 39:3-76.2a;
4. All adolescents, children and infants are loaded and unloaded from the curbside of the vehicle; and
5. Children are not permitted to ride in the back or beds of trucks.

(f) When transporting more than six children below six years of age the home or agency shall ensure that one adult in addition to the driver remains in the vehicle.

(g) When transporting more than four infants without their adolescent mothers, the home shall ensure that one adult in addition to the driver remains in the vehicle.

(h) The home or agency shall maintain transportation records, as specified in N.J.A.C. 10:128-8.4.

(i) If the home decides to utilize a Type I School Bus, Type II School Bus or a Type II School Vehicle, the home shall:

1. Meet all appropriate Division of Motor Vehicles (DMV) rules, Department of Education rules and/or Department of Human Services rules; and
2. Ensure that the drivers of such vehicles possess a valid New Jersey Type I School Bus driver's license, or possess a valid New Jersey Type II School Bus driver's license, or an out-of-State equivalent license, as approved by the DMV.

(j) The home shall limit travel in program vehicles including cars, vans and wagon trains by:

1. Scheduling at least one full day of rest after every four days of travel;
2. Ensuring that no staff member drives for more than four hours without a 30-minute break; and
3. Prohibiting driving between 11:00 P.M. and 6:00 A.M., unless it is necessary to complete an emergency evacuation.

10:128-8.2 Vehicle insurance requirements

(a) The home or agency shall maintain vehicle liability insurance for bodily injury or death in minimum amounts of $300,000 per person and $500,000 per accident for every vehicle that is:

1. Owned or leased by the home or agency; and
2. Utilized to transport children residing in the home.

(b) If the home or agency contracts transportation services, the home shall ensure that the company maintains insurance coverage as identified in (a) above.

10:128-8.3 Additional requirements for transporting physically handicapped, non-ambulatory children

(a) Homes or agencies providing or arranging for transportation services for physically handicapped children who are non-ambulatory shall have a vehicle that has a ramp device or hydraulic lift with a lift minimum pay load of 600 pounds. Any ramp device that is installed shall:

1. Have a non-skid surface;
2. Be securely stored and protected from the elements when not in use; and
3. Have at least three feet of length for each foot of incline.

(b) If wheelchairs are used, the home shall ensure that:

1. All wheelchairs are securely fastened and face forward;
2. All wheelchair passengers are secured with a seat belt;
3. Arrangements for wheelchairs do not impede access to emergency and exit doors; and
4. Any aisle leading from a wheelchair position to the emergency or exit door has a minimum width of 30 inches.

10:128-8.4 Record requirements

(a) The home or agency shall maintain on file the following:

1. A photostatic copy of the driver's license of each person whom the home or agency has authorized to transport children;
2. A photostatic copy of the registration of each vehicle used to transport children;

3. A copy of the insurance policy for every vehicle owned, leased, contracted or utilized by the home or agency; and

4. The name and address of the lessor or contractor furnishing a vehicle to the home or agency, if relevant.

(b) The home or agency shall maintain transportation maintenance records for all vehicles used by the home for the transportation of children, including repair and inspection records, and shall retain them for the lifetime of the vehicles.

(c) The home or agency shall develop and maintain on file a log of all trips where the home's vehicles are used that documents:

1. The times each staff member drove;
2. The mileage covered; and
3. Incidents of the day.

SUBCHAPTER 9. ADVENTURE ACTIVITIES

10:128-9.1 General requirements

(a) The requirements of this subchapter shall apply to any home or any agency that provides or contracts for adventure activities that may include, but are not limited to:

1. Biking;
2. Canoeing, kayaking and tubing;
3. Caving;
4. Hiking;
5. Horseback riding;
6. Ropes and rock climbing;
7. Sailing and boating;
8. Snow skiing;
9. Solos;
10. Swimming;
11. Water skiing; and
12. Camping.

(b) All homes whose program consists primarily of adventure activities shall maintain on file a written statement of purpose that shall identify the following:

1. The home's philosophy, goals, and objectives;
2. Characteristics of the children to be served;
3. Types of adventure activities that a child may participate in and other treatment services provided to the children, including those provided directly by the home and those services that may be provided in cooperation with community agencies or outside individuals;
4. Procedures for implementing those services; and
5. Criteria for successful completion of the program.

(c) For homes whose program consists primarily of adventure activities, the home shall describe to the child and the parents prior to admission to the facility, the types of adventure activities in which the child will be asked to participate. This discussion shall include:

1. An explanation of the anticipated benefits of the activity;
2. A description of the potential risks of the activity, as well as an explanation of how the facility will take precautions to minimize risks; and
3. A clear statement that no child will be forced to do an adventure activity against his or her will.

(d) For homes whose program does not consist primarily of adventure activities, the home shall discuss with the child and his or her parents the information specified above before the child is scheduled to participate in the activity.

(e) The home shall document that a staff member discussed the information specified in (c) and (d) above in the child's record.

(f) The home shall maintain on file at the home or home's administrative office a list of all children and staff members who participate in an adventure activity that occurs away from the grounds of the home.

(g) The home shall have a first aid kit available whenever an activity occurs off-grounds.

(h) The home shall ensure that all children and staff receive instruction about the value of the activity and necessary safety precautions, such as how to prevent dehydration, frostbite, heat exhaustion, hyperthermia, hypothermia, poisoning from plants and animals, sun poisoning, snow blindness, or drowning.

(i) The home shall not force or coerce a child to participate in an adventure activity, but may require a child to observe an adventure activity to assist the child in getting over his or her fears of a particular activity or to foster an interest in participating in a particular activity.

(j) The home shall ensure that staff members discuss the following topics with all the children who have participated in an adventure activity;

i. How they felt during and after the activity; and

ii. What they learned about themselves as individuals and members of a group after completing the activity.

(k) The home shall not engage in any activities requiring or involving firearms nor permit staff to have firearms.

(l) The home shall prohibit airborne activities including, but not limited to, hang gliding and parachuting.

(m) The home shall not permit children to use power tools unless the children are under direct supervision of staff.

(n) The home shall not allow children or staff to participate in manufacturer's tests of new adventure equipment.

(o) For all water and outdoor trips away from the grounds of campsites, the home shall obtain and maintain on file in the shift log or at the administrative office the information from a weather report issued by the National Weather Service no earlier than six hours before the trip and cancel the activity if there is a threat of a storm.

(p) The home shall also obtain and maintain on file in the shift log or at the administrative office the information from a report from the park service or other appropriate state or local agency that indicates that there is no life-threatening environmental hazard, such as fires, polluted water, threat of flash floods or avalanches.

(q) The home shall not engage in water activities where the water is known to have hazardous wastes, such as waters that have been contaminated by toxins, sewage or chemicals.

(r) The home shall ensure that all water in streams, ponds, lakes and rivers that is used for drinking, food preparation and dishwashing is first boiled, filtered or purified with iodine or tablets specifically designed to purify water.

10:128-9.2 Plans for emergency evacuation and search and rescue

(a) The home shall develop and maintain on file at the home or home's administrative office a written plan detailing procedures for emergency evacuation from any site used for adventure activities that is in a remote area or that is away from ordinary means of communication. This plan shall include, but not be limited to, the following:

1. Guidelines on how to determine dangerous weather conditions, such as storms, and life-threatening environmental hazards, such as fires, polluted waters, flash floods or avalanches;
2. Guidelines on how to determine whether a victim can walk out on his or her own power;
3. Guidelines for constructing a litter to carry out a child or staff member who cannot walk;
4. Procedures for evacuating all children and staff members*[.]**;*
5. Name, address and telephone number of local rescue squads, law enforcement agencies and hospitals, and guidelines for contacting them; and
6. Guidelines to determine whether the home needs a helicopter or other aircraft to assist with the emergency evacuation, if available.

(b) The home shall develop and maintain on file at the home or home's administratrive office a written plan detailing procedures for search and rescue for each activity that takes place outside the home's grounds. This plan shall include, but not be limited to, the following:

1. Guidelines on how to conduct a search to determine that a child is missing, including a time limit for ending the search and starting a search beyond the area being used for the adventure activity;
2. Procedures for completing a full description of the missing person;
3. Procedures detailing how to deploy staff and children to scout specific areas;
4. Procedures detailing how to deploy a rescue team that shall include a staff member to seek outside help;

5. Policy that indicates when to call law enforcement agencies and :lephone numbers of local law enforcement officials; and
6. Procedures for reviewing the incident with the person(s) who onducted the search.

(c) For adventure activities occurring outside the home, the home hall ensure that each staff member supervising an adventure activity:
1. Reviews the plan detailing the procedures for emergency vacuation;
2. Reviews the plan detailing the procedures for search and rescue; nd
3. Brings a copy of these plans on each adventure activity.

(d) The director of the home or his or her designee shall document nd maintain on file at the home or home's administrative office that ll emergency evacuation and search and rescue missions were re-iewed within five days of the incident, and issue a statement to staff nembers indicating approval or recommendations for improving hese practices, if applicable.

(e) For adventure activities occurring outside the home's grounds, he home shall give at least one staff member money or credit cards o handle emergencies.

10:128-9.3 Reporting requirements

(a) The home shall report all fatalities and all accidents requiring ıospitalization or medical care by a physician to the Bureau as soon ıs staff have access to a telephone, as specified in N.J.A.C. 10:128-3.7(b).

(b) The home or agency shall provide written notification and naintain on file reports of all incidents and accidents requiring hospi-alization or medical care by a physician, and incidents where an ıccident or fatality was avoided ("near miss") within five working days of the incident.

1. This documentation shall specify:
i. The factors leading to the incident;
ii. The nature of the fatality, accident or "near miss";
iii. How staff members handled the incident; and
iv. Recommendations for avoiding such incidents in the future.

2. The director of the home or his or her designee shall document in writing and maintain on file that he or she reviewed every incident and accident within five working days after the incidents or accidents occurred.

3. The home shall send a written report within 10 working days of the incident or accident to the Bureau and to the child's parents about what precautions have been taken to prevent a similar kind of incident or accident from occurring in the future.

(c) The home shall submit a written description to the Bureau and permit an on-site inspection prior to its implementation of the following high risk adventure activities:
1. Caving;
2. Ropes and rock climbing; and
3. Solo camping.

(d) The home shall submit a written description to the Bureau prior to the implementation of the following medium risk adventure activities:
1. Canoeing, kayaking and tubing;
2. Water skiing;
3. Snow skiing; and
4. Boating and sailing.

(e) The written descriptions required in (c) and (d) above shall include, but not be limited to, the following information:
1. The types of equipment that will be utilized;
2. The qualifications of the staff who will be involved in implementing the adventure activity; and
3. The policies and procedures to ensure the safety of the children and staff during the adventure activity.

10:128-9.4 Biking

(a) Prior to implementing a planned biking trip that is off the grounds of the home or away from the neighborhood of the home, the home shall:
1. Obtain the necessary permits to ride on roads or highways from host states and local governments; and
2. Maintain on file at the home or the home's administrative office copies of these permits.

(b) The home shall prohibit all biking from taking place:
1. In inclement weather;
2. On roads with heavy traffic unless there is a wide shoulder;
3. After sunset and before sunrise; and
4. On mountains and off trails.

(c) The home shall ensure that all persons engaged in biking:
1. Wear helmets that are approved by the American National Standards Institute (ANSI) or the Snell Memorial Fund;
2. Ride in single file on the right side of the road;
3. Obey all traffic signs and signals;
4. Yield to traffic;
5. Are led by a staff person, with another staff person riding at the end of the group; and
6. Take a 30-minute break every two hours, or sooner when a child expresses a need for rest or when a child is injured or ill.

(d) The home shall ensure that the following equipment is brought on a biking trip:
1. A road map;
2. A bike repair kit; and
3. A water bottle for each child and staff member, unless the itinerary provides access to potable water.

(e) The home shall ensure that all bikes are locked at night to deter children from running away or having the bikes stolen.

(f) Before starting a trip and every day of the trip thereafter, the home shall ensure that all bikes have:
1. Brakes that are in good working order;
2. Tires with treads and sufficient air;
3. Handlebars that are no more than 16 inches above the seat so that the biker can sit comfortably;
4. Pedals with treads that are a distance of 3½ inches or more from the front wheel or fender; and
5. Reflectors in the front, rear, pedals and spokes.

10:128-9.5 Canoeing, kayaking, and tubing

(a) The home shall ensure that all staff members and children:
1. Wear Personal Flotation Devices (PFD) (life jackets) rated Class I, II, or III by the U.S. Coast Guard; and
2. Never stand up in the canoe, kayak or tube, unless the children are in a confined area for staff supervised activities.

(b) The home shall ensure that life jackets are not used for seating or bedding.

(c) The home shall ensure that:
1. At least two staff members have a lifesaving or lifeguarding certificate issued from an organization that is recognized by the New Jersey State Department of Health or other appropriate authority;
2. Children and staff members wear footwear that is secured to their feet, unless the activity occurs on a lake with a sandy bottom and no rocks; and
3. All children and staff members stay away from debris and any trees that have fallen across the river and carry the canoe, kayak or tube along the riverbank past the debris or fallen tree, if necessary.

(d) The home shall prohibit canoeing, kayaking, and tubing:
1. At night;
2. In the open ocean; and
3. During electrical storms.

(e) The home shall ensure that the following equipment is brought along:
1. One spare life jacket for every 12 persons; and
2. Throw lines.

(f) For canoeing and kayaking, the home shall ensure that:
1. Each canoe and kayak has flotation at either end;
2. Each canoe and kayak has an extra paddle;
3. All equipment is secured;
4. Spray covers, if used, release promptly; and
5. The water temperature is 55 degrees Fahrenheit or higher unless a wet suit is provided to each child and staff member.

(g) For canoe or kayak trips in water with rapids rated Class III and IV on the International Scale of River Difficulty (hereafter referred to as the ISRD) developed by the American Canoe Association, the home shall ensure that:

1. All children and staff have completed at least three trips on water with rapids rated as Class I or II by the ISRD;
2. All children and staff wear helmets that are tied under the chin; and
3. For trips in water with rapids rated Class IV, all staff and children can do an Eskimo roll, as defined by the American Canoe Association.

(h) The home shall not take children on water with rapids rated Class V or VI on the ISRD.

(i) For tubing, the home shall prohibit trips when the water is:
1. Less than 55 degrees Fahrenheit; and/or
2. Rated above Class I on the ISRD.

10:128-9.6 Caving

(a) The home shall ensure that:
1. No child or staff member who is claustrophobic is taken on a caving trip;
2. All children and staff members wear helmets that are tied under the chin at all times;
3. At least three-quarters of the children on the caving trip are 12 years of age or older;
4. Children wear gloves if crawling is required;
5. Children have had at least two caving expeditions in horizontal caves before going into a vertical cave;
6. Children do not climb in vertical caves by hand-over-hand ropes methods;
7. Children and staff members do not run or jump in the cave;
8. All debris and human waste are carried out of the cave;
9. Animals and plants are left unharmed;
10. No marking or vandalism is done within the cave by children or staff members.

(b) The home shall ensure that at least one staff person on the trip:
1. Knows how to contact a local emergency rescue squad, such as the Cave Rescue Communications Network;
2. Is familiar with the terrain of the cave;
3. Carries a map of the cave, if available; and
4. Knows how to assist a child or staff member who becomes claustrophobic.

(c) For non-commercial caves, the home shall obtain written permission to enter the cave from the owner or public authority and maintain this on file for two years from the date of the expedition at the home or home's administrative office.

(d) The home shall ensure that the following equipment is brought along on all non-commercial caving expeditions:
1. A space blanket;
2. A whistle;
3. Three sources of light, one of which is either carbide, electric or a miner's headlamp;
4. Waterproof matches;
5. Potable water;
6. Climbing rope;
7. Emergency food; and
8. Spare clothes.

10:128-9.7 Hiking

(a) The requirements of this section apply for all walks or hiking expeditions in remote areas that are away from ordinary means of communications.

(b) The home shall ensure that:
1. At least two staff persons carry and know how to use a compass;
2. A first aid kit is brought along that includes treatment for snake, animal and insect bites, and treatment for the ingestion of or contact with poisonous plants;
3. All children and staff wear footwear appropriate for hiking;
4. No child or staff member carries a pack weighing more than 45 percent of his or her body weight; and
5. No child or staff member is allowed to destroy the environment.

(c) The home shall ensure that each child and staff member has access to potable water.

10:128-9.8 Horseback riding

(a) The home shall ensure that all staff members and children wh go horseback riding wear shoes or boots that have heels, lon trousers, and approved protective head gear that is fastened unde the chin.

(b) The home shall ensure that:
1. The horse is tame and can be ridden by a novice rider;
2. Two or more persons do not ride a horse at the same time
3. The time a horse spends in ring riding is limited to a total o six hours a day, with no more than three hours of riding withou at least a 15-minute break; and
4. The time a horse spends in trail riding is limited to a total o eight hours a day, with no more than four hours of riding withou at least a 15-minute break.

(c) The home or agency shall provide written documentation fo horses that they own that the horses are:
1. Checked daily, including the mouth;
2. Checked daily for cracked feet and reshod as necessary;
3. Fed at least once a day or according to a specified feedin schedule; and
4. Given water at least once a day or according to a specifie watering schedule.

(d) The home shall retain on file at the barn housing the horse or at the home or the home's administrative office documentatio of compliance with the requirements specified in (c) above.

(e) Homes that rent horses for horseback riding shall verify tha the stables meet all the requirements specified in (c) above prior t utilizing their services.

10:128-9.9 Ropes initiatives and rock climbing

(a) The home shall ensure that staff members:
1. State the objectives of the ropes course or climbing trip to th children;
2. Emphasize the importance of safety procedures of each in itiative to the children before starting the activity;
3. Allow each child to decide whether or not to participate in ropes course;
4. Inspect the ropes before each group of children uses them; an
5. Demonstrate effective observation ("spotting") and how one i secured by a rope ("belayed").

(b) The home shall prohibit:
1. Smoking near the ropes;
2. The wearing of jewelry, loose clothing and hair, and eyeglasse that are not fastened;
3. Unsafe practices including, but not limited to, solo climbing hanging upside down, diving head first, throwing people or over straining; and
4. The activity known as the "electric fence", in which a rope i attached to trees or poles and suspended four feet from the ground in a circle, and children standing inside the rope are expected to ge out without touching the rope or passing under the rope.

(c) The home shall ensure that persons on a high rope or rock climbing activity:
1. Are individually secured with an approved rope, or "belayed"; and
2. Wear helmets that are fastened under the chin.

(d) The facility shall document and maintain on file at the site o the ropes course or at the home or the home's administrative office that all ropes are:
1. Approved by the Union International Alpine Association (UIAA);
2. Visually inspected by the staff before use and discarded if the rope appears frayed or damaged; and
3. Logged for use and retired at four years from the date o purchase or after the rope has sustained the number of falls that the manufacturer's label indicates that the rope can sustain.

(e) The home shall ensure that all carbiners that are used to secure belay ropes are constructed of steel or a metal of equal strength and hardness, and have a locking gate.

):128-9.10 Sailing and boating

(a) The home shall ensure that all sailing vessels and motor boats sed by children and staff comply with all applicable Federal, State nd local laws.

(b) The home shall develop and have on file at the home or home's dministrative office a plan for each boating activity specifying:

1. A description of boat and engine, if relevant;
2. The names of all persons on board;
3. The survival equipment on board; and
4. The itinerary and phone number of the closest Coast Guard tation.

(c) The home shall ensure that at least one staff person has comleted a boating course offered by the U.S. Coast Guard Auxiliary, J.S. Power Squad, American Red Cross, or the equivalent.

(d) The home shall ensure that the following non-commercial oats have a current decal indicating a satisfactory rating on a ourtesy inspection by the U.S. Coast Guard Auxiliary:

1. For motor boats, 12 feet to 65 feet; and
2. For sailboats, 16 feet to 65 feet.

(e) For sailboats and motor boats less than 16 feet, the home shall nsure that there is a throw line and a Personal Flotation Device PFD) rated Class I, Class II or III by the U.S. Coast Guard on oard for every passenger.

(f) The home shall prohibit sailing and boating outside U.S. oastal waters.

(g) The home shall ensure that all marine heads (toilets) are ertified by the U.S. Coast Guard of a type authorized for the area vhere the boating will occur.

0:128-9.11 Snow skiing

(a) The home shall not permit skiing in areas known to have valanches or in temperatures below zero degrees Fahrenheit.

(b) The home shall ensure that staff:

1. Are familiar with the terrain; and
2. Carry a ski repair kit when skiing in remote areas.

(c) The home shall ensure that all children and staff members use ki equipment that is appropriate for each person's height, weight nd ability and that bindings are secure.

(d) The home shall ensure that all children and staff wear appropriate clothing, gloves and eye protection.

10:128-9.12 Solo (solitary activities)

(a) The home shall ensure that children freely consent to do a solo, defined as a camping experience where a child is living away from direct supervision of staff, and shall not coerce or force the children to do a solo.

(b) The home shall:

1. Limit solos to a maximum 72 hours;
2. Ensure that children know the boundaries of the solo activity; and
3. Prohibit children from making fires and from rock climbing.

(c) The home shall ensure that children receive the following equipment.

1. A whistle to signal for help;
2. Shelter such as a tent or tarpaulin;
3. Three liters of water a day;
4. Food sufficient for three meals a day; and
5. At least one change of clothes appropriate for the weather.

(d) The home shall ensure that staff:

1. Communicate with the child at least twice a day by whistle, radio or other means to check on his or her safety and document all contacts in the shift log; and
2. Are available to provide face-to-face contact and care immediately if a child requests attention from staff.

(e) The home shall not allow children to do a solo in areas with bodies of water higher than four feet or in areas having rivers or streams with a strong water current.

10:128-9.13 Swimming

(a) A home using off-grounds swimming facilities that are not public recreational bathing facilities shall ensure that at least two of the required staff members have a lifesaving or lifeguarding certificate issued from an organization that is recognized by the New Jersey State Department of Health or out-of-State health department or other appropriate authority.

1. Whenever more than 10 children are swimming, the home shall ensure that at least one lifeguard remains out of the water and is located in a position where he or she can observe all swimmers.
2. No staff member shall assume lifeguarding responsibility for more than three hours without a break.

(b) The home shall prohibit swimming:

1. At night time;
2. Under docks; and
3. When the water temperature is less than 55 degrees Fahrenheit.

(c) The home shall test each child's swimming ability. If a child cannot swim 100 feet, tread water for three minutes and swim under water for 10 feet, the facility shall ensure that the child wears a life jacket whenever he or she is in water over four-and-one-half feet deep, unless under direct supervision for swimming instruction. The home shall ensure that the life jacket:

1. Indicates a Class I, Class II, or Class III Personal Flotation Device (PFD) rating by the U.S. Coast Guard; and
2. Is never used as a cushion for sitting or kneeling at any time.

(d) The home shall provide staff members with the following equipment:

1. A whistle; and
2. A ring buoy with rope.

10:128-9.14 Water skiing

(a) The home shall ensure that:

1. No water skiing occurs after sunset or before sunrise;
2. The water skier wears a Personal Flotation Device (PFD) rated class II or III by the U.S. Coast Guard;
3. A staff member or responsible child other than the boat driver sits in the boat and acts as an observer of the water skier;
4. There is one staff member for every six additional children on the dock or on land; and
5. The motor boat used for water skiing meets all of the regulations as specified in N.J.A.C. 10:128-9.10.

10:128-9.15 Camping.

(a) The home shall obtain and maintain on file at the home or home's administrative office all permits, certificates or licenses that are required by the host State and local governments before using a campsite.

(b) The home shall ensure that all campsites it utilizes are located in areas that are well-drained and free of observable seepage.

(c) The home shall ensure that all tents, teepees and canvas on covered wagons are:

1. Made of fire retardant material; and
2. Made of waterproof material that have seams that are coated to resist water.

(d) The home shall ensure that cabins, tents, teepees and covered wagons when used for sleeping provide:

1. At least 20 square feet per person;
2. At least 30 inches between beds and sleeping bags;
3. At least six feet between heads of sleepers; and
4. Cross ventilation.

(e) The home shall prohibit smoking of tobacco products and cooking in all tents, teepees, and covered wagons whether used for sleeping quarters or for purposes other than sleeping.

(f) The home shall ensure that male and female children do not sleep in the same quarters.

(g) If the home uses sleeping bags instead of beds or bed linens, the home shall ensure that sleeping bags are:

1. Flame resistant;
2. Aired at least every five days and cleaned at least once a month and more often if necessary;
3. Sufficient for the temperatures where the sleeping bags will be used, as indicated by the manufacturer's label; and
4. Placed on a mat or padding when the air temperature at night is below 35 degrees Fahrenheit.

(h) If the home uses bunk beds, the home shall ensure that bunk beds:

1. Have railings on top bunks that are no more than 3½ inches from the top of the bed frame;
2. Have mattresses that are at least five inches from the top of the railing; and
3. Are limited to two in height.

(i) If the home uses latrines instead of toilets, the home shall ensure that all latrines:
1. Provide for privacy;
2. Are dug at least six feet deep; and
3. Are at least 100 feet from the campsite and bodies of water.

(j) The home shall ensure that there is one latrine for every 10 persons.

(k) Homes using cabins, tents or teepees for over seven continuous days shall ensure that:
1. There is one shower or bathtub for every 10 children and staff members;
2. The children have access to bathing facilities every day during normal waking hours; and
3. The children have privacy when bathing.

(l) Homes that camp overnight for seven or fewer continuous days shall ensure that children have access to bathing facilities or are provided with other means of maintaining personal hygiene. These may include, but are not limited to, wet towels and dry shampoo.

(m) Whenever regular plumbing facilities are not available for bathing or washing, the home shall:
1. Ensure that all washing is done with biodegradable non-detergent soap; and
2. Prohibit all washing and bathing in lakes, rivers and streams.

10:128-9.16 Requirements for wagon trains

(a) The home shall ensure that the canvas and wheels are in good repair.

(b) If horses are used, the home shall ensure that the requirements regarding the care of horses, as specified in N.J.A.C. 10:128-9.8 are met.

(c) If animals other than horses are used, the home shall:
1. Limit travel to 10 hours a day;
2. Water the animals at least every four hours;
3. Develop and maintain on file a feed plan; and
4. Check the animals daily for broken hooves and bones.

10:128-9.17 Health and sanitary practices

(a) The home shall ensure that each child has a health examination performed by a licensed physician that documents:
1. That the child can perform each type of adventure activity that he or she will be asked to do;
2. Receipt of a tetanus shot;
3. Notation of asthma, allergies or dietary needs; and
4. Notation of whether the child is on medication that would require the child to avoid using sunscreen and/or to take other special precautions.

(b) Within 30 days of a child's participation in an adventure activity, the home shall document in writing and maintain on file in the child's record that the child's current health status allows the child to engage in the specified adventure activity.

(c) The home shall develop and give to each staff member a written policy for treating:
1. Snake, animal and insect bites; and
2. Ingestion of, or contact with poisonous plants.

(d) The home shall ensure that all perishable food is refrigerated at a temperature of 45 degrees Fahrenheit or lower.

(e) The home shall ensure that all non-disposable utensils used for eating and preparing food are:
1. Not used by another person before rewashing;
2. Washed and rinsed in water that is at least 180 degrees Fahrenheit or water that has been sanitized chemically; and
3. Free of cracks.

(f) The home shall ensure that all water in streams and lakes that is used for drinking, food preparation and dishwashing is boiled, filtered or purified with iodine or tablets specifically designed to purify water.

(g) The home shall corral or tie the animals other than household pets in an area located at least 50 feet from any area where food is prepared, cooked or served.

(h) The home shall:
1. Use fly repellants as necessary;
2. Remove manure daily to a distance of at least 100 feet from the campsite, cooking and dining areas; and
3. Dispose of animal wastes through burial in a sanitary manner

10:128-9.18 Qualifications for staff supervising adventure activities

(a) The home shall comply with relevant State regulations specifying criminal disclosure or fingerprinting, academic credentials, and years of experience for the director, social service staff, and direct child care staff as specified in N.J.A.C. 10:128-5.1 and 5.2.

(b) For all water activities, ropes initiatives and rock climbing, the home shall ensure that at least one staff person is certified by an organization with recognized expertise in the applicable activity.

(c) For land activities other than ropes initiatives and rock climbing, the home shall ensure that at least one staff member:
1. Is certified; or
2. Has had at least one year's experience and demonstrated skill in the adventure activity for which he or she will be supervising children.

(d) The home shall ensure that for each adventure activity there are at least two staff members present who are certified in first aid and cardiopulmonary resuscitation (CPR).

10:128-9.19 Staff to child ratio requirements

(a) When children are engaged in an adventure activity, the home shall ensure that:
1. There are at least two staff members present when two or more children are engaged in an adventure activity; and
2. If more than 12 children are involved, there is one staff member for every additional six children.

(b) For purposes of determining whether a required staff ratio is met, only those staff members who are providing direct care and supervision of the children shall be counted. These staff members may be regular staff members or adventure staff members.

10:128-9.20 Special requirements for communication and visiting

(a) The requirements in this section apply only to homes that:
1. Are located in areas that are remote or away from ordinary means of communication; or
2. Use travel, including, but not limited to, backpacking, sailing or a wagon train.

(b) The home shall permit family members, the Division's case manager or other placing agency to visit the child where he or she is currently living and shall provide comfortable inside space when the weather prohibits outside visitation.
1. The home shall provide privacy for all visits between the child, the Division's case manager or other placing agency.
2. The home shall provide privacy for family visits unless the home documents in the child's record that the child would be at risk during a private family visit.

(c) The home shall develop and maintain on file in the home or home's administrative office plans and procedures to ensure that a child:
1. Can receive an emergency message from his or her family and from the Division's case manager or other placing agency within 24 hours of the family member's or the Division's case manager or other placing agency's contacting the home or home's administrative office;
2. Is given necessary postage to send mail to family members, the Division's case manager or other placing agency; and
3. Can receive mail from his or her family and the Division's case manager or other placing agency on a weekly basis.

(d) The home shall permit the child to make private telephone calls to the Division's case manager or other placing agency, upon request.

(e) The home shall permit children to make a free telephone call to a family member at least every other week.
1. The home may impose a time limit of 15 minutes on telephone calls made by children to family members.
2. The home may require children to telephone family members at off-peak times.

3. The home shall not use electronic devices to monitor children's elephone calls to family members, but may observe their reaction luring the telephone call.

4. The home shall maintain documentation that children were ermitted to make free telephone calls to family members. Such locumentation may include but is not limited to copies of telephone ills or notes in logs.

(f) The home shall not prohibit a child from receiving messages r mail or from making bi-weekly monthly telephone calls as a onsequence for misbehavior.

(g) The home shall explain its policies and procedures to all famiies and children upon admission and give parents a written explaation of the policy for visiting and communication. This explanation hall include the procedures for sending emergency messages and mail.

SUBCHAPTER 10. SERVICES FOR PREGNANT AND PARENTING ADOLESCENTS

10:128-10.1 General requirements

(a) Any home or agency that provides services to pregnant adolescents and adolescent parents caring for their children shall meet all requirements of this subchapter and all applicable requirements of subchapters 1 through 9 of this manual (N.J.A.C. 10:128-1 through 9).

(b) The home or agency shall provide services that include, but are not limited to the following:

1. Services regarding paternal involvement;
2. Services to the adolescent's family;
3. Parenting education;
4. Infant stimulation;
5. Health education and physical care of the adolescent mothers and infants;
6. Nutrition; and
7. Life skills development.

(c) The home shall provide the following indoor space:

1. A private place where adolescents can store their belongings and those of their infant and shall provide the adolescents access to this place at all times;

2. Sufficient space to accommodate tables and chairs for all adolescents and on-duty child care staff to eat meals together;

3. Adequate space for the implementation of treatment services including individual counseling sessions, parent training sessions, family counseling sessions and case management planning meetings; and

4. The following additional floor space:

i. At least 70 square feet for the first occupant of a bedroom and 50 additional square feet for each additional occupant. The home shall not allow more than four occupants, including adolescents and/or infants, to sleep in the same bedroom; and

ii. For each adolescent and infant, at least 35 square feet of common living space, defined as those areas that adolescents and infants can use for socializing or recreation during waking hours. The dining area shall not be included in determining compliance with this requirement, unless the dining area is accessible to adolescents and infants outside of meal time.

(d) The home shall maintain all indoor areas in a safe and sanitary manner by ensuring that:

1. There are no poisonous plants;

2. Any corrosive agents, insecticides, bleaches, detergents, polishes, any products under pressure in an aerosol spray can, and any toxic substance are stored in locked cabinets or enclosed in areas not accessible to infants;

3. All electrical outlets accessible to infants have protective covers;

4. All fluorescent tubes and incandescent light bulbs have protective covers or shields;

5. All windows and other glass surfaces that are not made of safety glass and that are located within three feet above the floor shall have protective guards unless the home does not provide services to ambulatory infants or toddlers;

6. Staff has access to any bedrooms that the adolescents are allowed to lock;

7. Non-permanent safety barriers (safety gates) are installed to prevent infants from falling if the home has stairs, ramps, balconies, porches or elevated play areas;

8. Materials and furniture for indoor and outdoor use are of sturdy and safe construction, easy to clean and free of hazards that may be injurious to adolescents and infants;

9. Infants are kept away from hot stoves, irons and ironing boards, knives, glassware and other equipment that may cause injury; and

10. Poisons, insect traps, and rodent traps are kept out of the reach of infants.

(e) The home shall maintain all outdoor areas in a safe and sanitary manner by ensuring that:

1. Non-permanent safety barriers (safety gates) are installed to block steps used by infants, unless the steps are blocked by a door;

2. Snow is removed from sidewalks and from the walkways and paths leading to the entrances and exits of the home:

i. Within 24 hours of cessation of snowfall; or

ii. According to local ordinance; and

3. All drains and wells have protective coverings.

(f) The home shall provide a crib for each infant under 18 months of age but may allow infants to sleep in a playpen or on a mat at least one-inch thick on the floor for naps during the daytime.

(g) The home shall provide a crib or bed for each infant 18 months of age or older.

(h) The home shall ensure that:

1. Crib and playpen slats are no more than 2⅜ inches apart;

2. Crib, bed and playpen mattreses are fire retardant;

3. The top rails of the crib or playpen are at least 19 inches above the mattress;

4. Any locks or latches on the dropside of a crib are safe from accidental release;

5. The mattress used in all cribs and playpens fits snugly;

6. Each infant has sheets, blankets and other coverings for his or her exclusive use, which are:

i. Immediately replaced when wet, soiled or damaged; and

ii. Laundered at least once a week;

7. Cribs and playpens are free of hazards including, but not limited to, use of mobiles (for infants six months of age or older) and excessive toys; and

8. Beds or cribs not used solely for a specific infant shall have linens and blankets replaced with clean linens and blankets before each use.

(i) The home shall provide beds for all adolescents.

(j) The home shall prohibit use of bunk beds for pregnant adolescents, adolescent mothers and infants.

(k) The home shall not use lead paint on and shall remove lead paint from any interior or exterior surfaces of a building, or on any furniture, toys, or other equipment used therein if deemed hazardous by a governmental agency, as specified in N.J.A.C. 10:128-4.

10:128-10.2 Staff and staff ratio requirements

(a) The home shall only employ staff members who are at least 21 years of age.

(b) Homes may use student interns and volunteers to support the activities of regular paid staff members. However, student interns and volunteers below the age of 21 years shall not be permitted to provide activities or transportation by themselves.

(c) Homes that serve three or more pregnant or parenting adolescents shall have at least one staff person who is certified in first aid and cardiopulmonary resuscitation (CPR), as defined by a recognized health organization (such as the American Red Cross) in the home during periods of operation.

(d) Treatment homes serving one or two adolescents shall have a child care staff member or house parent on duty whenever an adolescent or infant is present in the home.

1. When a treatment home serves two adolescents who together have five or more infants, the treatment home shall have at least two child care staff members or house parents to provide direct supervision when all adolescents and all infants are present in the home.

2. If five or more infants are present in the treatment home without their mothers, the treatment home shall provide at least two staff members or house parents to care for the infants.

(e) Homes serving three or more adolescents shall have a minimum of two staff on duty at all times. Once this minimum is met, the following staff ratios shall be used to determine staff ratio requirements for the actual member of adolescents and infants present in the home:

Adolescents and/or Infants Present in the Home	Staff Ratio Requirement
Waking Hours—Infants only	1 staff: 4 infants
Waking Hours—Adolescents only	1 staff: 6 adolescents
Waking Hours—Adolescents and their infants	1 staff: 6 residents
Sleeping Hours—Adolescents with or without infants	1 staff: 6 residents

(f) A home may permit an adolescent to care for another adolescent's infant if the following conditions are met:

1. The adolescent who is assuming the care of another adolescent's infant cares for no more than one other infant in addition to her own at any one time;
2. The adolescents discuss the expectations of the caregiver, including duration of child care, infant's nutritional and toileting needs, and whether the mother will make arrangements for compensation; and
3. The home documents approval of the arrangement, including how these arrangements will protect the health and well-being of both infants.

10:128-10.3 Staff development and training

(a) Upon employment, the home shall document in each staff member's personnel record that each staff member received instruction in:

1. The home's statement of purpose; and
2. Protocols for dispensing medication.

(b) The home shall develop, document, and maintain on file a training plan to ensure that the director, social service worker(s) and child care staff receive a total of at least 24 hours of training each year that includes at least one hour of training in each of the following topics:

1. Recognizing and reporting child abuse and neglect;
2. Evacuating the facility;
3. Infant and adolescent growth and development;
4. Discipline of adolescents and infants;
5. Infant care and stimulation;
6. Drug and alcohol abuse;
7. Human sexuality and AIDS prevention; and
8. Depression and suicide prevention.

(c) The home's training plan may include in-depth discussions at staff meetings, or attendance at workshops and/or attendance at conferences.

(d) The home may train staff in evacuating the facility, infant care and development, infant discipline, drug and alcohol abuse, and human sexuality and AIDS prevention by including staff in instructional programs attended by the adolescents.

10:128-10.4 Case management requirements

(a) The home shall develop, implement and maintain on file a written case management plan for each adolescent and her infant.

(b) The home shall form a case management planning team that is responsible for the development of a case management plan for each adolescent and infant. The team shall consist of each of the following:

1. Staff members representing the clinical or social work component;
2. Staff members representing the child care component;
3. Staff members representing the administration of the home, if necessary;
4. Representatives from the adolescent's responsible school district and/or current school district, if necessary;
5. A representative from the Division or other placing agency;
6. The adolescent's family, if applicable; and
7. The infant's father or paternal relatives, if applicable.

(c) The home shall document in the adolescent's and infant's record that the Division's case manager or other placing agency representative, the adolescent's therapist, parents or legal guardian, and the responsible or current school district, if applicable, were invited to participate as members of the case management planning team and in all subsequent revisions of the plan.

(d) The home shall develop the initial case management plan within 30 calendar days following an adolescent's and/or her infant's admission and shall review or revise the plan at least every three months thereafter.

(e) The case management plan shall include the following information:

1. The name of the adolescent, and infant, if relevant;
2. The date of admission of the adolescent, and infant, if relevant;
3. The date when the plan is developed or revised;
4. The names and titles of all persons attending the development and review meeting;
5. The adolescent's plan for and receipt of medical and dental care;
6. The infant's plan for and receipt of medical care, and dental care if the infant is three years of age or older;
7. Documentation that a referral to the Supplemental Feeding Program for Women, Infants, and Children (WIC) was made and that any necessary follow up was done, or documentation that the adolescent or infant was ineligible for WIC;
8. The adolescent's social, familial, emotional and behavioral strengths and weaknesses;
9. An assessment of the infant's father's interest in the child, including a notation of whether the infant's paternity has been legally established;
10. An assessment of the adolescent's parenting capabilities including but not limited to the adolescent's ability to feed and play with her infant, provide for her infant's grooming, provide medical care, and use child care responsibly, if applicable;
11. An assessment of the adolescent's academic progress, including a report of attendance and grades obtained within 30 calendar days of the case planning meeting;
12. An assessment of the health and development of the infant, including available developmental assessments from health examinations;
13. Specific treatment goal(s) in each program area and a projected time frame for completing each goal;
14. The name of the person responsible for the implementation of each treatment goal;
15. Techniques to be used to achieve each treatment goal;
16. Criteria to be used to determine whether each treatment goal is achieved;
17. A notation of progress made from any previous plan;
18. Efforts to achieve timely discharge, including but not limited to services needed by parents or other persons to whom the adolescent will be discharged; and
19. Documentation of how the adolescent is being prepared for self-sufficiency. This documentation shall include but not be limited to instruction in:

i. Food preparation, including participation in preparing at least one meal a week and training in food shopping at least once a month;

ii. Budgeting and money management, including but not limited to discussion of standard deductions from a paycheck, costs for housing and transportation and how to open and use a savings and checking account; and

iii. Career planning and job training, including but not limited to discussion of entry level requirements for job openings in the community and assistance in obtaining the qualifications for these positions.

(f) The home shall send to the Division's case manager or other placing agency a copy of the case management plan and any revisions to it within 30 calendar days after the planning meeting and retain a copy of the correspondence in the adolescent's and infant's record.

(g) The home shall explain to the adolescent, her parents, and all persons responsible the adolescent's and infant's case management plan and any revisions to it. If the home does not explain the adoles-

:ent's and infant's case management plan to the adolescent's parents, the home shall document in the adolescent's case record the reasons that the plan was not explained to the parents.

(h) The home shall provide and monitor all services specified in the case management plan and document the rationale for any deviations from the most recent case management plan in the adolescent's and infant's record.

(i) When an adolescent mother expresses interest in surrendering her infant for adoption, the home shall:

1. Explain to the adolescent mother the implications and process of adoption;
2. Notify the Division's case manager or other placing agency;
3. Notify the adolescent's parent or legal guardian, if applicable; and
4. Provide the adolescent with information in order to contact legal counsel if she so chooses.

10:128-10.5 Discharge planning requirements

(a) For discharges that can be anticipated at least 30 calendar days ahead of time, the home shall develop a plan with the Division's case manager or other placing agency at least 30 calendar days before the adolescent's or infant's discharge. The plan shall specify the following information:

1. The date of admission;
2. The anticipated date of discharge;
3. Details of the events and circumstances leading to the decision to discharge;
4. The name and address of the individual or agency to whom the adolescent or infant will be discharged and the rationale for planning a discharge to that individual or agency;
5. An assessment of the adolescent's continuing needs including, but not limited to, consideration of health care, behavior management and educational or vocational training; and
6. An assessment of the infant's continuing needs including, but not limited to, consideration of health and child care and referral to the Supplemental Feeding Program for Women, Infants and Children (WIC).

(b) For discharges that were not anticipated at least 30 calendar days ahead of time, the home shall send the Division's case manager or other placing agency a written plan at least 10 working days prior to the adolescent's or the infant's discharge. This plan shall specify the following information:

1. The date of admission;
2. Details of the events and circumstances leading to the discharge;
3. Efforts made to locate a runaway, if relevant;
4. An assessment of the adolescent's continuing needs including, but not limited to, health care, behavior management and educational and vocational training;
5. An assessment of the infant's health and child care needs, if relevant; and
6. Recommendations for providing follow-up services in the adolescent's or infant's new environment, including consideration of whether the adolescent or infant would be eligible for WIC.

(c) For emergency discharges that result in the immediate placement of the adolescent or infant in a facility such as a detention center, hospital, psychiatric facility or any other placement outside the home, the home shall notify the Division's case manager or other placing agency by the next working day by telephone. The home shall send a written discharge plan within 10 days after the adolescent's or infant's discharge. This plan shall specify the information outlined in (b)1 through 6 above.

10:128-10.6 Services regarding paternal involvement

(a) The home shall explain to the adolescent mother:

1. The benefits of establishing paternity for her infant and her options for establishing paternity;
2. How to establish paternity of the infant, including:
   i. Clarification that naming a father on her infant's birth certificate does not establish paternity unless she is or was married to the infant's father; and
   ii. Information about the procedures for establishing paternity;
3. How to deal with future questions her infant may have about his or her father;
4. How to manage visitation arrangements between her infant and the infant's father; and
5. That establishing paternity is not a condition for remaining in the home.

(b) The home shall discuss the topics specified in (a) above in individual or group meetings with adolescent mothers and assist the adolescent in establishing paternity if she so requests. These individual or group meetings shall be held:

1. Weekly for homes that discharge the adolescents soon after they deliver; and
2. At least monthly for homes that continue to provide services to the adolescents and their infants after delivery.

(c) When the infant's father is known and the adolescent mother agrees, the home shall attempt at least two in-person contacts with him within two months of the adolescent's admission to the home to discuss his interest in his child.

1. If the father does not respond to initial contacts made by the home, the home shall send a certified letter to all known addresses where the father may be residing indicating the home's interest in discussing his involvement with his child.
2. The above requirements may be waived only if the home documents that the father's involvement would place the adolescent or infant at physical or emotional risk.

(d) The home shall allow the fathers of infants residing in the home to attend parenting classes provided by the home.

10:128-10.7 Services to the adolescent's family

(a) The home shall attempt two in-person contacts with the adolescent's parents, or other adult relatives that are responsible for the adolescent if the parents are not available, within two months of the adolescent's admission to discuss the case management plan.

1. If the adolescent's parents or other responsible adult relatives do not respond to the initial contacts, the home shall send a certified letter to all known addresses where they may be residing indicating the home's interest in discussing their involvement with their daughter and grandchild.
2. The above requirement may be waived if the home documents that the family's involvement would place the adolescent or infant at physical or emotional risk.

10:128-10.8 Parenting education

(a) The home shall have a written curriculum or guidelines for providing parenting education that shall include, but not be limited to, the following topics:

1. Infant and child development including alternatives to punishment and options for toilet training;
2. Age-appropriate stimulation, games and other recreational activities for children;
3. Providing for child care;
4. Health and nutritional care including an explanation of the Supplemental Feeding Program for Women, Infants and Children (WIC);
5. Relationships with the adolescent mother's family;
6. Dealing with feelings about the adolescent's relationship with the infant's father; and
7. Options for placing the infant in a separate foster care placement or for adoption.

(b) The home shall provide parenting education on a group or individual basis to each adolescent.

(c) The home shall provide each adolescent at least one hour of parenting education each week until the home documents that the adolescent has mastered skills or resolved issues specified in (a) above.

(d) The home shall involve the adolescent in shopping for her infant's clothes and other necessities.

(e) The home shall provide information to the adolescent on preventing child abuse and neglect, including, but not limited to:

1. Discussion of mandatory reporting;
2. How to identify the report abuse and neglect; and
3. Resources to help parents avoid abusing or neglecting their children.

10:128-10.9 Infant stimulation

(a) The home shall ensure that all infants under three months of age are held and spoken to, or placed in a position to observe group activity when they are awake during daytime hours.

(b) The home shall ensure that infants up to six months of age are held by their mother or staff members throughout all feedings and that older infants are held if they are incapable of holding a bottle on their own.

(c) The home shall ensure that all infants have at least one toy that is accessible to them in their bedrooms.

(d) The home shall ensure that when adolescent mothers are in school or working, their infants are cared for, either in the home, in a licensed child care center or in a licensed or registered family day care or group day care home.

(e) Homes that provide services to adolescent mothers and infants between three and 18 months of age shall ensure that the adolescent mothers engage in at least four of the following activities with their infants for at least a total of 45 minutes each day:

1. Sensory activities: crib mobiles, teething toys, busy boxes, baby mirrors, rattles, melody chimes, squeeze toys, or other comparable supplies or equipment;

2. Language activities: picture books, toy telephones, records, hand puppets, stuffed animals, soft washable dolls, photographs, or other comparable supplies or equipment;

3. Manipulative activities: squeeze and grip toys, boxes, sorting and stacking toys, three or four-piece wooden inlay puzzles, puzzle blocks, simple threading toys, mobile pull toys, balls, or other comparable supplies or equipment;

4. Building activities: soft lightweight blocks, toy cars, trains or boats, figures of animals and people, stacking rings or cups, nesting toys, or other comparable supplies or equipment;

5. Large muscle activities: low climbers, slides, riding or rocking toys, foam or soft plastic balls, gym mats, play tunnels, or other comparable supplies or equipment; or

6. Music activities: rhythm instruments, record player and records, toys equipped with musical tones, musical mobiles, busy boxes, drums, xylophones, pianos, or other comparable supplies or equipment.

(f) Homes that provide services to adolescent mothers and infants 18 months of age and older shall ensure that adolescent mothers engage in at least three of the following activities with their child for at least a total of 45 minutes each day:

1. Language activities: reading a book, playing with flannel boards, pictures for discussion, materials for recognition, identification or classification, puppets, audio-visual equipment, or other comparable supplies or equipment;

2. Science and math activities: plants and gardening equipment, aquarium with fish or other appropriate live animals, water table and supplies, sand table and supplies, cooking supplies, weather chart, thermometer, counting equipment, or other comparable supplies or equipment;

3. Manipulative activities: puzzles, pegs and pegboards, lacing boards, table top building toys, stencils, dominoes, pounding bench, lotto games, or other comparable supplies or equipment;

4. Large muscle activities: rocking boat, wheel toys, climbers, slides, balance beam, barrels, large cartons, parachute, balls and beanbags, outdoor play equipment, gym mats, or other comparable supplies or equipment;

5. Building activities: unit blocks—minimum of four sizes, transportation toys, farm animals, play people, work bench and tools, table top building toys, building logs, or other comparable supplies or equipment;

6. Art activities: crayons, tempera paint, large brushes and newsprint, finger paint and finger paint paper, construction paper in assorted colors, *[past]* ***paste*** or glue, blunt scissors, collage materials, non-toxic felt tip markers, easels, clay or playdough, or other comparable supplies or equipment; or

7. Music activities: record player and records, piano, organ, guitar, rhythm sticks, drums, cymbals, bells, tape recorder, or other comparable supplies or equipment.

(g) The home shall ensure that television watching is not used as a substitute for mother-child interaction.

10:128-10.10 Infant toys and equipment

(a) The home shall only use infant and play equipment that i sturdy and of safe construction, non-toxic and free of hazards.

(b) The home shall have a choker tube to ensure that all parts o all toys used by infants under three years of age are large enoug so they can not be swallowed by the infants.

(c) The Bureau may also require the home to take other necessar precautions to promote toy and equipment safety in keeping wit recommendations of the United States Consumer Product Safet Commission.

10:128-10.11 Recreation

(a) In addition to the requirements specified in N.J.A.C 10:128-6.8, the home shall encourage each adolescent to use he leisure time productively by documenting in the adolescent's cas management plan the home's efforts to:

1. Inform the adolescent of appropriate activities for herself anc her infant in the community;

2. Teach the adolescent how to manage time and money to be able to participate in recreational activities; and

3. Teach the adolescent how to use public transportation so she and her infant can go to activities in the community.

(b) The home shall organize monthly outings or planned group activities within the home for adolescents and their infants.

10:128-10.12 Money and allowance

(a) The home shall provide opportunities for all adolescents to earn an allowance, unless the adolescent is receiving AFDC benefits.

(b) The home shall not require an adolescent to assume responsibility for expenses for her care or that of her infant, except for amounts needed to pay for damages done to the home by the adolescent or her infant.

1. When an adolescent damages the home's property, the home shall verify who damaged the property in an incident report before requiring the adolescent to pay restitution.

2. When an infant damages the home's property, the home shall verify who damaged the property and that the damage resulted from a lack of supervision by the adolescent mother, before requiring the adolescent mother to pay restitution.

3. The restitution payments shall not exceed 50 percent of an adolescent's weekly income from allowance and earnings.

4. Adolescents who are working or have a savings account shall have the option to make a lump sum payment for intentional damages.

5. The home may offer the adolescent the option of performing additional chores in lieu of restitution payments.

10:128-10.13 Visiting and communication

(a) The home shall ensure that the adolescents and infants are allowed to have regular contact with family members, including the infant's father.

1. The home may designate hours for family visits provided that there are at least three opportunities for families to visit each week.

2. The home may limit family members' visits to designated places within the home provided that family members visiting with the infant have access to equipment and toys that can foster communication with the infant.

(b) The home shall develop a visiting policy and explain the visiting policy to the adolescent and her parent(s) at intake. The visiting policy shall specify:

1. How visiting may be arranged;

2. That family visits shall not be denied for an adolescent's infraction of rules, but may be denied as part of a case management plan after consultation with the Division's case manager or other placing agency;

3. That family members who are under the influence of drugs or alcohol shall not be allowed to transport the adolescent or her infant;

4. That the adolescent and infant may visit with representatives from the Division or other placing agency upon request and that these visits shall not be denied for any reason;

5. The hours when an adolescent may visit with friends and whether the adolescent's vists with friends may be curtailed for infraction of the rules;

6. That the home may overrule an adolescent's arrangements for leaving her infant with persons living outside the home; and

7. That family members, including the infant's father, shall not be denied visitation unless the home documents show they pose a risk to the infant or adolescent.

10:128-10.14 Behavior management

(a) Staff members shall follow all the requirements as specified in N.J.A.C. 10:128-6.14.

(b) The home shall assign responsibility for the discipline, control, and supervision of adolescents to staff members and not delegate that responsibility to other adolescents.

(c) The home shall prohibit adolescents from using the punishments specified in N.J.A.C. 10:128-6.14 on their own infants or on another infant for whom they are caring.

(d) The home shall ensure that no staff member or adolescent mother disciplines an infant for refusing to eat or sleep, or for crying or soiling.

10:128-10.15 Comprehensive health plan for pregnant adolescents

(a) The home shall ensure that all pregnant adolescents receive comprehensive prenatal care including, but not limited to:

1. Monthly visits to an obstetrician or certified nurse mid-wife during the first 28 weeks of gestation;

2. Biweekly visits to an obstetrician or certified nurse mid-wife from the 29th to 36th week of gestation;

3. Weekly visits to an obstetrician or certified nurse mid-wife from the 36th week of gestation until delivery;

4. Child birth classes provided by a registered nurse or child birth educator; and

5. A post partum visit within six weeks of delivery.

(b) The home shall ensure that pregnant adolescents make up missed medical appointments.

(c) The home shall refer all pregnant adolescents to the Supplemental Feeding Program for Women, Infants and Children (WIC) and make necessary follow-up, or document that the pregnant adolescent was ineligible for WIC.

(d) The home shall ensure that arrangements for the birth of the infant are made by the end of the first trimester. If the adolescent enters the home after the first trimester, the home shall ensure that arrangements for delivery are made by the second prenatal visit.

1. The home shall ensure that a system is established to provide background medical information on the pregnant adolescent to the hospital identified for delivery or at the birthing center identified for delivery.

2. The home shall document that delivery arrangements have been made by recording the name and address of the selected hospital or birthing center in:

i. The adolescent's record; or

ii. As part of the administrative record.

(e) The home shall ensure that a staff member or volunteer accompanies the adolescent to the hospital or birthing center when she is ready to deliver and that the staff member or volunteer remains with the adolescent until health care personnel are assigned to her.

(f) The home shall arrange for pregnant adolescents to receive a dental examination within three months of admission and every six months thereafter.

10:128-10.16 Comprehensive health plan for infants

(a) The home shall ensure that infants are referred to the Supplemental Feeding Program for Women, Infants and Children (WIC) and take necessary follow-up, or document that the infant was ineligible for WIC.

(b) Unless contraindicated by the physician, the home shall ensure that adolescent mothers adhere to the following schedule in obtaining health care for infants:

1. At age one month, the infant receives:

i. A physical examination including height, weight, temperature check, and measurement of head and chest circumference; and

ii. A check for PKU, if indicated;

2. Between two and two and one-half months of age, the infant receives:

i. A physical examination, as specified in (b)1i above; and

ii. Immunization for diphtheria, tetanus, pertussis (DPT) and Trivalent Oral Polio Vaccine (TOPV);

3. Between three and one-half and four months, the infant receives a physical examination, and immunizations as specified in (b)2 above;

4. Between five and six months, the infant receives:

i. A physical examination, as specified in (b)1i above;

ii. Immunization for DPT; and

iii. A developmental assessment;

5. Between eight and nine months, the infant receives:

i. A physical examination, as specified in (b)1i above;

ii. A hemoglobin test; and

iii. A sickle cell screening, if indicated;

6. Between 11 and 12 months, the infant receives:

i. A physical examination, as specified in (b)1i above;

ii. A developmental assessment; and

iii. A tuberculin test;

7. At 15 months, the infant receives:

i. A physical examination, as specified in (b)1i above;

ii. Immunizations for rubella and measles; and

iii. At 15 or 16 months, immunization for mumps;

8. At 18 months, the infant receives:

i. A physical examination, as specified in (b)1i above;

ii. A DPT booster;

iii. A TOPV booster; and

iv. Immunization for hemophilus influenza Type B;

9. At 24 months and annually thereafter (until age five), the infant receives:

i. A physical examination, as specified in (b)1i above;

ii. A developmental assessment;

iii. A hemoglobin test;

iv. Urinalysis, and a tuberculin test if indicated; and

10. At 36 months and semi-annually therafter, a dental examination.

*[(b)]**(c)* The home shall ensure that the adolescent mother obtains a hemophilus influenza Type B (meningitis) immunization for her child when the child is two years of age, or at the earliest date possible thereafter.

*[(c)]**(d)* The home shall ensure that the adolescent mother has her child's sight and hearing tested when she takes a child over three and one-half years of age for a medical examination. This testing shall be repeated for children ages four and five years old who remain in the home.

*[(d)]**(e)* The home shall ensure that a child who is five years old receives a DTP booster and a TOPV booster when he or she remains in the home.

10:128-10.17 Comprehensive health care for adolescent mothers who are not pregnant

(a) The home shall ensure that all adolescent mothers who are not pregnant and who have not had a health examination within one year prior to admission, receive a comprehensive health examination within one month of admission to the home. This comprehensive health examination shall include but not be limited to an assessment of:

1. Height and weight;
2. Blood count;
3. Urinalysis;
4. Vision;
5. Hearing; and
6. Gynecological exam.

(b) The home shall arrange for follow-up medical care recommended as part of the comprehensive health examination.

(c) The home shall ensure that adolescent mothers receive a dental examination within three months of admission and every six months thereafter.

10:128-10.18 Care of sick infants*[, adolescents and staff]*

(a) When an infant at the home has any illness or symptom of illness including but not limited to those specified below, the home shall ensure that the adolescent mother or staff contacts a licensed physician:

1. Severe pain or discomfort;

2. Acute diarrhea, characterized as twice the child's usual frequency of bowel movements with a change to a looser consistency within a period of 24 hours;
3. Two or more episodes of acute vomiting within a period of 24 hours;
4. Elevated oral temperature of 101.5 degrees Fahrenheit or over or axillary temperature of 100.5 degrees Fahrenheit or over in conjunction with behavior changes;
5. Sore throat or severe coughing;
6. Yellow eyes or jaundiced skin;
7. Red eyes with discharge;
8. Infected, untreated skin patches;
9. Difficult or rapid breathing;
10. Skin rashes, excluding diaper rash, lasting more than one day;
11. Weeping or bleeding skin lesions that have not been treated by a physician or nurse;
12. Swollen joints;
13. Visibly enlarged lymph nodes;
14. Stiff neck; or
15. Blood in urine.

(b) The home shall follow the physician's advice about whether to permit the infant who is ill to have contact with other infants.

10:128-10.19 General medical practices

(a) The home shall ensure that any medical, dental, psychological or psychiatric treatment or medication administered to an adolescent is explained to the adolescent.

1. The home shall ensure that any medical, dental, psychological or psychiatric treatment or medication administered to an infant is explained to the adolescent mother.

2. The home shall document all of these explanations in the adolescent's record.

(b) When serious accidents or illnesses occur to an infant, the home shall take necessary emergency action and notify the adolescent, the adolescent's parents, if applicable, the Division's case manager or other placing agency and the Bureau immediately.

(c) When serious accidents or illnesses occur to an adolescent, the home shall take necessary action and notify the adolescent's parents if she is under 18 years of age, the Division's case manager or other placing agency and the Bureau immediately.

10:128-10.20 Medication

(a) The home shall ensure that adolescents use only prescription and non-prescription medication that is authorized by a physician.

1. The home shall permit adolescents to administer medication to their infants and themselves, unless the physician, psychiatrist or psychologist advises otherwise; in such cases the home shall document the reasons in the adolescent's record.

2. The home shall ensure that adolescents follow the advice of the infant's physician for administering medication to their infants.

3. The home shall supervise the adolescent's administration of all medication she gives to her infant and may require the adolescent to record the information specified in (b) below.

(b) The home shall maintain a medication log book that contains the following information:

1. Name of adolescent or infant receiving medication, whether prescription or non-prescription;
2. Type of medication, dosage, and intervals between dosages;
3. What to do if a dosage is missed;
4. Reason for medication;
5. Date and time medication was administered;
6. Possible side effects of the medication, if any; and
7. Signature and title of staff member or adolescent dispensing medication.

(c) The home shall ensure that the following procedures for storage are followed:

1. Homes shall keep prescription and non-prescription drugs in a locked cabinet, or, as needed, a locked container in a refrigerator that is inaccessible to infants;

2. External drugs and internal drugs shall be stored in separate locked shelves;

3. All outdated stocks and prescriptions no longer in use shall l disposed of safely, as specified in N.J.A.C. 10:128-7.4;

4. The telephone number of the regional poison control cent shall be posted at all medication-dispensing stations and by eac telephone; and

5. Medical supplies shall be stored in an area accessible to sta members at all times.

(d) In situations where the home determines that an adolescent capable of self-administration of prescription birth control-relate supplies, the home may allow the adolescent to maintain prescriptic birth control-related supplies among her personal possession provided that the home:

1. Provides a locked cabinet or box for storage; and

2. Documents the rationale and arrangements for the adolescer to maintain prescription birth control-related supplies.

10:128-10.21 Environmental sanitation requirements for disinfecting

(a) The home shall first wash with soap and water and then di infect those items specified below with a solution that shall eith be:

1. A commercially prepared disinfectant that indicates it kil bacteria, viruses and parasites. This solution shall be used in ac cordance with label instructions; or

2. A self-made solution consisting of one-quarter cup of househol bleach to each gallon of water (one tablespoon per quart), which sha be prepared daily and placed in a labeled, sealed container. ***Thi self-made solution shall not be utilized with those items specified in (d) below.***

(b) The home shall ensure that the following equipment, items o surfaces are washed and disinfected after each use:

1. Toilet training chairs that have first been emptied into a toile unless each infant has his or her own toilet training chair;

2. Sinks and faucets used for handwashing, if the sink is also use for rinsing a toilet training chair;

3. Diapering surfaces, used by more than one infant;
4. Toys mouthed by infants before being given to another infant
5. Mops used for cleaning; and
6. Oral and rectal thermometers.

(c) The home shall wash and disinfect the following items at leas daily:

1. Toilets and toilet seats used by more than one infant;
2. Diaper pails and lids used by more than one infant;
3. Drinking fountains;
4. Water table and water play equipment;
5. Play tables; and
6. Smooth surfaced non-porous floors in areas used by infants

(d) The home shall wash and disinfect the following items at leas weekly, and before use by another infant:

1. Cribs, cots, mats, playpens or other sleeping equipment ap proved by the Bureau; and

2. Sheets, blankets or other coverings.

(e) The home shall wash and disinfect tables used by the infant for eating before each meal.

(f) Homes that maintain outside sandboxes or play areas containing sand shall ensure that:

1. Only asbestos-free sand is used; and

2. The sand is maintained in a safe and sanitary manner.

10:128-10.22 Personal hygiene requirements

(a) The home shall ensure that adolescents and staff members wash their hands with soap and running water immediately:

1. Before preparing or serving food;
2. After diapering a child;
3. After toileting;
4. After assisting a child in toileting;
5. After caring for a child who appears to be sick;
6. After handling animals or their equipment or after coming in contact with an animal's body secretions; and
7. After coming into contact with blood; fecal matter, urine, vomit, saliva, nasal secretions or other body fluids or secretions.

(b) The home shall ensure that adolescents or staff members:

1. Change each infant's diaper when wet or soiled; and
2. Wash and dry each infant's bottom during each diaper change with an individual disposable wash cloth, paper towel or disposable diaper wipes.

(c) The home shall ensure that soiled diapers are placed in a closed container that is lined with a leakproof or impervious lining.

1. Disposable diapers shall be removed from the home daily and placed in a closed container that is outside the building and used for refuse collection.

2. Non-disposable diapers shall be stored and laundered separately for each child ***except when the diapers are laundered by a commercial laundry service***.

10:128-10.23 Health education and physical care for adolescents and infants

(a) The home shall ensure that adolescents receive training in personal care, hygiene, and grooming habits.

1. The home shall discuss the physiological changes experienced during adolescent pregnancy and childbearing with adolescents in the home.

2. The home shall instruct adolescents about sexually responsible behavior, including how to protect themselves from pregnancy and sexually transmitted diseases, including AIDS.

3. The home shall instruct all adolescents about the health consequences of cigarette smoking and alcohol and drug use.

(b) The home shall ensure that each adolescent bathes and grooms her infant daily, and provides other personal hygiene services that are necessary to meet the infant's needs.

1. The home shall give each adolescent and infant individual towels and washcloths.

2. The home shall ensure that soap and toilet paper are available for the adolescents and infants at all times.

(c) The home shall ensure that each adolescent and infant has a personal supply of adequate, clean, well-fitting, and attractive clothing appropriate to his or her age, gender, individual needs, community standards, and season.

1. The home shall ensure that each adolescent's and infant's clothing is kept clean and in good repair; and the home may require adolescents to do their own laundry and that of their infant.

2. The home shall not require adolescents or infants to wear any article of clothing that would identify them as a resident of the home.

3. The home shall supply adolescents with necessary personal hygiene items.

10:128-10.24 Food and nutrition for infants

(a) In addition to the requirements specified in N.J.A.C. 10:128-6.11, the home shall ensure that each adolescent mother obtains and follows a written plan developed with the infant's health care provider regarding the feeding schedule, specific formula, nutritional needs and introduction of new food for each infant.

1. The home shall maintain on file the feeding schedule of each infant residing in the home in the infant's record.

2. The home shall ensure that the adolescent makes the feeding schedule available to all of the infant's caregivers.

10:128-10.25 Life skills development

(a) The home or agency shall ensure that the adolescent mothers receive instruction and experience in the following:

1. Meal planning and meal preparation;
2. Food shopping;
3. Locating affordable housing;
4. Securing appropriate medical and dental services;
5. Utilization of public transportation;
6. Home safety practices including, but not limited to:
   i. Checking for gas leaks;
   ii. Keeping the child away from a hot stove;
   iii. The dangers of open windows when infants are present;
   iv. The appropriate methods to rid the home of pests;
   v. Fire prevention; and
   vi. Contacting the appropriate community agency when an emergency occurs;
7. Banking; and
8. Applying for public assistance.

(b) The home or agency shall document in the adolescent mother's record that she has received the training in (a) above.

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Nonrenewal of Automobile Insurance Policies

Adopted Concurrent Repeals and New Rules: N.J.A.C. 11:3- 8.4, 8.5, 8.7 and Appendix A and B.

Adopted Concurrent New Rules: N.J.A.C. 11:3-8.2 and 8.6.

Adopted Concurrent Amendment: N.J.A.C. 11:3-8.3.

Proposed: December 17, 1990 at 22 N.J.R. 3766(b).
Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.
Filed: January 25, 1991 as R.1991 d.89, **with substantive 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), 17:22-6(e), 17:22-6.14a 1, 2 and 3, 17:33B-1 et seq., 39:6A-3, 39:6a-7 and 39:6A-19.

Effective Date: January 25, 1991, Readoption of Emergency New Rules, Repeals and Amendment.
February 19, 1991, changes upon Adoption.
Operative Date: April 1, 1991.
Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently reproposed on November 26, 1990 pursuant to N.J.S.A. 52:14B-4(c). The present adoption of the current reproposed rules is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-6.4(d)).

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received 10 public comments from insurers and insurance trade organizations.

Initially the Department notes that these rules are closely related to other rules contemporaneously adopted concerning the definition of "eligible person," N.J.A.C. 11:3-34; Standard/Non-Standard Rating Plans, N.J.A.C. 11:3-19; and Automobile Insurance Underwriting Rules, N.J.A.C. 11:3-35. All of these rules relate to statutory changes concerning the voluntary automobile insurance market set forth in the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 et seq. (FAIR Act). Recognizing this, some commenters addressed their comments generally to all of these rules and some duplicated their comments, while other commenters did not identify the specific rule being commented upon. Often, commenters addressed a particular rule, but their comment was similar to a comment on a different rule. In preparing adoption notices for all of these rules, the Department has in some instances combined similar comments and responses, and those that related to more than one of these rules may appear only once. The Department believes that not only does this avoid duplication, but also promotes clarity and consistency. In other instances, the Department found that a more cogent response could be provided to various aspects of general comments by addressing each aspect in connection with a particular rule to which it is related. The reader is therefore urged to examine also the adoption notices for the other rules set forth above.

COMMENT: Many commenters restated comments previously made to this rule when first proposed on August 6, 1990 (see 22 N.J.R. 2224(b)), or stated simply that comments to that proposal were "incorporated by reference."

RESPONSE: These commenters are referred to the Department's responses set forth when these rules were reproposed (see 22 N.J.R. 3766(b)). The Department notes, however, that many of the following comments and responses contain elements of previous comments regarding particular aspects of these rules. Some of the following responses may serve to promote a greater understanding of the Department's previous responses when applicable.

COMMENT: Some commenters objected generally to various provisions of these rules which incorporate statutory standards.

RESPONSE: These provisions simply set forth standards required by the applicable statutes.

COMMENT: Several commenters stated that the implementation of these rules would involve significant expenditures for the system changes required to comply.

RESPONSE: Department recognizes that the statutory changes implemented by these rules require system changes by insurers.

COMMENT: Several commenters stated that the five-year record retention period set forth in N.J.A.C. 11:3-8.7 appears to be unnecessarily long.

RESPONSE: The Department believes that a five-year retention of these records is appropriate, noting that this is the same period previously required for documents regarding nonrenewals based on underwriting guidelines (see former N.J.A.C. 11:3-8.4(c)).

COMMENT: A commenter stated that "if an insurer offers to renew a policy on the condition that the premiums and a completed renewal questionnaire is returned by a specified date, may the insurer consider the renewal offer 'Not accepted' if the conditions are not met?"

RESPONSE: The Department notes that such a provision regarding renewal would be required to be stated in the insurer's policy forms in order to be part of the insurance contract. Policy forms are subject to review by the Department and prior approval. It is not appropriate that the Department undertake in this context to rule on the propriety of the form of a policy which has not yet been submitted for approval.

COMMENT: All of the commenters expressed objections or questions regarding N.J.A.C. 11:3-8.4(a) which permits nonrenewal of persons "who are not eligible persons defined in N.J.A.C. 11:3-34." The commenters stated that they had difficulty understanding what to do when a household consists of both eligible and "non-eligible" persons.

RESPONSE: Since the FAIR Act requires insurers to offer to renew "eligible persons," if a household consists of one eligible person and one who is not, and two automobiles, an insurer must offer to renew the eligible person (that is, the automobile that person principally drives) and may nonrenew the "not-eligible person" (that is, the automobile that person drives). This may, of course, require that the previous policy be split as the new policy would cover only one vehicle. The not-eligible person might then seek coverage in the residual market. If the policy covered only one vehicle, it may be nonrenewed, assuming the "not-eligible person" was responsible for at least 10 percent of the vehicle use.

The Department further notes that N.J.A.C. 11:3-8.4(a)3 provides that notices of nonrenewal shall only be issued in accordance with an insurer's underwriting rules filed and approved pursuant to N.J.A.C. 11:3-35. In order to improve insurer understanding of this rule, the Department has included relevant provisions from N.J.A.C. 11:3-35 in this rule and deleted N.J.A.C. 11:3-35.3(c)10 replacing it with a provision in N.J.A.C. 11:3-35.4 specifically addressing underwriting rules for eligible persons (see adoption notice for N.J.A.C. 11:3-35 elsewhere in this issue of the Register.)

The Department believes that the provisions of this rule and those of N.J.A.C. 11:3-35 yield a result consistent with the stated purpose of the FAIR Act to "guarantee that 'good drivers' secure motor vehicle insurance coverage in the voluntary market. . . ." N.J.S.A. 17:33B-2h(6). These rules provide that in a household of three drivers with three vehicles and two eligible persons (that is, one "not-eligible" person), only the "not-eligible" driver and the vehicle principally driven by that person would be insured in the residual market (assigned risk plan). The commenters would nonrenew the entire policy and require all three drivers and automobiles to seek coverage in the assigned risk plan. Because of the 10 percent limit on the assigned risk plan set forth in N.J.S.A. 17:29D-1, adding to the assigned risk plan all eligible persons who happen to reside in the household of a "not-eligible" person would quickly fill the plan beyond its statutory capacity. When so filled, and closed by the Commissioner, other "not-eligible" drivers would become entitled to be insured in the voluntary market. The Department believes the rule as adopted and as clarified with the additional language from N.J.A.C. 11:3-35 provides a superior result.

COMMENT: Several comments requested clarification concerning compliance with N.J.A.C. 11:3-8.3(f)1. Many insurers objected to the requirement under (f)1ii that the nonrenewal notice reference the specific underwriting rule by which the insured is disqualified. One commenter inquired whether a citation of the section is sufficient. Another noted that most insurers are more interested in the facts, rather than other matters.

RESPONSE: As noted in N.J.A.C. 11:3-8.3(f), a valid notice of nonrenewal should include designated provisions of the subchapter and the correct facts which bring the insured under the provision. The "facts" include not only the circumstances of the incident (the accident the motor vehicle violation) but also, as to (f)1i the eligibility points assessed for the incidents and the total eligibility points, as well as a statement of the source of the information (for example, the accident claim record, motor vehicle abstract, renewal application, etc.). Insurers have for many years been able to convey this type of information when issuing a notice of nonrenewal. As a practical matter, however, the use of N.J.A.C. 11:3-8.3(f)1i will cease upon approval and implementation of an insurer's underwriting rules filed in accordance with N.J.A.C. 11:3-35. Use of the insurer's underwriting rules simply adds an additional fact to the notice, that is, that the insured no longer qualifies for renewal in accordance with the insurer's approved underwriting rules (for example, "which provide that persons who have accrued nine or more eligibility points shall not be renewed").

COMMENT: One commenter requested clarification concerning the nonrenewal provisions of these rules and the provisions of the standard non-standard rating plan rules, N.J.A.C. 11:3-19, concerning the transfer between tiers.

RESPONSE: Nonrenewals should be provided the notice set forth in N.J.A.C. 11:3-8.3(f)1. Persons transferred between tiers of a standard non standard rating plan should be given notice in accordance with N.J.A.C. 11:3-19.5(a)2. If this notice of transfer between tiers is provided the transfer will not be deemed a "nonrenewal" for the purpose of the reports and limitations set forth in these rules concerning nonrenewable

COMMENT: Several companies requested "further clarification" concerning the ability to nonrenew per territory a limited number of risks purusant to N.J.A.C. 11:3-8.5. The commenter stated that these provisions appear inconsistent with the "take all comers" provision of N.J.S.A. 17:33B-15 and rules concerning automobile insurance underwriting rules, N.J.A.C. 11:3-35.

RESPONSE: As stated previously (see 22 N.J.R. 3767) the territorial "two percent" and "two-for-one" provisions of N.J.S.A. 17:29C-7.1 were left intact by the FAIR Act. In addition to choosing to nonrenew those who are not "eligible persons," an insurer may choose to nonrenew additional risks in accordance with those provisions of the statutes and these rules.

The Department notes that many commenters generally objected to the statutory requirement to insure eligible persons, and complained that the FAIR Act and the Department's rules prohibit any underwriting discretion that insurers have traditionally exercised. The Department notes that the nonrenewals permitted by N.J.S.A. 17:29C-7.1 provide some limited underwriting discretion.

COMMENT: One company inquired whether "renewal rules" must be filed.

RESPONSE: N.J.A.C. 11:3-8.4(a)3 cross-references N.J.A.C. 11:3-35 with respect to underwriting rules approved pursuant to that section. This provision is stated in connection with standards of nonrenewal applicable to all automobile policies. N.J.A.C. 11:3-35.3(a) requires insurers to file for approval their underwriting rules "use to accept or reject new business, to renew or nonrenew current business and to assign business to the standard or non-standard rate level of an approved standard/non-standard rating plan. . . ." Notices of nonrenewals issued in accordance with N.J.A.C. 11:3-8.4 should be consistent with an insurer's underwriting rules. With respect to the discretionary nonrenewals permitted by N.J.S.A. 17:29C-7.1 and N.J.A.C. 11:3-8.5, the Department notes that because these are intended by the Legislature to be discretionary, it is illogical to attempt to set forth in underwriting rules all of the factors that may result in a determination to nonrenew in accordance with those provisions. The commenter should note that the cross-reference to N.J.A.C. 11:3-35 (insurer underwriting rules) is set forth in N.J.A.C. 11:3-8.4, not N.J.A.C. 11:3-8.5.

COMMENT: Several commenters requested that insurers be permitted to carry over the N.J.A.C. 11:3-8.5(a)2 "one-for-two" or "two-for-one" credit beyond the calendar year.

RESPONSE: The Department disagrees that any "carry over" is authorized by statute, and believes that the rule as stated is consistent with the provisions of N.J.S.A. 17:29C-7.1. The Department also notes that many insurers have not satisfied their residual market depopulation apportionment share obligation and have been barred by Order of the Commissioner from any "two-percent" and "two-for-one" nonrenewals.

COMMENT: Several commenters requested deletion of the requirement for consecutive numbering for notices of nonrenewal issued pursuant to N.J.S.A. 11:3-8.5.

RESPONSE: The Department believes that consecutive numbering is important both to require insurers to establish the number of permitted discretionary nonrenewals in each territory, and to permit the Department to monitor effectively and respond promptly to consumer complaints.

COMMENT: One commenter requested that a "lead time 'grace period' be included in the regulation so that nonrenewals processed prior to the adoption of the regulation will not be deemed invalid."

RESPONSE: These rules were adopted November 26, 1990. They affect renewal of policies expiring April 1, 1991 and thereafter. Since N.J.A.C. 11:3-8.3(f) requires nonrenewal notices be issued no less than 60 days and not more than 90 days prior to the expiration of the current policy, any notice of nonrenewal effective April 1, 1991 and thereafter which was issued prior to November 26, 1990 would be ineffective in any event.

COMMENT: One commenter objected to the reports required by N.J.A.C. 11:3-8.7. The commenter suggested that the Department adopt a reporting requirement similar to that of the State of New York. Another commenter also objected to the reporting requirements and suggested a different form of report, which provided some of the information set forth in Appendix A and B, and a different format.

RESPONSE: The Department is not willing to modify these forms further at this time, noting that similar forms were originally proposed March 5, 1990 (see 22 N.J.R. 769(a)) and again on December 17, 1990 (see N.J.R. 3766(b)). The Department notes that the forms of reports as adopted include modifictions as the result of previous comments (see 22 N.J.R. 3769).

COMMENT: One commenter stated that the rules need "to be clarified with respect to its application to commercial automobile policies," noting the cancellation and nonrenewal requirements for commercial automobile policies are set forth in N.J.A.C. 11:1-20.

RESPONSE: The Department does not believe that clarification is necessary concerning these amendments to N.J.A.C. 11:3-8; it notes that N.J.A.C. 11:3-8.1 provides the scope of the subchapter as applying "to all automobiles as defined in N.J.S.A. 39:6A-2a excluding those owned by business entities or insured through any statutorily mandated residual market mechanism, and to all policies or contracts of insurance insuring such automobiles." The Department has proposed no amendments to N.J.A.C. 11:3-8.1.

COMMENT: One insurer inquired about the application of N.J.A.C. 11:3-8.4 with respect to personal fleet policies that may be issued to a person who owns a large number of cars or who collects cars. The commenter suggested N.J.A.C. 11:3-8.4 be amended to provide that the entire fleet policy may be nonrenewed by the insurer, where a driver is ineligible.

RESPONSE: The Department does not believe that such an amendment is necessary. It notes that the presumptions in N.J.A.C. 11:3-35.3(c)ii, and now incorporated into N.J.A.C. 11:3-8.4, are applicable to a situation in which there are more automobiles than drivers in a household, and therefore that an individual is the principal driver of more than one automobile. In such circumstances, the company may nonrenew the ineligible driver, that is, the policy covering all automobiles for which that individual was the principal driver. The Department notes, however, that the insurer would nevertheless be required to offer to renew insurance covering automobiles in which other eligible members of the household are the principal drivers. To include the language suggested by the commenter would authorize the insurer to nonrenew the policies covering these other eligible persons and the automobiles they principally drive.

COMMENT: One commenter objected to N.J.A.C. 11:3-8.5(a)2, which provides the "two-for-one" nonrenewals. The commenter objected to the provision of the rule that limits the language "voluntarily writes" so as not to include any exposure voluntarily by or assigned to an insurer pursuant to N.J.S.A. 17:33B-11 (which establishes the Market Transition Facility), as well as quotas established pursuant to N.J.S.A. 17:30E-14 (which establishes the JUA quotas). The commenter states that while N.J.S.A. 17:30E-14 provides a limit on an insurer's ability to nonrenew, no such limit is provided in N.J.S.A. 17:33B-11. The commenter asserts that its right to nonrenew in accordance with N.J.S.A. 17:29C-7.1(c) may not be overridden by these rules. The commenter makes a similar argument with respect to N.J.A.C. 11:3-8.5(b).

RESPONSE: While the Department recognizes the technical legal argument made by the commenter, it believes that the rule as stated is authorized not only by N.J.S.A. 17:33B-11, but also by other statutes providing the Commissioner with more general powers.

COMMENT: One commenter suggested that these rules "should accommodate those reasons that justify cancellations, such as nonpayment, failure to cooperate in claim investigations, fraud, etc."

RESPONSE: The Department notes that this rule concerns nonrenewals, not cancellations as provided in N.J.S.A. 17:29C-7 for nonpayment of premium or suspension or revocation of driver's license or motor vehicle registration. Rules concerning cancellation for nonpayment of premium are set forth at N.J.A.C. 11:3-7.6. With regard to nonrenewal for such things as failure to cooperate, etc., the Department notes that N.J.A.C. 11:3-8.5 provides additional discretionary nonrenewals per territory, which are not affected by an individual's status as an eligible person.

COMMENT: With respect to N.J.A.C. 11:3-8.7(b), which requires reports February 15 and August 15 of each year, one commenter inquired whether the reporting period is to end on June 30 and December 31, noting these dates are not contained in the rule or exhibits.

RESPONSE: No specific date is stated as the end of a reporting period because the Department recognizes that insurers have different capabilities with respect to obtaining the correct data to be set forth on these reports. Some insurers may be able to provide up-to-date data as of the end of January and the end of July. Others may submit the reports as this commenter suggested, based on mid-year and end-of-year data.

COMMENT: One commenter suggested that the format of the rule be changed to reverse the order of N.J.A.C. 11:3-8.4 and 8.5. It stated that it would make the rules much clearer.

RESPONSE: The Department notes that the current format was previously proposed August 6, 1990 (see 22 N.J.R. 2224(b)) and does not believe this change is necessary.

The Department notes that the text of N.J.A.C. 11:3-8.2(f)2i and 3 as adopted on an emergency basis and concurrently proposed differs from the proposed and adopted text of those paragraphs as reflected in the recent readoption of this chapter (see 22 N.J.R. 1678(a) and the notice of readoption in the February 5, 1991 New Jersey Register). The Department intended this concurrently proposed form for those paragraphs to be the final form, and it is that text that is reproduced herein for final inclusion in the Code.

Full text of the adopted concurrent proposed rules follows (additions to proposed indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

11:3-8.2 Definitions

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

"Automobile insurance eligibility points" or "eligibility points" means points calculated under the schedule set forth in N.J.A.C. 11:3-34.

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

"Department" means the New Jersey Department of Insurance.

"Eligible person" means an individual that meets the qualifications set forth in N.J.A.C. 11:3-34.

"Insurer means a group of affiliated companies.

"Renew" means to issue and deliver at the end of the policy period a policy superseding a policy previously issued and delivered, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, by the same individual insurance company, or by another of a group of affiliated companies pursuant to a standard/nonstandard rating plan filed and approved in accordance with N.J.A.C. 11:3-19.

"Standard/non-standard rating plan" means a rating system used by an insurer that provides different base rates for different risks to those insureds who qualify in accordance with the insurer's approved underwriting rules, which has been filed and approved in accordance with N.J.A.C. 11:3-19.

11:3-8.3 General provisions

(a)-(e) (No change.)

(f) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured no less than 60 days and no more than 90 days prior to the expiration of the current policy, setting forth the reason(s) for such nonrenewal.

1. No notice of nonrenewal shall be valid unless it includes the designated provision(s) of this subchapter under which action is being

taken and the correct facts which bring the insured under the provision(s), including dates and any other facts necessary for identification of the incidents.

i. In the event action is being taken under N.J.A.C. 11:3-8.4(a) (ineligible person), the notice shall provide the basis by which the insured fails to qualify as an eligible person. When notice of nonrenewal is based on automobile insurance eligibility points, the notice shall identify the number of eligibility points and the events and sources which resulted in their assessment.

ii. In the event action is being taken under N.J.A.C. 11:3-8.4(b) (underwriting rules) to nonrenew an insured who is not an eligible person in accordance with the approved underwriting rules applicable to the non-standard rate level of an approved standard/non-standard rating plan, the notice shall provide the basis by which the insured fails to qualify as an eligible person and shall reference the specific underwriting rule by which the insured is disqualified. The notice shall set forth the specific facts upon which the insurer relied to determine that the insured is not an eligible person and is no longer qualified to be insured in accordance with the insurer's approved underwriting rules.

iii. In the event action is being taken under N.J.A.C. 11:3-8.5(a)1, the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.5(a)1 (two percent territorial nonrenewal) and shall be consecutively numbered in each territory.

iv. In the event action is being taken under N.J.A.C. 11:3-8.5(a)2, the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.5(a)2 (one nonrenewal for each two newly insured automobiles) and shall be consecutively numbered in each territory.

2. Each notice of nonrenewal shall include or be accompanied by the statement prescribed in (f)2i below which shall be clearly and prominently set out in boldface type or other manner which draws the reader's attention.

i. Each notice of nonrenewal must set forth: "If you have reason to believe that our decision to nonrenew your policy is not in compliance with New Jersey Regulation N.J.A.C. 11:3-8, you should file a written complaint with the New Jersey Department of Insurance, Division of Enforcement and Consumer Protection, CN 329, Trenton, New Jersey 08625-0329. Your written complaint should indicate the facts on which you are basing your complaint."

(g)-(i) (No change.)

11:3-8.4 Standards of nonrenewable applicable to all automobile policies

(a) An insurer may issue a notice of nonrenewal to any person who is not an eligible person as defined in N.J.A.C. 11:3-34.

1. For the purpose of determining whether a person is an eligible person who must be renewed, an insurer shall consider those eligibility points accrued only in the 36-month period ending 90 days prior to the expiration of the current policy.

2. An insurer shall not issue a notice of nonrenewal for the reason that a member of the insured's household is not an eligible person unless the member of the insured's household usually accounts for 10 percent or more of the use of the vehicle insured. ***For the purpose of this section:**

i. Any driver who is the principal driver of an automobile shall be presumed not to account for 10 percent or more of the use of any other automoble in the household.

ii. Except when there are more automobiles than drivers in the household, a person shall be presumed not to be the principal driver of more than one automobile.*

3. No insurer shall issue a notice of nonrenewal to any person qualified to be renewed in accordance with the insurer's underwriting rules filed and approved pursuant to N.J.A.C. 11:3-35.

(b) An insurer which has filed a standard/non-standard ratin plan pursuant to N.J.A.C. 11:3-19 may issue notices of intention nc to renew any insured who is not an eligible person and who no longe qualifies for any rate level in accordance with its approved unde writing rules.

11:3-8.5 Additional nonrenewals

(a) Any insurer may:

1. For each calendar year period, issue notices of intention nc to renew an automobile insurance policy in the voluntary market i an amount not to exceed two percent of the total number of voluntar market automobile insurance policies of the insurer, rounded to th nearest whole number, which are in force at the end of the previou calendar year in each of the insurer's territories; and

2. For every two newly insured automobiles which an insure voluntarily writes in each territory during each calendar year perioc issue a notice of intention not to renew one additional automobil in that territory. For the purpose of this subsection, "voluntaril writes" shall not include any exposure voluntarily written by o assigned to an insurer to meet any quota established pursuant t N.J.S.A. 17:30E-14 and N.J.S.A. 17:33B-11 and shall not include an new business cancelled by the insurer pursuant to N.J.S.A. 17:29C-7

(b) Any insurer that does not write its apportionment share of an quota established by the Commissioner pursuant to N.J.S.A 17:30E-14 and N.J.S.A. 17:33B-11 within the applicable time shal be precluded from nonrenewing automobile insurance policie pursuant to (a) above during the following year.

(c) Nothing in this rule shall be construed to authorize insurer to act in contravention of any applicable State or Federal lav prohibiting discrimination on impermissible bases.

11:3-8.6 Suspension of nonrenewals

(a) Notwithstanding the provisions of this subchapter, if the plai for automobile insurance established pursuant to N.J.S.A. 17:29D- is not accepting new applications for coverage pursuant to N.J.S.A 17:29D-1(d), no insurer transacting automobile insurance in thi State shall refuse to renew any private passenger automobile in surance policy in this State.

11:3-8.7 Reporting requirements

(a) Insurance companies shall maintain records of nonrenewals fo not less than five years which shall include a copy of the notice o nonrenewal, data concerning the allowable number of nonrenewal: in each territory computed in accordance with N.J.A.C. 11:3-8.5(a)1 and data concerning the actual number of newly insured automobile: and nonrenewals in each territory for each category, computed ir accordance with N.J.A.C. 11:3-8.5(a)2. Such records and data shal be made available to the Department upon request. In addition, eacl insurer shall file summary reports of its nonrenewals as follows:

1. For insurers with approved standard/non-standard rating plans, in the form of report set forth as Exhibit A of the Appendix incorporated herein by reference; or

2. For all other insurers, in the form of report set forth as Exhibit B of the Appendix, incorporated herein by reference.

(b) An insurer shall submit summary reports of their nonrenewals for the year to date on or before February 15 and August 15 of each year to the following address:

New Jersey Department of Insurance
Division of Enforcement and Consumer Protection
20 West State Street
CN-329
Trenton, New Jersey 08625-0329

Recodify existing N.J.A.C. 11:3-8.6 and 8.7 as 8.8 and 8.9 (No change in text).

APPENDIX

EXHIBIT A

NONRENEWAL REPORT—A
Standard/Nonstandard Rating System

Insurer Group Name: _____ NAIC Group No. _____

Company Name: _____ NAIC Company No. _____

(list all companies in _____

standard/nonstandard plan) _____

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Territory	Vehicles Insured 12/31/—	Vehicles Cancelled	Vehicle N/R by Insured	Vehicles N/R for cause N.J.A.C. 11:3-8.4(a)1	Vehicles N/R Underwriting N.J.A.C. 11:3-8.4(b)	Vehicles N/R 2% Rule N.J.A.C. 11:3-8.5(a)1	Vehicles N/R 2:1 Rule N.J.A.C. 11:3-8.5(a)2	*Vehicles Newly Insured	*(JUA Depopulation)* *Voluntary Market* Quota	Vehicles Insured -/-/
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
18										
19										
20										
21										

*Does not include a vehicle cancelled within the first 60 days.

Insurer Group Name: _____ NAIC Group No. _____

Company Name: _____ NAIC Company No. _____

(list all companies in _____

standard/nonstandard plan) _____

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Territory	Vehicles Insured 12/31/—	Vehicles Cancelled	Vehicle N/R by Insured	Vehicles N/R for cause N.J.A.C. 11:3-8.4(a)1	Vehicles N/R Underwriting N.J.A.C. 11:3-8.4(b)	Vehicles N/R 2% Rule N.J.A.C. 11:3-8.5(a)1	Vehicles N/R 2:1 Rule N.J.A.C. 11:3-8.5(a)2	*Vehicles Newly Insured	*(JUA Depopulation)* *Voluntary Market* Quota	Vehicles Insured -/-/
22										
23										
24										
25										
26										
27										
Totals:										

Notes:
Column (1) shall be numbered in accordance with insurer's approved rating plan.
Column (2) shall be dated as of previous year.
Columns (3) through (11) shall contain information as of date in column (11).
No cancellation or nonrenewal shall be double counted by including it in more than one column.
Renewals within standard/nonstandard system are not to be reported as nonrenewals or cancellations.
Nonrenewals for underwriting (column 6) do not qualify for highest rated tier of standard/nonstandard plan.
Column (7) cannot be greater than .02 X column (2).
Report total only for column (10).
Column (11) equals column (2) plus column (9) minus columns (3), (4), (5), (6), (7) and (8).
Columns (4), (5), (6), (7) and (8) may be reported together as a single number for each territory, but if the insurer is eligible to do 2% or 2:1 nonrenewals, then the single number reported cannot exceed the permissible total of 2% and 2:1 nonrenewals for that territory.

*Does not include a vehicle cancelled within the first 60 days.

Date Submitted _____

EXHIBIT B

NONRENEWAL REPORT—B
Individual Company

Company Name: _____ NAIC Company No. _____

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	
Territory	Vehicles Insured 12/31/—	Vehicles Cancelled	Vehicle N/R by Insured	Vehicles N/R for cause N.J.A.C. 11:3-8.4	Vehicles N/R 2% Rule N.J.A.C. 11:3-8.5(a)1	Vehicles N/R 2:1 Rule N.J.A.C. 11:3-8.5(a)2	*Vehicles Newly Insured	Depopulation)* *Voluntary Market*	*(JUA Vehicles Insured Quota	-/-/
1										
2										
3										
4										
5										
6										
7										
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9										
10										
11										
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17										
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21										
22										
23										
24										

*Does not include a vehicle cancelled within the first 60 days.

NONRENEWAL REPORT—B
Individual Company

Company Name: _____ NAIC Company No. _____

(1) Territory	(2) Vehicles Insured 12/31/—	(3) Vehicles Cancelled	(4) Vehicle N/R by Insured	(5) Vehicles N/R for cause N.J.A.C. 11:3-8.4	(6) Vehicles N/R 2% Rule N.J.A.C. 11:3-8.5(a)1	(7) Vehicles N/R 2:1 Rule N.J.A.C. 11:3-8.5(a)2	(8) *Vehicles Newly Insured	(9) Depopulation)* *Voluntary Market*	(10) *(JUA Vehicles Insured Quota	-/-/
25										
26										
27										
Totals:										

Notes: Column (1) shall be numbered in accordance with insurer's approved rating plan.
Column (2) shall be dated as of previous year.
Columns (3) through (10) shall contain information as of date in column (10).
No cancellation or nonrenewal shall be double counted by including it in more than one column.
Column (6) cannot be greater than .02 X column (2).
Report total only for column (9).
Column (10) equals column (2) plus column (8) minus columns (3), (4), (5), (6) and (7).
Columns (4), (5), (6), (7) and (8) may be reported together as a single number for each territory, but if the insurer is eligible to do 2% nonrenewals of 2:1 nonrenewals, then th single number reported cannot exceed the permissible total of 2% and 2:1 nonrenewals for that territory.

*Does not include a vehicle cancelled within the first 60 days.

Date Submitted _____

(a)

DIVISION OF ADMINISTRATION

Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance

Adopted Concurrent Proposed Amendments: N.J.A.C. 11:3-16

Proposed: December 17, 1990 at 22 N.J.R. 3790(a).
Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissoner, Department of Insurance.
Filed: January 25, 1991 as R.1991, d.91, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3.).

Authority: 17:1-8.1, 17:1C-6(e); 17:29A-1 et seq.; 17:29A-36.2 and 36.3; 17:29A-44; and P.L. 1990, c.8.

Effective Date: January 25, 1991, Readoption of Emergency Amendments; February 19, 1991, Changes upon Adoption.
Expiration Date: January 4, 1996.

These amendments were adopted on an emergency basis and concurrently proposed on November 26, 1990, pursuant to N.J.S.A. 52:14B-4(c). These present adoption of the concurrent proposed amendments is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), except for the changes upon adoption, which are effective on the date of publication of this notice, Feburary 19, 1991.

Summary of Comments and Agency Responses:

The Department of Insurance (Department) received 15 written comments from insurers, the Department of Public Advocate, Division of Rate Counsel (Public Advocate), an insurance trade association, a rating organization and the New Jersey Property-Liability Insurance Guaranty Association.

Several commenters approved the fact that the proposed amendments substantially reduce the volume of data required from the existing rules. In addition, numerous commenters expressed concerns regarding specific provisions of the proposed amendments as follows:

COMMENT: Several commenters objected to the requirement that rate change filings include a computer disk that contains the rating system to be implemented for filers with at least 40,000 exposures.

One commenter specifically stated that it does not currently have a rating system on computer disk and that such a system would be difficult and expensive to develop. The commenter also requested clarificati regarding the purpose of requiring the data in this manner. Finally, t commenter stated that it could provide hard copies of all of its rati information and a number of rating examples in lieu of providing a rati system on computer disk.

Another commenter suggested that the rules require the rating syste on computer disk or if available.

Another commenter stated that this submission and that required l N.J.A.C. 11:3-16.5(a)5 involves the disclosure of proprietary and tra secret information which will be accessible by competitors and u authorized third parties.

RESPONSE: The Department previously addressed this concern in tl Notice of Adoption of N.J.A.C. 11:3-16 (see 22 N.J.R. 399). As was stat previously, the requirement that an insurer provide the rating system c computer disk is necessary both to determine that the rates are proper implemented and to respond to consumer inquiries. Further, the Depa ment increased the threshold of the exemption from this requirement fro insurers with less than 1,000 exposures in the prior years, to insurers wi less than 40,000 exposures in the prior year. In addition, the Departme notes that many insurers have developed the systems required for the u of their agents or employees. Pursuant to N.J.A.C. 11:3-16.3(a), a fil that does not currently have a rating system on computer disk, and not otherwise exempt pursuant to N.J.A.C. 11:3-16(j), must develop suc a system and report data so collected on filings made or required to l made on or after April 1, 1992. Further the Department previous addressed the issue of proprietary and trade secret information (see 2 N.J.R. 401).

COMMENT: The Department of the Public Advocate, Division c Rate Counsel stated that requiring a rating system on computer disk onl for filers with 40,000 or more exposures may have an anti-competitiv effect. In a competitive rating system, more insurers should be require to provide rating systems on computer disk so that consumers may obtai price comparisons. The Public Advocate suggested that a more reasonabl threshold be considered.

RESPONSE: After consideration of the commenter's suggestion, th Department has determined that no change to the threshold is requirec The Department believes that the new threshold is reasonable and tha the use of the disks by the Department may not justify the cost for insurer with less than 40,000 exposures during the prior calendar year. Furthe the Department notes that while the commenter suggested that a mor reasonable threshold be considered, it failed to suggest an alternativ

COMMENT: One commenter noted that the calculation of indicate rate level need has been deleted by the proposed amendments. The com menter questioned whether this was intentional.

RESPONSE: The Department did not intend to delete both N.J.A.C. 11:3-16.8(h) and (i), but rather to simply delete N.J.A.C. 11:3-16.8(i), which relates to rating organizations. The Department notes that this information is required in the cover letter submitted with prior approval filings.

COMMENT: One commenter noted that the proposed amendments eliminate the request for data regarding investment earnings previously included in N.J.A.C. 11:3-16.9(c). The commenter stated that this data appears to be required since N.J.A.C. 11:3-16.10 specifies the manner by which the investment income calculation is to be performed.

RESPONSE: The Department agrees. The rules are changed upon adoption to confirm that this data must be submitted as it is required for calculation of investment income pursuant to N.J.A.C. 11:3-16.10.

COMMENT: Several commenters expressed concern with the language contained in N.J.A.C. 11:3-16.11(b)13. This rule requires filers seeking to reflect assessments imposed by N.J.S.A. 17:30A-8(9) to provide an explanation why it believes that the assessment should be reflected in the requests rates "since the assessment, by statute, is classified as a loan." The commenters believe that this language does not accurately reflect the intent of the Legislature. The payment by the New Jersey Property-Liability Insurance Guaranty Association (Association) to the New Jersey Automobile Insurance Guaranty Fund (Guaranty Fund) is the "loan" denominated in the statute. Payment by the member insurer to the Association is not a "loan." The commenters thus suggested that the phrase ". . . since the assessment, by statute, is classified as a loan . . ." be eliminated.

Another commenter specifically stated that classification of the assessment as a loan raises the following questions: 1) the interest rate to be applied; 2) whether assessments and surtaxes should be considered an investment and results of the loan reflected as investment income; 3) whether such a loan would be considered a non-admitted asset; and 4) whether the assessments and surtaxes are considered a premium tax, which will result in retaliatory tax on New Jersey domestic insurers.

Another commenter additionally stated that the assessment has none of the traditional characteristics of a loan (that is, no specified interest rate, no definite period for repayment).

RESPONSE: After consideration of the comments the Department has determined that no change is required. N.J.S.A. 17:29A-35 as amended provides that merit rating plan surcharge money is to be remitted to the Association upon a certification by the Commissioner that the monies are no longer needed to fund the New Jersey Automobile Full Insurance Underwriting Association debt. The Commissioner has also addressed the issue of the repayment of these loans to the Association in Order No. A90-252. Finally, N.J.A.C. 11:3-16.13 codifies a procedure for the Association to remit these repaid loan funds to member insurers. Accordingly, since repayment is addressed the Department believes that this provision is appropriate. The Department further notes that some of the specific issues raised by the commenters are currently in litigation.

COMMENT: The Public Advocate noted that N.J.A.C. 11:3-16.3(b) states that an insurer may make a filing "combined for those companies of the group which use a common rating system, including both base rates and underwriting guidelines, or when the difference is based only upon expense differences." The Public Advocate inquired how the Department will determine whether the rate difference is based only upon expense differences.

RESPONSE: The Department notes the commenter's concern. The Department, however, has determine not to change this provision upon adoption. The Department will, however, consider this concern and may propose amendments to the rules as necessary.

COMMENT: The Public Advocate generally suggested that additional data be required and that specific data requirements eliminated by the proposed amendments be retained. First, for both flex rate and prior approval filings, the Public Advocate suggested that insurers be required to submit the last three Annual Statements, including Insurance Expense Exhibits and New Jersey page 14 data to the Public Advocate. These documents would be useful to the Public Advocate in its evaluation of the filing. Secondly, the Public Advocate suggested that the requirement that filers separately report paid losses and incurred losses for prior approval filings be retained. If this requirement is eliminated, the ability to analyze changes in a carriers' loss reserve practices will be impaired. Thirdly, the requirement that filers submit trend data on both a paid and incurred basis should be retained. The amendments provide the filer with the option of providing paid or incurred trend data. It stated that both paid and incurred data are necessary to show different aspects of insurance trends. Fourthly, the requirement that filers submit a copy of the annual report and the latest 10K statement for prior approval filings should be retained. These reports contain valuable information regarding the insurer's overall operating procedures which are useful in analyzing a rate filing.

RESPONSE: The Department disagrees. The Department's experience in reviewing rate filings submitted under these rules indicates that the information cited by the Public Advocate is not necessary to adequately evaluate an insurer's rate filing in all cases. In order to streamline the review process of rate filings, the Department has reduced the amount of data required through these proposed amendments. If the Public Advocate, however, believes that clarifying, explanatory or supplemental information is necessary, it may request that the filer provide such information pursuant to N.J.A.C. 11:3-18.6(e). The Department, however, still consider the commenter's concerns and may propose amendments to the rules as necessary.

COMMENT: The Public Advocate stated that the term "consistent levels" as used in N.J.A.C. 11:3-16.7(a)1a requires definition.

RESPONSE: "Consistent levels" means the same point in time but not a future point in time. The rules are changed upon adoption to reflect this clarification.

COMMENT: The Public Advocate stated that the definition of "allocated loss adjustment expenses" in N.J.A.C. 11:3-16.7(b) and (c) appears inconsistent with past practices of the Department and other standard definitions. This may create problems in comparing past and prospective experience and New Jersey experience to that in other states.

RESPONSE: The definition of "allocated loss adjustment expense" is intentionally narrow in scope. This definition related to information which may be compiled and disseminated to insurers by rating organizations or advisory organizations for rate making purposes. Many of the expenses listed in the standard definitions of "allocated loss adjustment expense" include expenses which vary between companies based on different allocation methodologies. The Department believes that it is inappropriate to permit development of data for two or more insurers utilizing such expenses pursuant to N.J.S.A. 17:33B-31.

COMMENT: The Public Advocate stated that the Treasury constant three-year maturity rate, which is used as the standard interest rate for the calculation of investment income in N.J.A.C. 11:3-16.10(a)8, is inappropriate. Insurers should be able to earn a higher rate of return. Utilizing the rate proposed may result in much of an insurer's investment income being excluded from the ratemaking process. The Public Advocate suggested that the Department utilize the current Internal Revenue Service discount rate plus 200 basis points as the standard interest rate.

RESPONSE: After consideration of the commenter's suggestion, the Department has determined not to change this provision. The Department believes that the Treasury Constant three-year maturity rate is appropriate and reflects a rate of return that an insurer should be able to receive on its investments if it invests prudently. In addition, the interest rate used pursuant to N.J.A.C. 11:3-16.10(a)8 is the simple average of the most recent 12 monthly numbers for the three-year maturity rate. This number takes into account interest rate fluctuations from year to year thus maintaining more consistency in the calculation of investment income.

COMMENT: The Public Advocate suggested that the rules state that insurers have a continuing obligation to provide additional data requested by the Department and the Public Advocate.

RESPONSE: The rules currently state that the Commissioner of Insurance (Commissioner) may request any additional information deemed necessary as follows: N.J.A.C. 11:3-16.4(b) (for annual informational filings), N.J.A.C. 11:3-16.8(h) (recodified as 16.8(i) upon adoption) and 11:3-16.9(e)3 (recodified as 16.9(f)3 upon adoption) (for prior approval filings), and N.J.A.C. 11:3-16.11(b)14 (for rate filings reflecting surtaxes and/or assessments imposed by N.J.S.A. 17:33B-49 and 17:30A-8(9)). The Department believes that this clearly and adequately indicates to insurers that they are under an obligation submit additional information upon request. Further, the Public Advocate may specifically request additional information pursuant to N.J.A.C. 11:3-18.6(e). Therefore no change is warranted.

COMMENT: The Public Advocate suggested that the time frames for requesting additional information be lengthened. In view of the recent changes to New Jersey's insurance laws, additional time may be neccessary to determine if additional data would be necessary.

RESPONSE: The Department believes that the time frames are appropriate in consideration of the time frames for the Commissioner's action on rate filings established by N.J.S.A. 17:29A-14.

COMMENT: The Public Advocate noted that its address is stated incorrectly in the rules. The correct address is: Department of Public

Advocate, Division of Rate Counsel, P.O. Box 46005, 31 Clinton Street, Newark, N.J. 07101.

RESPONSE: This correction has been made upon adoption with the post office box immediately preceding the city as provided by postal regulations.

COMMENT: Several commenters expressed concern with the prohibition against rating organizations and advisory organizations developing and providing specified data to insurers for ratemaking purposes.

One commenter noted that insurers will pass through costs associated with independently developing and establishing standards for loss smoothing, selection of weights and relativities. The commenter noted that permitting advisory organizations to provide this data results in economies of scale and the establishment of a benchmark to test actual results. Further, the commenter stated that this will create a greater burden on small carriers.

RESPONSE: The prohibition against rating organizations and advisory organizations developing and providing specified data to insureds for ratemaking purposes implements N.J.S.A. 17:33B-31. This statute prohibits this activity and states in pertinent part: "no rating organization or advisory organization may be used by an insurer in ratemaking for private passenger automobile insurance except for the purposes of the collection, compilation and dissemination of historical data for two or more insurers."

COMMENT: Several commenters objected to the prohibition against rating organizations or advisory organizations providing symbol, vehicle series and model year rating programs for physical damage coverages after model year 1992. The commenters stated that this will result in increased costs ultimately passed on to policyholders. The commenters also requested clarification regarding how vehicle series and model year rating will be performed after 1992.

Another commenter specifically stated that use of Insurance Services Office (ISO) symbols would not violate the anti-trust provisions of New Jersey law.

RESPONSE: The Department believes that this prohibition is consistent with N.J.S.A. 17:33B-31. The creation and maintenance of symbol, vehicle series and model year rating plans involves both the collection of historical data and the projection of future values or results.

COMMENT: One commenter stated that requiring copies of flex rate filings to be sent to the Public Advocate, and permitting the Public Advocate to challenge flex rate changes, is inappropriate since it makes these filings, in effect, subject to prior approval.

RESPONSE: The Department disagrees. N.J.S.A. 17:29A-44, as amended by the Fair Act, provides that the Commissioner shall provide a copy of any filing made or other information provided to a filer pursuant to [N.J.S.A. 17:29A-44] to the [Public Advocate]. The statute also permits the Public Advocate to challenge a flex rate change. The rules reflect current statutory requirements and thus no change is required.

COMMENT: One commenter stated that the requirement that average incurred expenses be developed on a per exposure basis for a five year period fails to provide useful data for many expense classifications which are a function of premium rather than exposure (that is, commissions, brokerage, taxes, licenses and fees).

RESPONSE: After consideration of the comment, the Department has determined that no change is required. The Department believes that this data is necessary to its review of rate filings.

COMMENT: Several commenters stated that excluding consideration of lobbying expenses, advertising expenses and charitable contributions from the expense base for determining rates is inappropriate. These costs are often incurred in advocating safety and loss prevention issues (that is, support for passive restraints, bumper standards, etc.). The exclusion also raises freedom of speech and fairness questions. Finally, isolating these expenses to be excluded will be difficult and will require subjective determinations.

RESPONSE: These comments were previously addressed (see 21 N.J.R. 2182(a), 2189).

COMMENT: Several commenters expressed concern with N.J.A.C. 11:3-16.8(e)2, which requires data on distribution by model and symbol for the last five years. One commenter suggested that N.J.A.C. 11:3-16.8(e)2 be reworded to make clear that the required information need only be included if the differentials are being modified by the filing. Another commenter suggested that this section provide that filers can build up to five years of data and then submit five years of data from that point forward.

RESPONSE: After consideration of the commenters' suggestions, t Department has determined that no change is required. The Departme utilizes this for purposes in addition to reviewing the differential (f example, to project premium increases for physical damage coverag

COMMENT: One commenter suggested that N.J.A.C. 11:3-16.10(c be revised to establish that the accident year data used in the filing m be from either a fiscal year or year ending December 31, so long as t period is within 15 months of the filing.

RESPONSE: The Department agrees. The rules are changed upc adoption to reflect this clarification.

COMMENT: Several commenters stated that filing requirements co tained in N.J.A.C. 11:3-16.11 regarding rate filings reflecting surtax and/or assessments is burdensome, unnecessary, irrelevant, arbitrary ar capricious (for example, the Schedule of Key Performance Indicators; t schedule of premiums, incurred losses and operating expenses; and t estimate of the synergistic effects of providing mandated private passeng automobile insurance in this State). One commenter specifically stat that a company should not be required to submit all of data und N.J.A.C. 11:3-16.11(b)1 if a prior approval filing has already been mad Further, the commenter stated that the requirements provide the Con missioner with wide latitude in determining both the propriety of t inclusion and in establishing the timing of the recovery of these cost Thus recoupment of assessments and surtaxes exists in form but n substance.

Another commenter specifically stated that much of the data require is implicit in the Annual Statement and Insurance Expense Exhibi already submitted to the Department.

Another commenter stated that N.J.A.C. 11:3-16.11 violates the Unite States and New Jersey constitutional provisions regarding the taking c property without just compensation, due process of law and equal prote tion. The commenter also believes that N.J.A.C. 11:3-16.11 is unsu ported by New Jersey law and is thus utra vires.

Finally one commenter stated that the requirements in N.J.A.C 11:3-16.11(b)4 are impossible to comply with due to conflicts betwee the required certifications and the New Jersey laws.

RESPONSE: The Department disagrees. The Department believes tha the information requested is appropriate, relevant and necessary to evalu ate an insurer's rate filing which reflects surtaxes and/or assessment imposed by the Fair Act, and to determine whether an increase in revenu is necessary to enable the insurer to earn a constitutionally adequate rat of return. The Department notes that some filers may not be in a positio to provide all of the required information or have not collected data i such a manner so as to facilitate its reporting. This situation is addresse in N.J.A.C. 11:3-16.3(a), which provides that filers must begin collectin data in a manner to facilitate reporting by January 1, 1991 to be include in filings made on or after April 1, 1992, and N.J.A.C. 11:3-16.11(c) which provides for the waiver of any filing requirement contained i N.J.A.C. 11:3-16.11 in the Commissioner's discretion, upon good caus shown. Regarding the comment that an insurer need not file all of th data under N.J.A.C. 11:3-16.11(b)1 if a prior approval filing has alread been made, the Department agrees in part. An insurer may reference it prior approval filing to satisfy N.J.A.C. 11:3-16.11(b)1 provided n change to the data has occurred since the prior approval filing wa submitted. Any data submitted in the prior approval filing which ha changed since the time of its original filing must be submitted. Th Department believes the amendments do not violate the United State and New Jersey Constitutions, and that the amendments are supporte by New Jersey Law.

COMMENT: Several commenters stated that internal audit report and management comments required by N.J.A.C. 11:3-16.11(b)11 ar proprietary information and should not be disclosed. The commenter also questioned the relevance of this information to a review of the rate filing.

RESPONSE: The Department believes that this information is necessary and relevant in its review of rate filings which reflect surtaxes and/ or assessments imposed by the Fair Act. The Department notes that internal audit reports and management responses submitted pursuant to N.J.A.C. 11:3-16.11(b)11 are confidential pursuant to N.J.S.A. 17:23-6. The rules have been changed upon adoption to reflect this clarification.

COMMENT: Several commenters stated that the provision that the Commissioner shall, in determining whether an insurer is making an adequate rate of return, consider whether the insurer is efficient in its operations, is unclear.

One commenter inquired whether this determination is made in comarison to insurers on a Statewide or countrywide basis. The commenter irther stated that no standard is provided for measuring efficiency.

RESPONSE: The Department believes that this provision is clear. As ated in N.J.A.C. 11:3-16.11(d)2, the Commissioner shall consider hether the insurer is reasonably efficient in its operations on both a tatewide and countrywide basis. An insurer that seeks to include surtaxes id/or assessments imposed by the Fair Act in its requested rates must emonstrate that it is unable to earn a constitutionally adequate rate of :turn. The Department believes it is appropriate to require specified data) enable the Commissioner to, among things, determine whether the isurer is unable to earn an adequate rate of return due to imposition f the surtaxes and/or assessments or due to inefficient operations pracces. The standard for this determination is a "reasonable standard" iow prudent insurers in similar circumstances conduct their operations, icluding claims handling, subrogation and salvage).

COMMENT: Several commenters requested clarification of the terms fair and equitable allocations" as they are used in N.J.A.C. 1:3-16.11(d)3.

RESPONSE: These terms have their customary English language sage. The Department believes that no clarification is necessary.

COMMENT: Several commenters stated that it is inappropriate to eview the overall profitability of the insurer in determining whether its ates are adequate for purposes of reflecting surtaxes and/or assessments nposed by the Fair Act in the requested rates. This is inconsistent with eneral practice. One commenter specifically stated that it is doubtful that ne Commissioner would allow a rate increase in private passenger autonobile rates to resolve a profitability problem with workers' compensaion.

RESPONSE: The Department disagrees. If an insurer is unable to earn constitutionally adequate rate of return due to imposition of surtaxes nd/or assessments imposed by the Fair Act, it may request a rate ncrease reflect such surtaxes and/or assessments. However, the Departnent does not believe that the Constitution requires approval of rates hat guarantee that an insurer will make a profit in all lines for all years. 'he Department thus believes it appropriate to consider the insurer's xperience on all lines of its business for a period of time over which t could plan to earn a reasonable rate of return.

COMMENT: Several commenters stated that the consideration of the ynergistic effect of mandated private passenger automobile insurance on he sale of other lines the filer writes (N.J.A.C. 11:3-16.11(d)4) is inapropriate. One commenter stated that this requirement fails to recognize hat insurers who are unable to adjust automobile rates would likely etain the benefit of this effect to offset the losses in automobile insurance; ir reflect the effect in the rating of the collateral lines of insurers. In either ase, the synergistic effect has been transferred to the insured. Another ommenter requested that the Department provide clarification regarding he meaning of "synergistic effects of private passenger automobile inurance in this State."

RESPONSE: After consideration of the comments, the Department has letermined not to change this provision. The synergistic effect of mandated private passenger automobile coverage means the amount of busiess in other lines the filer writes that may be attributed to its providing utomobile coverage in this State. While an insurer may not make a profit n its automobile line for a particular year, it may do so in other lines. Since private passenger automobile insurance may generate business in other lines, the Department believes it appropriate to review and consider ny synergistic effects of providing automobile coverage on other lines.

COMMENT: Several commenters requested that N.J.A.C. 11:3-16.13 e clarified to provide that an insurer must submit plans to reduce rates upon repayment of assessments only if it successfully sought rate relief pursuant to N.J.A.C. 11:3-16.11.

RESPONSE: The Department believes it appropriate to require insurers to submit a plan to reduce rates commensurate with the repayment of assessments. Upon repayment of the loans the Commissioner must determine that rates are not inadequate, excessive or unfairly discriminatory.

COMMENT: One commenter requested that the rules confirm that a consulting actuarial firm may continue to develop rates independently for two or more insurers. This is a necessity for a small company with no actuarial staff which may no longer use ISO to provide data for ratemaking purposes.

RESPONSE: The rules do not prohibit a consulting actuarial firm from developing and transmitting separate, independent rate filings for its clients. Rather, the rules prohibit combined rate filings made by any entity on behalf of two or more insurers, pursuant to N.J.S.A. 17:33B-31. The Department believes that no clarification is necessary.

COMMENT: One commenter inquired whether only studies relied upon by the filer in its rate filing are required to be submitted.

RESPONSE: Only studies relied upon need to be submitted.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.3(l), which provides that data submitted in any rate filing may not include experience derived from risks insured through any assigned risk plan, is an unconstitutional taking, unless insurers can offset assigned risk losses by building a subsidy into voluntary market rates. Under the Fair Act, only liability coverages in excess of $50,000/$100,000/$25,000, comprehensive and collision coverages on certain vehicles will be experienced rated. Therefore, assigned risk losses will accrue. The commenter further suggested that N.J.A.C. 11:3-16.3(l) be revised to confirm that voluntary market experience includes risks assigned to a company under the procedures provided in the Voluntary Placement Program in the Plan of Operation of the New Jersey Automobile Full Insurance Underwriting Association (as superseded by the Market Transition Facility).

RESPONSE: The Department does not believe that experience derived from risks insured through an assigned risk plan should be reflected in rates for the voluntary market. Further, the referenced rule prohibits experience from risks insured through "any assigned risk plan established pursuant to N.J.S.A. 17:29D-1." Voluntary market experience from risks assigned to a company pursuant to the Voluntary Market Placement Program are not excluded by this provision since they are not from an assigned risk plan established pursuant to N.J.S.A. 17:29D-1.

COMMENT: One commenter noted that N.J.A.C. 11:3-16.6(b) requires that rate filers submit data based on their own experience to the extent it is credible. The commenter inquired as to what action a filer should take if its own data is not credible.

RESPONSE: There are several ratemaking methodologies that a filer may utilize in this situation (for example, Consumer Price Index data, and expected loss ratios.)

COMMENT: Several commenters stated that N.J.A.C. 11:3-16.11, governing rate filings which reflect assessments and surtaxes imposed by the Fair Act, is inappropriate since these charges violate the United States and New Jersey State and Constitutions, and other laws of New Jersey.

RESPONSE: The Department notes that the commenter's position is currently being litigated. The Department believes that laws are presumed to be constitutional unless and until determined unconstitutional.

COMMENT: Several commenters stated that N.J.A.C. 11:3-16.11(b), which requires data of the filer's affiliates for rate filings reflecting surtaxes and/or assessments, is inappropriate in that it is inconsistent with N.J.S.A. 17:33B-2g which provides that automobile insurers are entitled to earn an adequate rate of return through the ratemaking process; runs afoul of other state's insurance rating laws which prohibit interstate subsidization; would require excess insurance rates be levied on New Jersey citizens for other lines; and is inconsistent with current Department practice of recognizing each insurer as a distinct legal entity. Further, this requirement will distort healthy competition by providing advantages to some insurers and disadvantages to others based on their mixes of business in different markets. Another commenter stated that requiring other lines of business to subsidize automobile insurance is contrary to the historical development of and approval in the automobile ratemaking process.

RESPONSE: The Department does not require through N.J.A.C. 11:3-16.11(b) that other lines of business subsidize the private passenger automobile line. As was stated in a response to a previous comment, an insurer is entitled to rates which permit it to earn a constitutionally adequate rate of return. This does not mean, however, that an insurer is entitled to make a profit in all lines for all years. Thus, the Department believes it appropriate to consider an insurer's overall profitability over a period of time in determining whether an insurer's rates are constitutionally adequate, considering the payment of surtaxes and/or assessments imposed by the Fair Act.

COMMENT: One commenter stated that providing the schedule of Key Performance Indicators set forth in Exhibit G in the Appendix to these rules will be expensive. The commenter further questioned the relevancy of required items to the rate filing.

RESPONSE: As was stated in a response to a previous comment, the Department believes that the Key Performance Indicators as set forth in Exhibit G are necessary and relevant to its review of rate filings reflecting surtaxes and assessments and does not place an undue burden on filers.

COMMENT: One commenter stated that the data requirements in N.J.A.C. 11:3-16.5(a)4 relating to flex rate filings are unclear and requested clarification regarding the type of data requested.

RESPONSE: The Department believes that the data requirements are self-explanatory. Because the commenter did not elaborate on the paragraph's lack of clarity, no further response is possible.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.11 is ambiguous in that it is difficult for large insurers with numerous affiliates to determine whether data is required by the filer or by the enterprise. For example, the commenter inquired whether worldwide expense data is required by the filer or by the enterprise.

RESPONSE: The Department believes that the filing requirements are self explanatory. The Department notes that the filer is required to submit the data.

COMMENT: One commenter stated that the requirement that insurers submit a separate rate filing to reflect surtaxes and assessments is contrary to the Department's position (as expressed by the Attorney General) in *Jackson v. Twin City Fire Insurance Company, et al,* in which the Attorney General stated that assessments and surtaxes imposed by the FAIR Act may be allowable into the expense base for determining rates. Accordingly, the separate filing requirement and the requirement in N.J.A.C. 11:3-16.10(b)8vii that assessments and surtaxes imposed by the Fair Act be excluded from the expense base in determining rates should be eliminated.

RESPONSE: The Department disagrees. Insurers may not directly "pass-through" assessments and/or surtaxes imposed by the Fair Act on a dollar for dollar basis to policyholders pursuant to N.J.S.A. 17:30A-16 and 17:33B-51. Thus, assessments and/or surtaxes are excluded from the expense base in determining rates using standard methodologies. However, an insurer may request an increase in rates on the basis that it is required to pay assessments and/or surtaxes. Because these expenses are generally excluded, however, the insurer must demonstrate that it is unable to earn a constitutionally adequate rate of return unless these expenses are considered. The filing requirements set forth in N.J.A.C. 11:3-16.11 enable the Commissioner to determine whether a rate change is necessary to provide the insurer with the opportunity to earn a constitutionally adequate rate of return.

COMMENT: One commenter stated that "an estimate of the amount of business in other lines produced by the synergistic effects of the insurer writing private passenger automobile insurance," as required by N.J.A.C. 11:3-16.10(b)3iv, is not produced by companies and is therefore not available.

RESPONSE: The Department believes that this information may be produced by filers. The Department further notes that a filer may request a waiver of any of the filing requirements imposed by N.J.A.C. 11:3-16.11(b) for cause.

COMMENT: One commenter objected to the requirement that the insurer's President and Chief Financial Officer certify that a reasonable, prudent person would not determine that another allocation methodology is reasonable (Exhibit F, Item 11), in that opinions may differ. Thus the commenter believes that this requirement serves no useful purpose.

RESPONSE: This provision is intended to require the insurer's President and Chief Financial Officer to certify the reasonableness of its allocation methodology. The Department believes it approrpiate to require such a certification.

COMMENT: One commenter requested clarification regarding the items requested in N.J.A.C. 11:3-16.11(b)8 as follows:

1. N.J.A.C. 11:3-16.11(b)8—"number of insureds;" specifically, whether this refers to named insureds, additional insureds and/or omnibus insureds; if this refers to the named insured only, whether it refers only to the first named insured.

2. N.J.A.C. 11:3-16.11(b)8ii—"number of employees directly dedicated to the line of business."

3. N.J.A.C. 11:3-16.11(b)8iii—"square feet of office space dedicated to the line of business."

4. N.J.A.C. 11:3-16.11(b)8v—"number of exposures"; specifically, whether this is the rating exposure or volume of exposures.

RESPONSE: The term "number of insureds" means the total number of named insureds for whom insurance coverage is provided by the insurer for each line of business written in New Jersey; "number of employees directly dedicated to the line of business" means the number of employees that either solely or partially perform duties relating to providing insurance coverage in New Jersey for each line of business; "square feet of office space dedicated to the line of business" means the amount of office space which is wholly or partially utilized in providing insurance coverage in New Jersey for each line of business (excluding corpor or administrative office space); and "number of exposures" means volume of exposures. The rules are changed upon adoption to refl appropriate clarifications.

COMMENT: One commenter stated that it allocates hours of d processing time charged by line of business rather than line of busin by state, as required by N.J.A.C. 11:3-16.11(b)8iv. Production of the d in the required format would be costly and time consuming. The co menter further believes that this requirement serves only to dissua companies from making rate filings to reflect surtaxes and assessmen since rates have not been made using data processing expenses charg in this manner.

RESPONSE: The Department disagrees. As was stated in a respor to a previous comment, the Department believes that this informati is necessary and appropriate to its review of rate filings reflecting surta and/or assessments. If a filer is not currently collecting data in a mann to facilitate reporting, it must begin doing so by January 1, 1991 a include the information on filings made on or after April 1, 1992 pursu to N.J.A.C. 11:3-16.3(a).

COMMENT: Several commenters incorporated by reference their pr comments submitted in conjunction with the prior proposal of N.J.A. 11:3-16. One commenter additionally incorporated by reference the f lowing:

1. Comments to N.J.A.C. 11:3-18 submitted December 5, 1989;

2. Statement of Items Comprising the Record on Appeal filed behalf of the Department of Insurance on August 8, 1989 in the Superi Court of New Jersey, Appellate Division (Docket No. A-5324-88T1

3. Its private passenger automobile rate filings submitted on Aug 24, 1990 and October 16, 1990;

4. Statement of Principles Regarding Property and Casualty Insuran Ratemaking as adopted in May 1988 by the Casualty Actuarial Socie

5. The Insurance Reporter published November 1989 by the N Jersey Department of Insurance which contains a profitability report; a

6. The Fair Automobile Insurance Reform Act of 1990 (P.L. 1990, c and its legislative history.

RESPONSE: The Department similarly incorporates by reference responses to the materials described in the comment as appropriate, set forth in 22 N.J.R. 399(a).

COMMENT: One commenter requested the opportunity to provi verbal actuarial, economic, and other testimony at a hearing to more fu address the issues regarding these rules.

RESPONSE: The Department disagrees. A hearing is not statutoria required. The Department obtains public input from comments su mitted.

COMMENT: Several commenters stated that the open-ended reque for additional information contained in N.J.A.C. 11:3-16.4(b)2, 16.8(l 16.9(e)3 and 16.11(b)14 are inappropriate. The Department should speci the information that would pertain to the Commissioner's review of rat and informational filings.

RESPONSE: The Department disagrees. The rules set forth data quirements for private passenger automobile rate filings and infc mational filings. The Department, however, believes it appropriate a necessary to provide for the request of additional, clarifying or su plemental information.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.11(b) quires insurers with life and health affiliates to submit an enormo amount of data with respect to those lines of business. Life and heal insurance is not related to property and casualty insurance, and accor ingly, information regarding life and health experience should not l required.

RESPONSE: As was stated in a response to a previous comment, t Department believes that information relating to the filer's profitabili for all lines is necessary and relevant in its review of rate filings reflectir surtaxes and assessments imposed by the FAIR Act.

COMMENT: One commenter stated that these rules are redundant conflict with other New Jersey statutes and regulations including N.J.S. 17:23-1 et seq. and N.J.A.C. 11:3-20.5 et seq. Further, numero provisions of these rules appear to conflict with actuarial principles ar require disclosure of confidential, proprietary and trade secret info mation, with no provisions protecting the company making disclosur pursuant to the rules.

RESPONSE: As was stated in a response to a previous comment, t Department believes that all data submitted is necessary and relevant its review of rate filings. Further, as indicated in another response to previous comment, the rules have been changed upon adoption to confir

it internal audits and management responses required to N.J.A.C. :3-16.11(b)11 are confidential pursuant to N.J.S.A. 17:23-6.

COMMENT: One commenter stated that since an insurer's efficiency examined in each prior approval rate filing, and an insurers's ofitability is examined annually through the excess profits reports filed rsuant to N.J.A.C. 11:3-20, recovery of assessments and surtaxes im-sed by the FAIR Act through increased rates should be presumed as cessary to ensure that rates are not inadequate, excessive or unfairly scriminatory, and to allow insurers the opportunity to earn a fair rate return.

RESPONSE: The Department disagrees. The data cited by the com-enter is utilized for different purposes. Further, the standard for de-mining whether an insurer is entitled to rate relief, considering the penses of surtaxes and/or assessments imposed, is whether it is able earn a constitutionally adequate rate of return. The Department be-ves that the filing requirements set forth in N.J.A.C. 11:3-16.11 are cessary and relevant in its review of such filings. Therefore, no change warranted.

COMMENT: One commenter stated that surtaxes and assessments are penses which must be reflected in the rates under an actuarally sound temaking system. The commenter further stated that the language con-ined in the FAIR Act contradicts this position.

RESPONSE: As was stated in a response to a previous comment, the AIR Act prohibits direct "pass-through" of surtaxes and/or assessments policyholders. Thus, these charges may not be automatically included the expense base for the determination of rates.

COMMENT: One commenter stated that the items requested as the ey Performance Indicators listed in Exhibit G are not recognized as ch by insurers, insurance company rating services or regulations in her states. In addition, the items requested are not defined in terms nerally defined or understood in insurance accounting and statistical ports to have a common meaning which can reasonably be compared tween insurers.

RESPONSE: All terms have their customary and usual meanings. The epartment recognizes that the terms are not insurance terms of art. owever, the Department believes that these terms are utilized and re-gnized by all business. The Department thus believes that the use of ese terms is appropriate.

COMMENT: One commenter stated that it observes the "Instructions r Uniform Classification of Expenses" (NAIC Regulation 30) which ovides that insurers must utilize uniform standards for reporting of penses. The commenter has followed Regulation 30 in all 50 states. To e extent New Jersey suggests, through N.J.A.C. 11:3-16.11, an alloca-on methodology inconsistent with Regulation 30, it would invite con-icting state requirements. This could create a situation in which an surer's state by state expenses would not equal its countrywide expenses.

RESPONSE: The Department is not suggesting an alternative alloca-on methodology through N.J.A.C. 11:3-16.11. An insurer wishing to flect surtaxes and/or assessments in the rates must demonstrate that is unable to earn a constitutionally adequate rate of return due to the nposition of such charges. The Department believes it appropriate to view the filer's method of allocation of expense to New Jersey, and to quire the data specified in N.J.A.C. 11:3-16.11 to enable the Com-issioner to perform the evaluation.

COMMENT: One commenter stated that the rules fail to address a umber of issues, including treatment of dividends, contingencies and cess profits refunds.

RESPONSE: Dividends and excess profits refunds are treated as pol-yholder dividends and may be subtracted from earned premium to etermine underwriting income. Contingencies are included in the Clif-ord formula methodology.

COMMENT: One commenter stated that the definition of "IBNR" N.J.A.C. 11:3-16.2 excludes future development of known claims. This inconsistent with the procedures of many insurers. Accordingly, the ommenter suggested that the definition specify that future development f known claims may be included within either IBNR or case reserves.

RESPONSE: The Department interprets "IBNR" to mean that future evelopment of known claims is to be included in case reserves.

COMMENT: One commenter stated that "loss development triangles" as been defined to require "the same number of accident years at each valuation date." This is incorrect. The commenter stated that each valuation date will have a different number of accident years as the losses evelop.

RESPONSE: The Department agrees. The term's definition is changed pon adoption to reflect this clarification.

COMMENT: Several commenters stated that since these rules were adopted November 26, 1990, the time by which insurers must begin collecting the required data (currently January 1, 1991) should be extended to January 1, 1992.

RESPONSE: The Department disagrees. Much of the data required was contained in these rules as adopted on February 5, 1990. In fact, these proposed amendments generally reduce the amount of data required for annual informational filings, flex rate filings and prior approval filings which do not reflect surtaxes and/or assessments imposed by the FAIR Act. The Department notes that the rules require that insurers begin collecting required data no later than January 1, 1991 for inclusion in filings made on or after April 1, 1992. The Department believes that these time frames are reasonable and impose no undue burden on filers.

COMMENT: Several commenters objected to the Department prescribing a "preferred rate making methodology" as expressed in these rules. Specifically, objections were as follows: establishment of the maximum expense base permitted by corporate form from the A.M. Best *Averages and Aggregates*; requiring that expense and profit data exclude Automobile Insurance Risk Exchange (AIRE) assessments and reimbursements; the prescribed method (the Clifford formula) as a means to calculate investment income (N.J.A.C. 11:3-16.10(a)1); the imputation of a specific interest rate for calculation of investment income (N.J.A.C. 11:3-16.10(a)8); the limitation of other acquisition and general expenses to a prevailing wage or inflation factor in the calculation of expense trends (N.J.A.C. 11:3-16.10(b)5); the industry average cap on certain expenses (N.J.A.C. 11:3-16.10(b)6); and the limitation of Unsatisfied Claim and Judgement Fund (UCJF) expense provisions to the actual assessment prescribed by the Commissioner.

RESPONSE: The Department previously addressed these comments (see 22 N.J.R. 399(a)). The Department has determined not to make any changes to the rules regarding its preferred ratemaking methodology at this time. The Department notes that in addition to making a rate filing utilizing the Department's preferred ratemaking methodology, a filer may propose an alternative ratemaking methodology in total or in part supported by such calculations or information it deems appropriate to demonstrate the superiority of the alternate procedure in the determination of the filer's rates pursuant to N.J.A.C. 11:3-16.10(f).

COMMENT: Several commenters generally stated that the rules, while reducing the amount of data required, still require an excesive amount of data which is unnecessary; burdensome; irrelevant to sound actuarial ratemaking; and inconsistent with sound actual principles. Specifically, commenters stated that the rules exceed the Commissioner's statutory authority and obfuscate the standard that rates be reasonable, adequate and not unfairly discrminatory; the requirement that filers submit class plan data with each filing is unnecessary; the trend analysis required by N.J.A.C. 11:3-16.8 (including exponential and straight line least-squares regression points; "T" statistics and coefficients of correlation by coverage, and separately for frequency and severity for each of the latetst six, nine, 12, 16 and 20 point periods) is burdensome and unnecessary; the requirement that filers provide all data and worksheets used and judgement made in derivation of certain trends is unreasonable and burdensome; the requirement that loading for catastrophe losses include as many years as are available but no less than ten years (N.J.A.C. 11:3-16.8(a)3) unnecessary; the requirement that filers provide five years of trend data (N.J.A.C. 11:3-16.8(d)5) is excessive; and that the allocation of surplus by state and line of business (N.J.A.C. 11:3-16.10(e)) is arbitrary and meaningless.

RESPONSE: The Department previously addressed these comments (see 22 N.J.R. 399(a)). The Department believes that the data is necessary and relevant for its review, is readily available, and does not place an undue burden on filers. The Department further notes that these amendments generally reduce the amount of data required for informational filings, flex rate filings and prior approval filings.

COMMENT: One commenter noted that the reference of N.J.S.A. 36:6-73.1 in N.J.A.C. 11:3-16.8(d)1 should read N.J.S.A. 39:6-73.1.

RESPONSE: This change has been made upon adoption. A similar change is also made to N.J.A.C. 11:3-16.10(c)3.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.8(d)1 and 16.10(a)5 implies that basic personal injury protection (PIP) data should be limited to $75,000 per person for trend development. Apparently this is to prohibit trend data for the layer of coverage from $75,000 to $250,000 starting January 1, 1991. Since insurers have the option to offer coverage above $250,000, the commenter suggested that data for coverage in excess of $250,000 be allowed.

RESPONSE: The filing requirements set forth in these rules are minimum requirements. Filers may include any additional information it believes relevant to its filing. Thus, a filer which offers additional PIP coverage may include data it believes relevant to the determination of rates for providing such additional coverage.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.8(d)2i is inconsistent with Exhibit AII(5) in that N.J.A.C. 11:3-16.8(d)2i requires trend factors for the latest six, nine, 12, 16 and 20 months, and the Exhibit requires trend factors for only two periods, either six, nine, 12, 16 or 20 months. The commenter further stated that the use of two periods is sufficient.

RESPONSE: The Department agrees that two periods are sufficient. The rules are changed upon adoption to reflect this clarification.

COMMENT: One commenter suggested that N.J.A.C. 11:3-16.8(g)2 be revised to refer to "all limits combined" and "all deductibles combined" rather than "all limits and all deductibles." The commenter believes that this would clarify the information sought by the Department.

RESPONSE: The Department agrees. The rules are changed upon adoption to reflect this clarification.

COMMENT: One commenter noted that N.J.A.C. 11:3-16.10(a)5 requires filers to use page 14 Annual Statement data to calculate the ratio of loss reserves to incurred losses, which would include AIP reserves from old claims. The commenter believes that this is incorrect because such reserves would be compared to incurred losses which exclude AIP losses. Reserves would appear to be overstated which would thus overstate investment income.

RESPONSE: The Department agrees. The rules are changed upon adoption to reflect this clarification.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.10(a)5 and 16.10(a)7 are inconsistent. N.J.A.C. 11:3-16.10(a)5 refers to "ratio of loss reserves to expected losses" while 16.10(a)7 refers to the expected loss and loss adjustment expense ratiio." The commenter suggested that N.J.A.C. 11:3-16.10(a)5 be revised to read "ratio of loss reserves to incurred losses and loss adjustment expenses."

RESPONSE: The Department disagrees. N.J.A.C. 11:3-16.10(a)5 and 11:3-16.10(a)7 refer to two separate requirements. Therefore, no change is required.

COMMENT: Several commenters stated that the prohibition against including assessments and surtaxes imposed by the FAIR Act as expenses for ratemaking violates sound actuarial principles.

RESPONSE: The exclusion of surtaxes and/or assessments imposed by the FAIR Act implements the intent of the Legislature as expressed in N.J.S.A. 17:30A-16, as amended, and N.J.S.A. 17:33B-51. These provisions prohibit "direct pass-through" of surtaxes and/or assessments to policyholders. Insurers may not automatically include these charges as an expense to be reflected in the rates. If an insurer is unable to earn a constitutionally adequate rate of return, it may seek to reflect surtaxes and/or assessments in requested private passenger automobile rates pursuant to N.J.A.C. 11:3-16.11.

COMMENT: One commenter objected to N.J.A.C. 11:3-16.12, which allows an insurer 30 days within which to cure deficiencies in its filing as identified by the Department. Given the complexity of Department deficiency notices, it is difficult to cure deficiencies within 30 days. The commenter further noted that this rule requires that the Department provide insurers with a notice of deficiency within a stated peirod of time. The commenter suggested that the Department be allowed the same period within which to issue delinquency notices that insurers are given to cure deficiencies.

RESPONSE: The Department believes that the time frames are appropriate in consideration of the time frames for the Commissioner's action in rate filings established by N.J.S.A. 17:23A-14. Further, the Department is required to notify filers of deficiencies within 25 days of the receipt of the filing pursuant to N.J.A.C. 11:3-18.6.

COMMENT: One commenter suggested that N.J.A.C. 11:3-16.11 be omitted in its entirety. If a separate process is adopted to permit insurers to reflect surtaxes and assessments imposed by the FAIR Act, the procedures should be streamlined to permit immediate inclusion of these charges and to allow insurers the opportunity to earn a constitutionally adequate rate of return. Any Department concerns regarding the level of insurer profits can be dealt with in the context of the excess profits report filings.

RESPONSE: The Department disagrees. As was stated in a response to a previous comment, the FAIR Act prohibits direct pass-through of surtaxes and/or assessments to policyholders. If an insurer is unable to earn a constitutionally adequate rate of return it may request an increase in rates based on these additional charges. The Department believes th the filing requirements are necessary and appropriate in its review of ra filings which reflect these charges. Further, the Excess Profits Repor filed by insurers does not contain all of the information required l N.J.A.C. 11:3-16.11.

COMMENT: One commenter stated that it insures mobile homes ar recreational vehicles only. The commenter believes that mobile homes ar recreational vehicles are not "private passenger automobiles" f purposes of New Jersey law. Although not specifically stated, the cor menter implied that it is therefore not subject to these rules.

RESPONSE: The Department disagrees. The Department conside mobile homes and recreational vehicles to be private passenger aut mobiles in that they are not used for commercial purposes, carry passe gers and are designed for use on the public roads, highways and not c rails.

COMMENT: One commenter stated that the rules do not specifical permit insurers to refer to information provided by a rating organizatio and do not appear to provide any role for rating organizations in tl filing process. The failure to provide for rating organization filings inefficient, counterproductive and burdensome for the Department ar insurers. Further, the rules fail to provide a mechanism for insurers refer to information permitted to be disseminated by these rules whic is submitted by rating organizations. This will increase the burden c the Department in that it will be required to receive and review multip copies of the same data. In addition, N.J.S.A. 17:29A-1 et seq. ar N.J.S.A. 17:33B-31 recognize the necessity for rating organizations make information available to all insurers lacking sufficient premium ar loss date of their own to make statistically reliable estimates of prospe tive losses. The Department also implicitly recognizes that insurers shoul be able to include other information in support of their filings sinc N.J.A.C. 11:3-16.6(b) provides that filers must submit data based on the own loss experience "to the extent it is credible." The commenter thi suggested that the rules provide for the filing of historical data by ratir organizations and for the review of such data by insurers.

RESPONSE: The rules do not prohibit filings by rating organizatior of historical data or prohibits use by insures of such data. The Depar ment believes that no mechanism for insurer use of the information necessary at this time. The Department will, however, consider the com menter's suggestion for possible future amendment.

COMMENT: One commenter stated that the proposal Summary incorrect in that it states that the FAIR Act prohibits rating organiz tions. Rating organizations are still authorized to engage in the ratemal ing and filing process pursuant to N.J.S.A. 17:29A-1 et seq. The FAI Act limits rating organization activity in ratemaking for private passenge automobile business only.

RESPONSE: The Department believes that the proposal Summar language regarding rating organization activity in ratemaking for priva passenger automobile business reflects the statutory requirements s forth in N.J.S.A. 17:33B-31.

COMMENT: One commenter questioned the Department's authorit to apply the requirements of these rules to form filings as stated i N.J.A.C. 11:3-16.1.

RESPONSE: These rules apply to any insurer wishing to affect the rat level by changing rates, rules or forms. The Commissioner has the statu tory authority to review and approve rates pursuant to N.J.S.A. 17:29A- et seq.

COMMENT: One commenter stated that definitions of "filer" an "rating system," which exclude rating organizations, are inconsistent wit the definitions of these terms in N.J.S.A. 17:29A-1 et seq. The insuranc laws of New Jersey do not prohibit rating organizations from filing rat related information. Accordingly, the commenter believes that elimina ing references to these activities in the rules exceeds the Department' statutory authority.

RESPONSE: The Department disagrees. The definition of "ratin organization" in these rules was derived from N.J.S.A. 17:29A-1(f). A insurer may not use a rating organization or advisory organization i ratemaking for private passenger automobile insurance except for th compilation, collection and dissemination of historical data, pursuant t N.J.S.A. 17:33B-31. Accordingly, a rating organization may not file rating system on behalf of insurers. The Department believes that th definitions of "filer" and "rating system" are consistent with N.J.S.A 17:33B-31, and that no change is required.

COMMENT: One commenter stated that the definition of "trending" in N.J.A.C. 11:3-16.7(d) is inconsistent with the general rules of construc tion as set forth in N.J.S.A 1:1-1 (technical words and phrases shall b

)nstrued in accordance with such technical or special and accepted eaning). The Actuarial Standard of Practice No. 13 defines "trending rocedure" as "a process by which the actuary evaluates how changes ver time affect such items as claim costs, claim frequencies, expenses, posures, and premiums." The Standard further states that the "purpose trending procedures is to estimate future expected values by analyzing storical data and other relevant information. Therefore, the actuary ıould apply trending procedures which appropriately reflect projected ıanges in such components as claim costs, claim frquencies, expenses, posures and premiums over the trending period."

RESPONSE: The Department believes that the definition is consistent ith N.J.S.A. 17:33B-31. However, the Department believes that the efinition should be revised to confirm that "trending" does not include ıy representation of past costs but rather a representation of historical ata adjusted to future values. The rules are changed upon adoption to flect this clarification.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.7(d) recludes rating organizations from disseminating loss development data ased on the misconception that loss development is trending. The com- ıenter believes that loss development is not trending. Loss development a technique used to estimate the ultimate value of losses on claims that ave already occurred. Loss development factors are determined from n analysis of how historical losses have changed in the past from time ıitially reported to the time ultimately paid. Trending is a technique that stimates the value of future losses on claims that will occur on policies be issued in the future by evaluating how changes over time affect laim costs, claim frequencies and exposures. The commenter concluded ıat application of loss development calculated from the historical data ompiled by a rating organization to that same set of data will benefit ompetition by enhancing the usefulness and accuracy of historical data ı relation to policies already issued.

RESPONSE: As was stated in the response to the previous comment, ıe Department believes that the definition of "trending" is appropriate nd consistent with N.J.S.A. 17:33B-31.

COMMENT: One commenter objected to limitation on the collection, ompilation, and dissemination of historical data contained in N.J.A.C. 1:3-16.7, and except for use in the creation and maintenance of vehicle eries rating systems, the prohibition against the dissemination of weights, elativities, relativity analysis and final "pure premium" or "loss costs", s calculated, based on data to be exchanged. The commenter believes hat this prohibition is not justified since to the extent historical data has ıeen defined, the commenter believes that N.J.S.A. 17:33B-31 permits a ating organization to perform these functions regarding all types of nformation which a rating organization may compile and disseminate.

RESPONSE: The Department agrees that the rules should be clarified o confirm that rating organizations or advisory organizations may per- orm these functions so long as they are not utilized to project or select uture values. Appropriate revisions to N.J.A.C. 11:3-16.7 are made upon doption to reflect this clarification.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.7(i), which ıermits the joint development of symbol, vehicle series and model year ating programs through model year 1992, exceeds the Department's tatutory authority. There is no statutory basis which authorizes the mposition of the time restriction.

RESPONSE: As was stated in the response to a previous comment the reation and maintenance of symbol, vehicle series and model year rating ılus involves not only collection of historical data, but projections of uture results. The Department believes that this prohibition is consistent vith the requirements of N.J.S.A. 17:33B-31. The Department, however, ıas determined that it is appropriate to permit joint development of these lassification systems through model year 1992.

COMMENT: One commenter stated that the proposed rules fail to ırovide for rating organization activities necessary for the accurate collec- ion and compilation of data (that is, forms, classifications and rules). Compilation of historical data in a format useful for making credible rates equires the development of meaningful classifications; gathering of re- iable data for each class; and monitoring the relationship of loss ex- ıerience from class to class to determine that the relationship is fair and easonable. The commenter further stated that the Department recognizes he need for classification in N.J.A.C. 11:3-16.7(i), which authorizes rat- ng organization activity in the creation, maintenance and continued nsurer use of symbol, vehicle series and model year rating systems horugh model year 1992. The commenter believes that this activity hould be extended to all types of classifications.

RESPONSE: The Department disagrees. The Department believes that N.J.A.C. 11:3-16.7(a)2ii adequately provides for rating organization activities necessary for the accurate collection and compilation of data. As indicated in a response to a previous comment, revisions to N.J.A.C. 11:3-16.7 have been made to clarify permisible rating organization activity.

COMMENT: One commenter stated that the rules should be revised to authorize rating organizations to develop standardized coverage parts and permit insurers to refer to such data. The commenter stated that standardized coverage parts serve many functions. These include: enabling the statistical agent to collect data necessary for sound ratemaking; providing basic categories or "benchmarks" for pooling historical data; assisting regulators, producers and insureds in making comparisons and evaluations among insurers with respect to price and coverage; and providing a base from which insurers and producers can depart and tailor endorsements to insure risks or compete in markets.

RESPONSE: The commenter appears to be referring to forms as "coverage parts." Joint development of forms are not addressed in these rules. The Department suggests that the commenter review Bulletin No. 90-8 (issued September 19, 1990) as it relates to forms.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.7(h), which prohibits the exchange of marketing data, rate data and rate manuals, is overly broad and ambiguous.

RESPONSE: The Department believes that this rule clearly prohibits the exchange of marketing data, rate data and rate manuals to the extent the data may not be exchanged pursuant to N.J.A.C. 11:3-16.7.

Summary of Agency-Initiated Changes:

The Department has made minor editorial changes upon adoption to the following sections to correct errors and as a matter of form: N.J.A.C. 11:3-16.8(c)2; 16.8(c)6; 16.8(d)2ii; 16.9(a); Exhibit AII and Exhibit E. The Department has also revised N.J.A.C. 11:3-16.4(b) to confirm that this is to be utilized upon a determination by the Commissioner that additional information on a particular subject is needed at a particular time.

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 16. RATE FILING REQUIREMENTS: VOLUNTARY MARKET PRIVATE PASSENGER AUTOMOBILE INSURANCE

11:3-16.1 Purpose and scope

(a) This subchapter establishes data, filing format and preferred ratemaking requirements for all private passenger automobile rate filings for the voluntary market, in implementation of N.J.S.A. 17:29A-1 et seq. and as required by N.J.S.A. 17:29A-36.2.

(b) This subchapter applies to all insurers making private passenger automobile insurance rate filings for the voluntary market in this State.

(c) These requirements apply to all rate filings made by insurers for the revision of base rates; informational filings to be made on July 1 of each year pursuant to N.J.S.A. 17:29A-36.2b; and those filings made under the flex rate provisions of N.J.S.A. 17:29A-44.

(d) Any insurer wishing to effect the rate level by changing rates, rules or forms must file data pursuant to this subchapter.

11:3-16.2 Definitions

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

. . .

"Advisory organization" means every group, association or other organization of insurers, whether located within or outside this State, which assists insurers which make their own filings or rating organizations, in ratemaking, by the collection and furnishing of loss or expense statistics, but which does not make filings.

"Affiliate" means an insurer that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the insurer making a filing.

. . .

"AIP" means the Automobile Insurance Plan which, prior to January 1, 1984, issued policies providing insurance coverage for personal private passenger automobiles in accordance with N.J.S.A. 17:29D-1.

. . .

"Base rate" means the rate inclusive of expense fee by coverage for basic limit of liability or $500.00 deductible collision or comprehensive for a single car adult pleasure risk.

"Case reserves" means the reserves for reported claims whether determined by judgment or set by formula.

"Consistent levels" means the same point in time, but not a future point in time."

. . .

"Control" is as defined in N.J.S.A. 17:27A-1.

. . .

"External trend data" means trend data derived from experience other than on policies issued by the filer.

"Filer" means any insurer who makes an annual informational filing, flex rate filing or rate filing requiring prior approval pursuant to these rules.

. . .

"Group of coverages" means liability coverages (to include bodily injury liability, property damage liability, personal injury protection and uninsured/underinsured motorists) and physical damage coverages (to include collision and comprehensive).

"IBNR" or "incurred but not reported loss" means losses which have been incurred but have not yet been reported as of a specified date.

"Informational filing" means a filing made annually on July 1 in accordance with N.J.S.A. 17:29A-36.2b.

"Internal trend data" means trend data derived from the experience of the filer related to the policies it issues.

"Loss development triangle" means a display of losses showing accident year data by evaluation date*[*, with the same number of accident years shown at each evaluation date]*. The accident years shall be shown vertically and the evaluation dates shown horizontally. The first evaluation date shall be three months after the end of the accident year; subsequent evaluations shall be at 12-month intervals. IBNR shall be shown as a separate number at the latest evaluation date for each year displayed.

"MTF" means the Market Transition Facility established pursuant to N.J.S.A. 17:33B-11.

"NJAFIUA" means the New Jersey Automobile Full Insurance Underwriting Association established pursuant to N.J.S.A. 17:30E-1 et seq.

"Public Advocate" means the Division of Rate Counsel, New Jersey Department of the Public Advocate.

"Rating organization" means every person or persons, corporation, partnership, company, society, or association engaged in the business of ratemaking for two or more insurers.

"Rating system" means every schedule, class, classification, rule, guide, standard, manual, table or rating plan by whatever name described containing the rates and rules used by any insurer in determining or ascertaining a rate.

. . .

11:3-16.3 General requirements and filing format

(a) The data requirements set forth in this subchapter are minimum requirements. The filer may submit any other data it believes to be relevant in justifying proposed rate changes. If the filer has not collected portions of this information in the past, or has not collected it in a form so as to facilitate reporting, it is not required to compile it retrospectively. All filers shall begin collecting this information in a manner so as to facilitate reporting no later than January 1, 1991 and report data so collected on filings made or required to be made on or after April 1, 1992. If a filer has collected this information, it may be included on filings made or required to be made prior to April 1, 1992.

(b) Separate insurance companies that are affiliated by a parent-subsidiary or any group relationship and that choose to submit a single filing for the group shall provide the minimum data requirements set forth in N.J.A.C. 11:3-16.8 and 16.9, and make the rate level calculation set forth in N.J.A.C. 11:3-16.10, either:

1. Separately for each company with a different rate level or di ferent underwriting guidelines; or

2. Combined for those companies of the group which use a com mon rating system, including both base rates and underwriting guide lines, or when the difference is based only on expense difference:

(c) Small filers need not provide all of the information require by N.J.A.C. 11:3-16.8(c) and (d); more limited requirements are se forth in those sections. Notwithstanding this, any filing by a sma filer for a rate change shall include sufficient justification for a factors used.

(d) (No change.)

(e) A copy of all rate change filings submitted pursuant to N.J.S.A 17:29A-14 or N.J.S.A. 17:29A-44 shall be submitted simultaneousl to the Public Advocate at the following address:

Department of the Public Advocate
Division of Rate Counsel
*[744 Broad Street
Newark, New Jersey 07102]*
***31 Clinton Street**
P.O. Box 46005
Newark, New Jersey 07101*

(f) (No change.)

(g) All filings shall be accompanied by the following certificatio signed by an officer of the filer: "I _____ certify that the attache filing complies with all statutory and regulatory requirements an that all the information it contains is true and accurate. I furthe certify that I am authorized to execute this certification on behal of the filer."

(h) Each filer shall submit prior approval filings in loose leaf forn inserted into standard three-ring binders. The loose leaf sheets use in the filing shall be eight and one-half inches wide and 11 inche long and punched for three hole standard binders. Only one side o the page shall be used. Each page shall be consecutively numbered

(i) (No change.)

(j) Except for filers with less than 40,000 exposures in the prio year, after January 1, 1991, each flex rate filing when made, or othe rate change filing when effective, shall be accompanied by a compute disk(s) that contains the rating system to be implemented.

i.-3. (No change.)

(k) All data shall be reported on a direct basis exclusive of busines ceded to reinsurers or reinsurance assumed from other companies Notwithstanding this provision, transactions with the UCJF shall b reported as set forth in N.J.A.C. 11:3-16.8(d)1, 11:3-16.9(a)3 an 11:3-16.10(c)3.

(l) Data submitted in any rate filing shall report only voluntar market experience and shall not include experience derived from risk insured through any assigned risk plan established pursuant t N.J.S.A. 17:29D-1. For the purpose of this subsection, "voluntar market" shall include risks insured by the filer in the voluntar market during any period of time certified by the Commissioner fo the cessation of acceptance of applications or the issuance of nev policies by the assigned risk plan pursuant to N.J.S.A. 17:29D-1d

11:3-16.4 Insurer informational filings due July 1 of each year

(a) Informational filings shall be made by all insurers transactin private passenger automobile insurance in the voluntary marke pursuant to N.J.S.A. 17:29A-36.2b.

(b) The informational filing shall consist of the following docu ments:

1. The insurer's Excess Profits Report for each company filec pursuant to N.J.A.C. 11:3-20 and the Financial Data Report for eacl company filed pursuant to N.J.A.C. 11:3-31. In lieu of providin copies, the filer may submit a certification of an officer that th reports have been filed and are incorporated by reference.

2. Such other ***specific*** information ***on a particular subject at a particular time*** as the Commissioner may *[specifically]* require by Order.

11:3-16.5 Insurer flex rating filings

(a) Any insurer that desires to increase its rates in accordance with the flex rate provisions of N.J.S.A. 17:29A-44 and applicable Orders

the Commissioner issued pursuant to N.J.A.C. 11:3-16A shall ovide the following information in support of its flex rate filing:
1. A cover letter notifying the Department of its intention to adjust tes according to the provisions of N.J.S.A. 17:29A-44 and appli- ble Orders of the Commissioner issued pursuant to N.J.A.C. :3-16A; a statement of the percentage and total dollar amount of e increase in rates by coverage for each company included in the ing with subtotals by group of coverages and a grand total (includ- g the variable portion plus expense fees but excluding the policy nstant and RMEC) in the format of Exhibit E in the Appendix corporated herein by reference; a statement containing the effective te of the change; and the name, telephone number and mailing ldress of the company officer familiar with the filing to whom quiries about the filing may be directed;
2. A checklist that sets forth the information in Exhibit AI in the ppendix incorporated herein by reference;
3. The Excess Profits Report (required by N.J.A.C. 11:3-20) and e Financial Data Report (required by N.J.A.C. 11:3-31). In lieu providing copies, the filer may submit a certification by an officer at the documents have been filed and are incorporated into the ing by reference; nevertheless, a complete copy of all documents quired (including the Excess Profits Report and the Financial Data eport) shall be provided to the Public Advocate pursuant to .J.A.C. 11:3-16.3(e);
4. An exhibit that illustrates that the new rates are within the range rmitted by Order of the Commissioner issued pursuant to N.J.A.C. 1:3-16A.
i. When coverages are combined (for example, bodily injury liab- ty and property damage liability) the method of combining shall shown.
ii. When bodily injury liability is combined with any other cov- age or coverages, the method of combining shall be shown separ- ely for each tort threshold.
5. The manual rating pages and computer disk(s) containing the ex rate system to be implemented, accompanied by an explanatory emorandum showing the calculation of the new manual rates, using ie current manual rates as the starting point in the calculation. The emorandum shall also include the Department's file number and ie effective date of use for the current rates.

1:3-16.6 Insurer filings for rates requiring prior approval
(a) Any insurer that desires to modify its rates or rating system a manner other than that provided by N.J.S.A. 17:29A-44 and rders of the Commissioner issued pursuant to N.J.A.C. 11:3-16A garding flex rates shall provide the following information in sup- ort of its application:
1. A cover letter notifying the Department of its intention to odify its rating system in a manner that requires prior approval, ursuant to N.J.S.A. 17:29A-14; a statement describing the proposed anges, which shall include the percentage and total dollar amount f any change in rates for each company included in the filing with btotals by groups of coverages and a grand total (including the ariable portion plus expense fees, but excluding the policy constant nd RMEC) by coverage and overall; and the name, telephone umber and mailing address of the company officer familiar with the ling, to whom further inquiries about the filing may be directed;
2. A checklist that sets forth the information in Exhibit AII in the ppendix incorporated herein by reference;
3. A narrative overview that sets forth the contents of the filing, nd explains the reasons and procedures used to derive the rate ange requested;
4. Data concerning the premiums, losses and loss adjustment ex- enses, as specified in N.J.A.C. 11:3-16.8;
5. Data concerning the expense and profit provisions, as set forth n N.J.A.C. 11:3-16.9;
6. Rate calculation, as set forth in N.J.A.C. 11:3-16.10; and
7. Data described in N.J.A.C. 11:3-16.8, 16.9 and 16.10 shall be bmitted in written copy and, except for purely textual information, n an MS-DOS formatted disk(s). Filers with fewer than 20,000 xposures in the prior year are exempt from submitting the formatted isk. The disk(s) may be either 5.25 inch 360 KB or 3.5 inch 1.44MB. he information shall be provided in a Lotus 1-2-3 or compatible spreadsheet. The left and top margins of each page shall indicate the row and column respectively of all data on the page. Each page of written copy shall also display in the bottom right corner the name of computer file and disk on which it is contained. All calculated values shall be given as a formula in the spreadsheet.
(b) All rate filers shall submit data in support of their application for approval of their proposed rating system based on their own loss experience to the extent it is credible (N.J.A.C. 11:3-16.8), their own expense and profit provisions (N.J.A.C. 11:3-16.9) and their own rate calculation (N.J.A.C. 11:3-16.10).
(c) Upon approval insurers shall file manual rating pages and computer disk(s) containing the rating system on or before the effective date of the rates.

11:3-16.7 Jointly developed historical data
(a) In connection with the dissemination of historical data by rating organizations or advisory organizations for ratemaking purposes, insurers shall comply with the following:
1. Historical data that may be compiled and disseminated by rating organizations or advisory organizations for use by insurers in ratemaking includes:
i. Written and earned premiums and exposures which may be adjusted to consistent levels;
ii. Losses paid;
iii. Reserves for reported claims (whether determined by judgment or set by formula by the insurers); and
iv. Claim counts.
2. For the purposes of this section, "compilation of historical data" includes:
i. Checking the data for accuracy and completeness and excluding data which is inaccurate or incomplete;
ii. Selection of experience (for example, type of business, type of vehicles, accident year or calendar year basis, and deductibles for physical damage);
iii. Selection of number of years;
iv. Calculation of claim cost and frequency, pure premiums, the combination of paid and outstanding losses into incurred losses and the conversion of car months into car years;
v. Compiling losses on a basic and excess limits basis for liability and adjusting losses to a common deductible level for physical damage; and
vi. The organization of or calculations on historical data according to classification detail such as territory, class, etc.
3. The following are not historical data and may not be disseminated for use in ratemaking:
i. Estimates of future values of any data compiled under (a)1 and 2 above;
ii. Reserves for claims which have been incurred but not reported (IBNR);
iii. Operating expenses and profit provisions, including unallocated loss adjustment expenses; and
iv. Trending.
4. Except for activities as a designated statistical agent or activities involved in the creation and maintenance of vehicle series rating systems for private passenger automobile collision and comprehensive coverages, the following are not historical data and may not be disseminated for use in ratemaking:
i. Credibility ***weights to be used to project future values***;
ii. Loss smoothing ***when used to project future values***;
iii. Selection of weights ***when it is done to select future values***;
iv. Relativities and relativity analysis ***when it is performed as part of a projection of future values***; and
v. Final ***trended*** "pure premium" or "loss costs" *[as calculated, based on data permitted to be exchanged]*.
(b) For purposes of this section, "losses paid" and "reserves for reported claims" may include allocated loss adjustment expenses if *[they are also separately identified]* ***it is indicated that allocated loss adjustment expenses are included*** and ***are*** limited to the following expenses which can be allocated to a particular claim:
i. Attorneys fees for claims in suit; and
ii. Court and other specific items of expense such as: medical examinations to determine the extent of a company's liability; expert,

medical or other testimony; laboratory, x-ray and autopsy; stenographic; witnesses and summonses; and copies of documents.

(c) For the purposes of this section, "allocated loss adjustment expenses" shall not include: salaries and traveling expenses of company employees other than amounts allocated as attorneys' fees for costs in suit; overhead; and fees paid to independent adjusters, or attorneys, for adjusting claims.

(d) For purposes of this section, "trending" includes all projections of future costs and any representation of past costs adjusted by a mathematical or non-mathematical process. It does not, however, include displays of historical average costs or frequency, or the display of historical data (*[that is]* ***for example***, loss development triangles with historical link ratios) from which an insurer can independently calculate ***future*** loss development.

(e) Projections of the number and dollar value of incurred and/or paid known claims at future evaluation dates may not be disseminated.

(f) Data on the number and dollar value of claims which have been closed but are expected to reopen may not be disseminated.

(g) Projections of the increase in *[claim costs]* ***number and dollar value of claims*** due to changes in the judicial and regulatory environments, legislative changes and economic variables such as inflation may not be disseminated.

(h) Except as provided in (a) above, marketing data, rate data and rate manuals may not be exchanged.

(i) Insurers may continue to use symbol, vehicle series and model year rating programs for physical damage coverages for model years 1991 and 1992. Pursuant to this section, insurers may jointly develop symbol assignments, vehicle series and model year data and determine adjustments to the symbol assignment through model year 1992.

11:3-16.8 Premium, loss and loss adjustment expense data

(a) Filers shall provide the following data regarding New Jersey premium, loss and loss adjustment expense:

1. For each coverage, or combined coverages when the premium is inseparable, calculate earned premium at present rates using either the extension of exposures or on level factor methodologies. Provide the rate level history. Provide the underlying calculations and indicate how such calculations were produced and supply supporting documentation for a sample of such calculations and justification of any factors used where the on level factor methodology is used. Provide the justification for the selected use of a particular method in calculating the rate level. Provide this information either at basic limits or at total limits.

2. For each coverage and each experience year used in setting the overall rate level, the following information either at basic limits or total limits whichever is consistent with the filer's methodology:

i. Direct earned exposures measured in car years;

ii. Incurred losses;

iii. Applicable loss development factor (aged to ultimate);

iv. Paid or incurred allocated loss adjustment expenses;

v. Paid or incurred unallocated loss adjustment expenses;

vi. Ultimate incurred losses and loss adjustment expenses;

vii. Trend factor; and

viii. Trended ultimate incurred losses and loss adjustment expenses.

3. Whenever New Jersey losses are separated into catastrophe and non-catastrophe losses, include a clear description and justification of the standard used to separate such losses. In determining a catastrophe loading, include as many years of data as available but at least 10 years. Provide an explanation if the data base from which the catastrophe loading is derived differs from that on which the rate level change is based.

4. Territorial rate calculations including earned premiums, earned exposures, incurred losses, and the number of claims by territory separately for each coverage and each of the years used to determine the territorial relativities, or for each of the last three years, whichever is greater.

5. All information related to the derivation of classification differentials contained in the filing. Include the following minimum information:

i. All data and worksheets used and judgments made;

ii. A description of the methodology used to arrive at the differe tials; and

iii. A description of the application of the methodology to th filing.

6. For all incurred loss adjustment expense data contained in tl filing, show the related incurred losses used to determine any lo adjustment expense loadings.

(b) Filers shall provide all information related to the derivatic of credibility factors contained in the filing, specifically including tl following information:

1. All data and worksheets used and judgments made;

2. A description of the methodology used to derive the factor and

3. A description of the application of the methodology to th filing.

(c) Each filer, except small filers, shall provide the data in (c through 9 below. Small filers shall provide the data in (c)4, 5, ar 6 below:

1. All information related to the derivation of loss developme factors contained in the filing specifically including:

i. All data and worksheets used and judgments made;

ii. A description of the methodology used to derive the factor and

iii. A description of the application of the methodology to th filing.

2. For each coverage, complete loss development triangles for tl 10 latest available accident years at each and every annual evaluatic date from 15 months to 123 months for basic Personal Injury Prote tion ("PIP") and Bodily Injury Liability ("BI"), 15 months to 7 months for Property Damage Liability ("PD") and uninsured/unde insured motorists, and 15 months to 51 months for collision ar comprehensive if accident year data is used by the filer to develc its rate level indications for collision and comprehensive coverage Provide the corresponding nine-year, five-year and three-year averaj loss development factors derivable from these *[parallelograms *triangles*. (These are minimum requirements. The filer may prese additional accident years, further evaluations and other averages factors);

3. The information in (c)2 above for total limits paid losses;

4. The information in (c)2 above for total limits incurred losse

5. The information in (c)2 above for basic limits incurred loss if used by the filer to develop its rate level indications;

6. For liability coverages only, the information in (c)2 above f allocated loss adjustment expenses on a paid or incurred basi Alternatively, if allocated loss adjustment expenses are not availab separately, the filer shall provide incurred losses and allocated lo adjustment expenses combined ***and so indicate on the filing***;

7. The information in (c)2 above for the number of paid claim

8. The information in (c)2 above for the number of incurre claims; and

9. A statement regarding any changes in the filer's case loss reser ing practices during the last five years.

(d) Each filer, except small filers, shall provide the following da regarding trend factors and their application:

1. All internal loss trend data on either a calendar year paid incurred basis shown separately for frequency and severity for tl latest available five calendar years on a quarterly year ending bas for all coverages on both a countrywide and New Jersey basis. Bodi injury liability and property damage liability trend data shall be give at basic or total limits, whichever is consistent with the filer's metho ology. Basic personal injury protection ("PIP") data shall be give at a per person limit retained by the insurer according to N.J.S.A *[36:6-73.1]* ***39:6-73.1*** ($75,000 of insurer payments). Physic damage coverages shall be shown on the basis of the $500.00 dedu tible or all deductibles combined adjusted to the $500.00 deductib basis. In the latter case the filer shall provide an explanation of tl methodology for adjusting other than $500.00 deductible data to tl $500.00 deductible level.

2. For all trend data described above, calculate annual trend fa tors along with "T" statistics and the coefficient of correlation. Th

ıall be done from a least-squares regression with time being the dependent variable.

i. Include trend results calculations for ***at least two of*** the latest x, nine, 12, 16 and 20-point periods;

ii. *[A]* ***Include a*** side-by-side comparison of the actual data ıd fitted data; and

iii. Include calculations on both an exponential and straight line ısis.

3. All information related to the derivation of trend factors con-ined in the filing specifically including:

i. All data used, worksheets used, and judgments made;

ii. A description of the methodology used to derive the factors; ıd

iii. A description of the application of the methodology to this ing.

4. Information, including studies, analyses, and fact sheets regard-g the effects (both countrywide and in New Jersey) of the items :scribed in (d)4i through vi below if the filer has either compiled e information itself or relied upon outside information in the sup-ort of the filing. If the effects of such studies, etc., have been corporated into the rate filing, describe in detail the methodologies ed. Provide this information for the following:

i. Changes in seatbelt use;

ii. Use of passive restraint systems, including air bags, and any her safety or anti-theft devices including, but not limited to, anti-ck braking systems; and automatic traction control systems;

iii. Changes in the drinking age;

iv. Changes in the price and amount of gasoline purchased;

v. Changes in the average miles driven; and

vi. Other legislative, regulatory, social, or economic factors that ıve an impact on loss frequency or severity, including, but not nited to, the effects of the Fair Automobile Insurance Reform Act 1990, P.L. 1990, c.8.

(e) Each filer shall provide the following regarding changes in the ew Jersey premium base and exposures:

1. Data on the mix of written exposures by different policy terms r the latest three years. Include both the number of written ex-osures and the amount of written premium for different policy rms;

2. Calculate the trend in the average model year and symbol rela-ivities for collision and comprehensive coverages separately during e most recent five calendar years. Explain how these trends were lculated and provide all intermediate calculations. Show the aver-ge age/model year and average symbol relativity for each of the test five calendar years. Include the distributions of written ex-osure by age/model year and symbol for comprehensive and col-ion coverages separately for each of the latest five calendar years; ıd

3. The most recent five-year history of the distribution, by deduc-ble amount, of written exposures and premium of comprehensive ıd collision coverages purchased.

(f) Filers shall provide the following regarding limitations appli-ble to the filing:

1. Limitations on losses and/or loss adjustment expenses included the statistical data used in the filing;

2. Limitations on the extent of the rate level change by coverage;

3. Limitations on the extent of territorial rate changes;

4. Limitations on the extent of classification rate changes; and

5. Any other limitations applied.

(g) Filers shall provide the following New Jersey calendar year ıta on a direct business basis by coverage and group of coverages:

1. The amount of earned premium, incurred losses, incurred al-cated and unallocated loss adjustment expenses for each of the test five complete calendar years; and

2. The number of incurred claims (all limits ***combined*** and all :ductibles ***combined***) by coverage and allocated loss adjustment penses for each of the latest five complete calendar years.

(h) Filers shall show the overall Statewide rate change indicated by verage.

*[(h)]**(i)* Filers shall provide any additional information specifi-lly requested by the Department which may be necessary to con-tute a proper rate filing.

11:3-16.9 Data requirements for expense and profit provisions

(a) Filers shall provide the data in (a)1 through *[3]***6*** below regarding expenses:

1. All information related to the derivation of expense provisions contained in the filing specifically including:

i. All data and worksheets used and judgment made;

ii. A complete description of the methodology used to derive the provisions; and

iii. Details on the application of the methodology to this filing;

2. Average incurred expenses per exposure on a New Jersey basis (explain the basis of allocation) and on a countrywide basis for each of the last five complete calendar years for the following expense categories:

i. Commission and brokerage;

ii. Other acquisition expenses;

iii. General expenses; and

iv. Taxes, licenses and fees;

3. The derivation of the expense flattening as required by N.J.S.A. 17:29A-37. The expense flattening calculation shall exclude the UCJF assessment for the excess medical benefits reimbursed to insurers by that fund. The expense shall be applied by coverage;

4. All data shall be on a direct basis excluding AIRE assessments and reimbursements;

5. New Jersey private passenger automobile insurance expense data separately for the most recent three complete calendar years using the format of the Underwriting Investment Exhibit, Part 4—Expenses of the Statutory Annual Statement; and

6. AIRE assessment and reimbursements in dollars and as a percent of bodily injury liability paid losses for the most recent five complete accident years evaluated as of March 31 of the current year.

(b) Filers shall provide the following data regarding proposed rates:

1. Proposed rates for each territory and coverage together with their derivation;

2. Classification differentials, with descriptions, if any proposed changes are being made to the currently approved classification plan;

3.-4. (No change.)

(c) Filers shall provide the following data regarding investment earnings:

1. The amount of investment income earned on loss, loss adjustment expense and unearned premium reserves in relation to earned premium for private passenger automobile insurance in New Jersey shall be calculated for the latest two years and estimated for the current year and the two following years. Calculations should be provided in detail including the amount of the composite reserves of each type (that is, loss, loss adjustment expense and unearned premium) at the beginning and end of each of the specified years;

2. The cash flow pattern from policy inception date until receipt of premium. This shall be provided by coverage;

3. The cash flow pattern from policy inception date for commission and brokerage, other acquisition expenses, general expenses, assessments, premium taxes, licenses and fees and any other expense payments; and

4. The cash flow pattern from policy inception date for losses, allocated loss adjustment expenses, and unallocated loss adjustment expenses.*

*[(c)]**(d)* Filers shall provide the following regarding identification and certification of statistical plans:

1. Identification of all statistical plans used or consulted in preparing the filing; and

2. (No change.)

*[(d)]**(e)* Filers shall provide the following information regarding investment earnings on capital and surplus:

1. Given the selected underwriting profit and contingency loadings contained in the filing, the resulting rate of return on equity capital and on total assets, showing the derivation on all factors used to produce the calculations; and

2. Justification that these rates of return are fair and reasonable. These calculations shall be performed by group of coverages.

*[(e)]**(f)* Filers shall provide also the following:

1. The amount of finance and other miscellaneous charges collected in New Jersey in connection with the sale of private passenger automobile insurance;

2. A description of all products and services supplied or received in transactions between the filer and a parent company, a wholly-owned subsidiary or an affiliated company; and

3. Any additional information specifically requested by the Commissioner which may be necessary to constitute a proper rate filing.

11:3-16.10 Rate calculation using standard ratemaking methodology

(a) Investment income shall be treated by group of coverages as follows:

1. (No change.)

2. No deductions shall be made for prepaid expenses unless there is specific documentation included in the filing that supports the prepayment of those expenses, which shall include the cash flow pattern from policy inception date for commission and brokerage, other acquisition expenses, general expenses, assessments, premium taxes, licenses and fees and any other expense payments.

3. No deductions shall be made for the delayed remission in premiums unless there is specific supporting documentation in the filing verifying such delay in the remission of premiums, which shall include the cash flow pattern from policy inception date until receipt of premium.

4. (No change.)

5. The ratio of loss reserves to incurred losses shall be on a direct business basis derived from the appropriate line of business from Page 14 of the Statutory Annual Statement for New Jersey. The calculations shall be as follows:

i. The average of the loss reserve (excluding the reserves for excess medical benefits claims over $75,000 ***and AIP reserves***) at the beginning of the year and at the end of the year divided by the corresponding incurred losses during the year;

ii. The ratio of these reserves to corresponding losses incurred shall be calculated for the most recent four calendar years; and

iii. If there is a monotonic change in these ratios, either up or down, the most recent ratio shall be used in the calculation. If no such trend exists, the unweighted average of the four ratios shall be used in the calculation.

6. The ratio of loss adjustment expense reserves to loss reserves shall be derived from the appropriate line of business from Part 3A—Unpaid Losses and Loss Adjustment Expenses of the Annual Statement. The calculations shall be as follows:

i. The unpaid loss adjustment expense divided by the net losses unpaid excluding loss adjustment expense;

ii. This ratio shall be calculated for the most recent four calendar years; and

iii. If there is a monotonic change in these ratios, either up or down, the most recent ratio shall be used in the calculation. If no such trend exists, the unweighted average of the four ratios shall be used in the calculation.

7. The expected loss and loss adjustment expense ratio shall be one minus the underwriting expense ratio, minus the underwriting profit and contingency ratio derived from the Clifford Formula.

8. The interest rate used in the calculation shall be a simple average of the most recent 12 monthly numbers for the Treasury constant three-year maturity rate as published in the Federal Reserve statistical release "Selected Interest Rates".

(b) Underwriting expense provisions shall be determined as follows:

1.-7. (No change.)

8. The following expense items shall not be incorporated into the expense base for determining rates:

i. Fines against the company;

ii. Lobbying expenses;

iii. Charitable contributions;

iv. Political contributions;

v. Awards against the company itself for punitive damages and for bad faith claims;

vi. Advertising and other expenses incurred in connection with proposed changes in the regulation of insurance; and

vii. Assessments and surtaxes imposed pursuant to N.J.S.A 17:30A-8(9) and 17:33B-49, respectively.

9. The filing shall include for each of the categories in (b)8 abov the dollars of expense that were excluded from the rate base, sepa ately for each year of historic information and separately for eac of the above seven categories. If the filer submits a ratemakin methodology that includes these expenses pursuant to (f) belov specific justification for including these expenses shall be include

10. (No change.)

(c) The data base to be used shall be as follows:

1. Accident year data shall be used for all liability coverage Accident year or calendar year data shall be used for physical damag coverages.

2. The most recent accident year data used in the filing shall en no more than 15 months prior to the date of submission of the filin ***Data may be from either a fiscal year or year ending December 3 so long as the period is within 15 months of the filing.***

3. Personal injury protection experience shall be limited to th direct "before reinsurance" exposure retained by the insurance com pany according to N.J.S.A. ***[36]**39***:6-73.1. Any losses reimburse or subject to reimbursement to the insurer by the UCJF for exce medical benefits shall not be included with the experience containe in the filing.

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

(f) The ratemaking methodology set forth in (a) through (e) abo is the Department's preferred procedure and must be included in th filing. The filer may, however, propose an alternate procedure in tot or in part and support it with such calculations and other informatio it deems appropriate to demonstrate the superiority of the alterna procedure in the determination of the filer's rates.

1. In the event the filer has computed the rates using an alterna methodology, it shall provide all information related to the derivatio of the profit and contingency loading contained in the filing, specif cally including:

i. All data and worksheets used and judgments made;

ii. A description of the methodology used to arrive at the selecte loading; and

iii. Details on the application of the methodology to this filin

2. Filers which propose an alternate ratemaking methodolog shall show the overall statewide rate change by coverage by both th standard and alternate methodologies.

11:3-16.11 Rate filings reflecting assessments and surtaxes

(a) All insurers who submit a rate filing which reflects assessmen or surtaxes imposed pursuant to N.J.S.A. 17:30A-8(a), an 17:33B-49, respectively shall submit such rate filing independently any prior approval rate filing submitted pursuant to N.J.A.C 11:3-16.6.

(b) Any insurer desiring to modify its rates to reflect assessmen or surtaxes imposed pursuant to N.J.S.A. 17:30A-8(9) and 17:33B-4 respectively shall provide the following information in support of i application:

1. All of the data required for prior approval filings submitte pursuant to N.J.A.C. 11:3-16.6;

2. A copy of the statutory property and casualty Annual Stat ment, Exhibit of Premiums and Losses (page 14) for New Jersey f each of the most recent 10 years. The insurer shall also file info mation combining this data for each of the most recent 10 years f all states and the District of Columbia, if applicable, in which th insurer is authorized to transact business; and shall provide a list these jurisdictions;

3. The following data for all of its insurance affiliates for each the most recent 10 years on a Statewide and countrywide basis;

i. For property and casualty affiliates, Exhibit of Premiums an Losses (page 14) of the statutory property and casualty Annu Statement;

ii. For title insurance affiliates, Operations and Investment Exhib (page 4) and Schedule T—Exhibit of Premiums Written (page 3 of the statutory title insurance Annual Statement;

iii. For life and health affiliates, Liabilities, Surplus and Oth Funds (page 3); Analysis of Operations by Lines of Business (pa

); and Exhibit I Part 1 and Part 2 (pages 7 and 7A) of the statutory fe and health Annual Statement; and

iv. An estimate of the amount of business in other lines that is roduced by the synergistic effects of the insurer writing private assenger automobile insurance in this State.

4. Certifications/representations by the insurer's Chief Financial)fficer and President containing the information set forth in Exhibit in the Appendix incorporated herein by reference;

5. A schedule of Key Performance Indicators (KPI's), as set forth n Exhibit G in the Appendix incorporated herein by reference, for he year of the rate filing and each of the preceding two years;

6. For the current year and preceding two years, a schedule of remiums, incurred losses and operating expenses by New Jersey ines of business corresponding to line items one (1) through twenty-wo (22) of Part II of the IEE. In addition, provide a schedule of perating expenses by classification corresponding to line items one 1) through twenty-two (22) of Part I of the IEE. The aggregate of xpenses reported by line item must agree with the total operating xpenses related to New Jersey policies reported by line of business n Part II of the IEE, (sum of lines four (4) through eight (8));

7. For each line item expenditure included in the schedule required ursuant to (b)6 above, the following:

i. A description of all allocation methodologies used to allocate orporate-wide costs (including worldwide, countrywide and re-ionalwide costs) to New Jersey lines of business;

ii. A description of all allocation methodologies used to allocate perating expenses to New Jersey private passenger automobile liab-lity and physical damage lines of business and to all other New Jersey ines of business;

iii. An explanation for any changes in allocation methodologies etween years;

iv. For NJAFIUA/MTF servicing entities which are also insurers, n explanation for differences between allocation methodologies used o prepare the schedule required pursuant to (b)6 above and the nethodologies used to prepare Exhibit P of the NJAFIUA/MTF eporting package; and

v. For each operating expense classification by each New Jersey ine of business, a schedule which shows the expenses directly charged o a line of business; and indirect expenses allocated to various lines f business using a reasonable allocation methodology;

8. For each New Jersey line of business (including private passen-er automobile), the following:

i. The number of ***named*** insureds;

ii. The number of employees directly dedicated to the line of business;

iii. The square feet of office space dedicated to the line of business (excluding allocations of corporate or administrative office space);

iv. The hours of data processing time charged;

v. The *[number]* ***volume*** of exposures;

vi. The number of policies in force; and

vii. The number of claims reported during each of the three years requested;

9. A report, based on a study and evaluation of the insurer's system of internal accounting control and signed by an independent public accountant. The report shall state that in the accountants' opinion, the system of internal accounting control of the insurer in effect during the current year, taken as a whole, was sufficient to meet the objectives of a system of internal accounting control insofar as those objectives pertain to the prevention or detection of errors or irregularities in amounts that would be material in relation to the insurer's financial statements;

10. A listing of all internal audits performed of the operations of the New Jersey private passenger automobile lines of business during the current year, including the scope of procedures performed;

11. Copies of all internal audit reports issued during the current year pursuant to (b)10 above and management responses to all internal audit findings*, **which are deemed to be confidential pursuant to N.J.S.A. 17:23-6***;

12. Access to source documents which, in the opinion of the Commissioner, are necessary to support any and all transactions reported on the insurer's statutory annual statement filed with the Department or to support any other schedules referred to herein;

13. An explanation why the insurer believes that the assessment imposed by N.J.S.A. 17:30A-8(9) should be reflected in the requested private passenger automobile rates since the assessment, by statute, is classified as a loan; and

14. Any additional information specifically requested by the Commissioner which may be necessary to evaluate the request for rate relief.

(c) Upon written application and for good cause shown, the Commissioner may, in his or her discretion, waive any of the data filing requirements set forth in (b) above.

(d) The Commissioner shall not approve any increase in an insurer's rates on the basis that the insurer is required to pay assessments pursuant to N.J.S.A. 17:30A-8(9), or surtaxes pursuant to N.J.S.A. 17:33B-49, unless he or she shall find that an increase in revenue is necessary to ensure that the insurer earns a constitutionally adequate return. In making that determination the Commissioner shall consider:

1. The insurer's experience on all lines of its business in New Jersey, and in the case of insurers operating in an insurance holding company system, the experience of all of the lines of business of all affiliated companies in New Jersey, for a period of time over which an insurer could reasonably plan to earn a target rate of return;

2. Whether the insurer and its affiliates, if any, are reasonably efficient in their operations, including claims handling, subrogation and salvage, by comparison to insurers on a statewide and countrywide basis;

3. Whether the insurer and its affiliates, if any, have allocated expenses to New Jersey operations in a fair and equitable manner; and

4. The synergistic effect of mandated private passenger automobile insurance on the sale of other lines of insurance that the filer writes, including, but not limited to, higher premium volumes, lower operating costs and lower acquisition costs.

(e) Each filer shall present in its filing a formula it believes appropriate for determining the return required by relevant constitutional principles, with supporting analysis and data fully explaining why such formula should be utilized.

(f) The Commissioner may determine whether an insurer's rates are, as a result of the payment of the surtaxes and assessments, constitutionally adequate. In the event that the Commissioner determines that rate relief is deemed to be necessary, the Commissioner shall determine whether the rates should be adjusted immediately or over time, as may be appropriate.

11:3-16.12 (No change in text.)

11:3-16.13 Rate adjustments upon repayment of assessments

(a) At such time that the loans provided for in N.J.S.A. 17:30A-8(a)(10) from the Property-Liability Insurance Guaranty Association to the Automobile Insurance Guaranty Fund are repaid, the Guaranty Association shall determine the proportion of the repayment which is to be allocated to each insurer which paid assessments pursuant to N.J.S.A. 17:30A-8(a)(9).

(b) The Guaranty Association shall advise each insurer in writing of the amount of the repayment which is to be allocated to that insurer, and shall further advise the insurer that it must comply with the provisions of N.J.A.C. 11:3-16.13(c) before the funds will be remitted.

(c) Prior to receiving repayment of any funds attributable to the assessments paid to the Guaranty Association pursuant to N.J.S.A. 17:30A-8(a)(9), an insurer shall file a plan with the Commissioner for a reduction of rates commensurate with such repayment. Upon the Commissioner's review and approval of such plan, the Commissioner shall order the repayment of funds from the Guaranty Association to the insurer.

AGENCY NOTE: Repealed Exhibits AI, AII and E are not reproduced herein, but may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-16 Appendix. The new text of these Exhibits follows.

APPENDIX

EXHIBIT A I

FLEX RATE FILINGS

COMPANY:_____

COMPANY FILE NO._____

RATE FILING REQUIREMENTS:	PAGE #
(1) COVER LETTER NOTIFYING THE DEPARTMENT OF INTENTION TO INCREASE RATES IN ACCORDANCE WITH N.J.S.A. 17:29A-44	____
(2) STATEMENT OF PERCENT OF INCREASE BY COVERAGE (INCLUDING VARIABLE PORTION AND EXPENSE FEES EXCLUDING POLICY CONSTANT AND RMEC)	____
(3) STATEMENT OF DOLLAR AMOUNT OF INCREASE BY COVERAGE	____
(4) EFFECTIVE DATE OF CHANGE	____
(5) NAME, ADDRESS AND TELEPHONE NUMBER OF COMPANY OFFICER FAMILIAR WITH FILING	____
(6) MANUAL PAGES CONTAINING THE FLEX RATES	____
(7) A COPY OF THE FILING MUST BE SUBMITTED TO THE NEW JERSEY PUBLIC ADVOCATE'S OFFICE	____
(8) FORM AMB 10 MUST BE INCLUDED	____
(9) CERTIFICATION BY COMPANY OFFICER THAT FILING MEETS STATUTORY AND REGULATORY REQUIREMENTS AND INFORMATION IS ACCURATE AND TRUE	____
(10) FILER'S NAME SHOWN	____
FILER'S IDENTIFYING NUMBERS	____
FILER NAIC #	____
GROUP NAIC #	____
(11) CERTIFICATION BY COMPANY OFFICER THAT EXCESS PROFITS REPORT REQUIRED BY N.J.A.C. 11:3-20 HAS BEEN FILED	____
(12) CERTIFICATION BY COMPANY OFFICER THAT FINANCIAL EXPERIENCE REPORT AS REQUIRED BY N.J.A.C. 11:3-31 HAS BEEN FILED	____
(13) CERTIFICATION BY COMPANY OFFICER THAT ANNUAL INFORMATION FILING AS REQUIRED BY N.J.A.C. 11:3-16.4 HAS BEEN FILED	____
(14) THE MOST RECENT FIVE COMPLETE CALENDAR YEAR HISTORY OF THE DISTRIBUTION, BY LIMIT OF LIABILITY OF WRITTEN EXPOSURES AND PREMIUMS FOR:	
BODILY INJURY LIABILITY	____
PROPERTY DAMAGE LIABILITY	____
COMBINED SINGLE LIMIT LIABILITY	____
UNINSURED/UNDERINSURED MOTORISTS	____
(15) EXHIBIT SHOWING COVERAGE WEIGHTS AND CALCULATION OF NEW VARIABLE BASE RATES IF COVERAGES ARE COMBINED	____
(16) COMMISSION EQUALIZATION WORKSHEET	____

EXHIBIT A II

PRIOR APPROVAL FILINGS

COMPANY_____

COMPANY FILE NO._____

RATE FILING DATA REQUIREMENTS:	PAGE
(1) Cover Letter notifying department of intention to modify rates which requires prior approval.	____
Statement of % of change by coverage and overall by company (including variable portion and expense fees exc. policy constant and RMEC).	____
Statement of dollar amount of change by coverage and overall by company.	____
Proposed Date of the Change.	____
Name, address and telephone number of company officer familiar with filing.	____
An overview of the contents of filing and the reasons and procedures used to derive the rate change requested.	____
Manual pages on or before the effective date of the rates.	____
Computer Disk containing rating system if over 40,000 exposures.	____
Data Disk if over 20,000 exposures.	____
(2) The following data must be filed by:	
PREMIUM DATA:	
Earned premium at present rates for each coverage or combined coverages using extension of exposures or on level factors.	____
A rate level history.	____
Explanation as to how calculations were produced and documentation for sample of such calculation and justification for factors used including the rate level history.	____
Justification for the selected method.	____
Data on a basic or total limits basis.	____
LOSS DATA:	
For each coverage and each year used in calculating rate level loss data is provided on a basic or total limits basis.	____
Each year and each coverage includes:	
Earned Exposures	____
Incurred Losses	____
Loss Development Factor	____
Unallocated Loss Adjustment Expense	____
Allocated Loss Adjustment Expense	____
Ultimate Incurred Losses and Loss Adjustment Expense	____
Trend Factor Expenses	____
Trended Ultimate Incurred Losses and Loss Adjustment Expenses	____
If New Jersey losses are separated into catastrophic and non-catastrophic, a description of method used to separate losses.	____
If the number of years used to determine catastrophe loading is different than number of years available, an explanation is provided, at least 10 years needed.	____
Territorial Rate Calculations include earned premiums, earned exposures, incurred losses, and number of claims by territory for each coverage and each of the years used to determine territorial relativities or last three years, whichever is greater.	____
Provide the following information with regard to classification differentials:	
Data used, worksheets used and judgments made.	____
Methodology used to arrive at differentials.	____
Description of application of the methodology to this filing.	____
For loss adjustment expense data showing related incurred losses used to determine any loss adjustment expense loadings.	____
(3) DERIVATION OF CREDIBILITY FACTORS	
Provide all data *[reviewed]* ***used*** and judgments made.	____
Provide description of methodology used to derive factors.	____

LOSS DEVELOPMENT

All data used, worksheets used and judgments made. ____

Description of the methodology used to derive the loss development factors. ____

By coverage provide total limits paid loss development parallelograms for the latest 10 accident years at each annual evaluation date from 15 months to 123 months for PIP and BI, 15 months to 75 months for PD and Uninsured/Underinsured Motorist, 15 months to 51 months for collision and comprehensive if on an accident year basis. ____

Nine, five, and three year average loss development factors by coverage. ____

Loss Development Data must be provided by:

Total Limits Paid Losses ____

Total Limits Incurred Losses ____

Basic Limits Incurred Loss if used for rate level ____

Allocated Loss Adjustment Expenses ____

Incurred Losses Allocated Loss Adjustment Expenses ____

Number of Paid Claims ____

Number of Incurred Claims ____

Statement regarding any changes in loss reserving practices during last five years. ____

) TREND FACTORS:

All internal loss trend data on either a calendar year paid or incurred basis for the latest five years on a quarterly year ending basis. ____

Bodily Injury Liability data on a basic or total limits basis (Frequency & Severity shown separately). ____

Property Damage Liability shown on a basic or total limits basis (Frequency & Severity shown separately). ____

PIP shown at a per person limit retained by insurer. ____

Collision and Comprehensive shown on basis of: ____

$500 Deductible or adjusted to $500 Deductible. ____

Calculate Annual Trend Factors, T-statistics, and coefficient of correlation using least squares regression for all trend data. ____

Calculations for at least 2 of 6, 9, 12, 16, 20 point periods on both exponential and straight line basis. ____

Side by side comparison of actual data, fitted data and differences. ____

All data used, worksheets used and judgments made regarding trend. ____

Description of methodology used to derive factors. ____

Description of application of the methodology used to this filing. ____

If filer has included the effects of any studies, analyses, or fact sheets, describe in detail the methodologies used for the following: ____

Changes in seatbelt use. ____

Changes in use of passive restraint system. ____

Changes in drinking age. ____

Changes in price and amount of gasoline purchased. ____

Changes in average miles driven. ____

Legislative, regulatory, social or economic factors. ____

5) NEW JERSEY PREMIUM BASE AND EXPOSURES

a. Data on mix of written exposures by different policy terms for latest 3 years. Include both written exposures and amount of written premiums for different policy terms. ____

b. Calculation of trend showing all steps for average model year and symbol relativities for most recent 5 calendar years. ____

c. Actual model year and symbol written exposure and distribution for comprehensive and collision separately for each of the last 5 calendar years. ____

d. Five year history of distribution by written exposures and premium of comprehensive and collision by deductible amount. ____

(7) LIMITS ON FILING

Limitations on losses and/or loss adjustment expenses included in statistical data used in filing. ____

Limitations on extent of rate level change by coverage. ____

Limitations on extent of territorial rate changes. ____

Limitations on extent of classification rate changes. ____

Limitations not provided for above. ____

(8) BY COVERAGE AND GROUP OF COVERAGES:

Amount of Earned Premium, incurred losses, incurred allocated and unallocated loss adjustment expense for each of the latest 5 calendar years. ____

Number of claims incurred for all limits and deductibles by coverage. ____

Allocated loss adjustment expenses for each of latest 5 calendar years. ____

(9) EXPENSE AND PROFIT PROVISIONS

For each filer provide all information related to derivation of expense provisions including:

All data used, worksheets used, and judgments made. ____

Description of methodology used to derive provisions. ____

For each of the latest 5 calendar years provide:

Average Incurred Expenses per exposure on a New Jersey basis for:

Commission & Brokerage ____

Other Acquisition ____

General Expense ____

Taxes, Licenses, Fees ____

Explanation of Basis of Allocation Taxes ____

Average Incurred Expenses per exposure on a countrywide basis for:

Commission & Brokerage ____

Other Acquisition ____

General Expense ____

Taxes, Licenses, Fees ____

Provide Derivation of Expense Flattening (Exclude UCJF assessment for excess medical). ____

Three years New Jersey auto expenses as in Part 4.

Underwriting Investment Exhibit, Annual Statement. ____

Five years AIRE assessments and reimbursements ____

(10) DATA REGARDING PROPOSED RATES

Proposed rates for each territory and coverage with their deviation. ____

If classification plan is changed describe classification differentials. Provide explanation of how classification rates are determined and provide a sample calculation. ____

Provide calculations showing how base rates are in compliance with N.J.S.A. 17:29A-36.

Base class not greater than 1.35 statewide average base rate (include expense fees). ____

Principal operator over 65 not greater than 1¼ times statewide average rate for principal operators over 65. ____

Comparison of average statewide variable rates and expense fees proposed and currently in use and # of exposures by coverage. ____

(11) INVESTMENT EARNINGS:

Amount of investment income earned on loss, loss adjustment expense and unearned premiums reserve to earned premium for the latest 2 years, estimated for current and two following years. ____

Reserves at beginning and end of specified years:

Loss Reserve ____

Loss Adjustment Reserve ____

Unearned Premium Reserve ____

By coverage cash flow pattern from policy inception until premium received. ____

Cash flow pattern from inception for commission and brokerage, other acquisition expenses, general expenses, assessments, premium taxes, licenses, fees, other expense payments. ____

Cash flow pattern from inception for losses, allocated loss adjustment expense, and unallocated loss adjustment expense. ____

(12) STATISTICAL PLANS

Identify plans used or consulted in preparing filing. ____

Describe data compiled by each plan. ____

Certification by officer that data was collected by such plans and is true and accurate. ____

Identify data not collected in accordance with plan and used in filing. ____

(13) OTHER

Using the underwriting profit and contingency loadings selected for use in the filing, provide the rate of return on equity and assets by group of coverages. ____

Provide justification that rates of return are fair and reasonable. ____

Provide amount of finance and other miscellaneous charges collected in New Jersey for auto. ____

Provide a description of all products, and services supplied between filer and a parent company. ____

(14) STANDARD RATEMAKING METHODOLOGY

INVESTMENT INCOME

Underwriting profit calculated using the Clifford Formula so that after tax profit from underwriting and investment income on loss and LAE and unearned premium reserve is 3.5% of premium. ____

If there is deduction for prepaid expenses or delayed remission of premiums support is provided. ____

The ratio of unearned premium reserves to premium from Page 14 of annual statement. (Direct E.P. divided by Direct Premium Written) is provided. ____

The ratio of loss reserves to incurred losses from Page 14 of annual statement for 4 years (Avg. of LR at beg. of yr. & at end of yr. divided by incurred losses during yr.) Monotonic *[trend]* ***change*** use latest ratio, otherwise use average of 4 years. ____

The ratio of loss adjustment expense reserves to loss reserves from annual statement for 4 years. (Unpaid LAE divided net losses unpaid exc. LAE) Monotonic *[trend]* ***change*** use latest ratio, otherwise use average of 4 years. ____

The expected loss and LAE ratio 1—(Underwriting Exp. Ratio + Underwriting Profit & Cont. Radio). ____

Interest Rate = Treasury 3-year constant maturity rate 12 months. ____

(15) UNDERWRITING EXPENSE PROVISIONS

NJ data for commission and brokerage. ____

NJ data for taxes, licenses, fees. ____

Basis of allocation for general expenses if NJ data is not used. ____

Provision for other acquisition and general expense based on separate trending of dollar amounts for these items. (50/50 weighting of trend using AICP index and MAWWFCIE index and regression analysis). ____

Historic Exp. Provisions limited by % in Best Aggregates & Averages for comparable company. ____

UCJF loading = latest year. ____

Fines against companies, lobbying expenses, charitable and political contributions awards against company for punitive damages, advertising legal and expenses in connection with changes in regulation of insurance *[premium by surcharge]**, **and assessments and surtaxes*** are not included. Company must show dollar amount of expense excluded separately and by year. ____

Commissions for BI for $0 and verbal threshold are equalized. ____

(16) DATA BASE

Accident year used for either calendar or accident year for physical damage. ____

Most recent data year ends no more than 15 months prior to submission. ____

PIP limited to direct exposure retained by company. ____

(17) TREND

Separate determinations of loss severity and frequency trends. ____

Adjustment for symbol drift and model year rating. ____

(18) TOTAL RATE OF RETURN

Demonstrate reasonable rate of return from capital investment will result from proposed rates. ____

(19) ALTERNATIVE RATEMAKING METHODOLOGY

Is one used? ____

If yes, provide: all data *[reviewed]* used, worksheets used, description of methodology to arrive at selective loading. ____

Details on application of methodology to this filing. ____

Overall statewide rate change and by coverage standard and alternate methodology. ____

(20) GENERAL AND FORMAT REQUIREMENTS

Separate insurance companies make rate calculation separately and combined as a group if separate rate levels or underwriting guidelines are used. ____

Form AMB 10 must be included. ____

Certification by company officer (meets statutory and regulatory requirements). ____

Loose leaf binder, one side of page, consecutively numbered. ____

Filer's name shown ____

Filer's identifying numbers ____

Filer's NAIC # ____

Group NAIC # ____

(21) List of items the filer states are not included and the reason why. ____

(22) IF SURTAX AND GUARANTY *[FUND]* ***ASSOCIATION ASSESSMENT*** REFLECTED IN FILING:

Annual Statement, New Jersey, Page 14, for 10 years. ____

Annual Statement, Countrywide, Page 14 equivalent 10 years. ____

(A) EACH AFFILIATE, NEW JERSEY AND COUNTRYWIDE

PROPERTY AND CASUALTY

Annual Statement, New Jersey, Page 14, for 10 years. ____

Annual Statement, Countrywide, Page 14 equivalent 10 years. ____

TITLE INSURANCE AFFILIATES

Operations and Investment Exhibit, Page 4, 10 years. ____

Premiums Written, Schedule T, page 39, 10 years. ____

LIFE AND HEALTH AFFILIATES

Liabilities, Surplus and Other Funds, page 3, 10 years. ____

Analysis of Operations by lines of business, page 5, 10 years. ____

Exhibit I, Part 1 and Part 2, pages 7 and 7A, 10 years. ____

(B) ADDITIONAL DATA AND CERTIFICATIONS

Estimated amounts of business in other lines because the insurer writes private passenger automobile in New Jersey. ____

Certifications and representations by both Chief Financial Officer and President on information in Exhibit *[T]**F*. ____

Schedule of Key Performance Indicators in Exhibit G. ____

Current year and preceding two years operating expenses by classification for each New Jersey line of business. (Insurance Expense Exhibit Parts I and II.) ____

Description of all allocation methodologies used to allocate corporatewide costs to New Jersey lines of business. ____

Description of allocation methodologies to New Jersey private passenger automobile liability and physical damage lines of business. ____

Explanation of any allocation changes between the years. ____

For NJAFIUA/MTF servicing entities which we also insure. Differences in allocation methodologies for IEE and Exhibit P of NJAFIUA/MTF reporting package. ____

Each operating expense classification by each New Jersey line of business, directly charged expenses, and indirectly allocated expenses. ____

3) DATA FOR EACH NEW JERSEY LINE OF BUSINESS:

Number of insureds. _____

Number of employees directly dedicated to business. _____

Square feet of office space dedicated to line of business. _____

Hours of data processing time. _____

Number of exposures. _____

Number of policies in force. _____

Number of claims in each of 3 years requested. _____

4) ACCOUNTING REPORTS AND AUDITS

Report by independent public accountant evaluating the insurer's system of internal accounting controls. _____

Listing of internal audits for New Jersey private passenger lines of business current year. _____

Copies of all internal audits issued during the current year with management responses. _____

5) OTHER INFORMATION

Why the assessment *[(17:30-8(9)]**(17:30A-8(9)*) should be reflected in rates since it is a loan. _____

Formula filer believes appropriate for determining constitutional rate of return with supporting analysis and data _____

EXHIBIT E

	Percentage Change	Dollar Effect
odily Injury		
Verbal	_____	_____
Zero	_____	_____
roperty Damage	_____	_____
ersonal Injury Protection	_____	_____
Jninsured Motorists		
Verbal	_____	_____
Zero	_____	_____
Total Liability	_____	_____*
omprehensive	_____	_____
ollision	_____	_____
otal ***Physical Damage***	_____	_____
Overall Total	_____	_____*
xpense Fees	Current	Proposed
ingle Limit Liability	_____	_____
odily Injury	_____	_____
roperty Damage	_____	_____
ersonal Injury Protection	_____	_____
omprehensive	_____	_____
ollision	_____	_____

EXHIBIT F

The Chief Financial Officer and President must make the following representations regarding rate filing documents:

1. The schedule of operating expenses for the insurer's New Jersey private passenger automobile lines of business (corresponding to columns 19.1 through 19.4 and in columns 21.1 and 21.2 of the insurance expense exhibit (IEE)). Include only those costs which were incurred to support the insurer's New Jersey private passenger automobile insurance operations.
2. The allocation of expenses to each line of business on the insurance expense exhibit and the required schedule was made in accordance with the Instructions for Uniform Classifications of Expenses.
3. The allocation of corporate-wide (worldwide, countrywide and regionalwide) expenses to New Jersey lines of business represents only those corporate-wide costs that are properly allocable to New Jersey operations based on reasonable and prudent allocation methodologies.
4. The allocation methodologies used to allocate certain New Jersey general and administrative or indirect costs to New Jersey private passenger automobile lines of business were reasonable, adequately supportable, and did not result in costs being allocated which were incurred by reason of non-private passenger automobile insurance operations.
5. Allocation methodologies used were applied consistently from year to year or, if there were any changes in allocation methodologies, the insurer has stated the reasons for the changes and has quantified the effect of changing the methodologies.
6. The methodologies used to allocate indirect costs is consistent with the methodologies used to allocate indirect costs by the insurer's internal reporting system and, if the company is also an NJAFIUA/MTF servicing entity, the methodologies were consistent with those used in preparing the NJAFIUA/MTF operating statement (Exhibit P).
7. If the insurer operated separate cost centers for its New Jersey private passenger automobile lines of business, but expenses for these cost centers were allocated rather than accounted for directly, the insurer has accurately quantified the effect of not accounting for such expenses directly. Also, reasons for not using direct costing for the separate New Jersey private passenger auto cost centers have been provided.
8. The methodologies used to allocate indirect costs to the New Jersey private passenger automobile lines of business are consistent with the methodologies used to allocate indirect costs to other New Jersey lines of business.
9. The total pool of allocated costs (before allocating to the various lines of business in each state) represents all and only such costs as are reflected in the insurer's annual audited financial statements prepared under statutory accounting principles.
10. All paid allocated loss adjustment expenses reported for New Jersey private passenger automobile lines of business were incurred to settle specific claims and the guidelines used for determining these loss adjustment expenses are the same as those used for the insurer's other lines of business.
11. A reasonable, prudent person would not determine that there are allocation methodologies which could have been used that would clearly have resulted in a more accurate allocation of operating expenses.
12. Financial information on the IEE properly reconciles with the insurer's annual statements as reported to the Department.
13. The schedule provided for premiums, incurred losses and operating expenses (on a direct basis) by New Jersey lines of business properly reconciles to the insurer's total premiums, incurred losses and operating expenses by line of business (on a net basis) as reported in the IEE.
14. Net direct written premiums reported in the current year for each New Jersey line of business were determined in the same manner as in the preceding two years.
15. The Insurance Expense Exhibits for the current and preceding two years and the required supporting schedules were prepared in conformity with statutory accounting principles.
16. Adequate provision has been made for all incurred losses in each of the periods reported.
17. There were no violations of laws or regulations during the periods reported whose effects have not been considered in the results of operations reported.
18. The accounting records underlying the financial information provided accurately and fairly reflect, in reasonable detail, the transactions of the insurer's private passenger automobile and other lines of business.
19. The filer has complied with all aspects of contractual agreements that would have a material effect on the financial information provided in the event of noncompliance.
20. No events have occurred subsequent to the date of the most recent Insurance Expense Exhibit that would require adjustment to the financial information provided on the Insurance Expense Exhibits or to the financial information provided on the other schedules required.
21. There have been no:
    a. Irregularities involving management or employees who have significant roles in the internal control structure.
    b. Irregularities involving other employees that could have a material effect on the financial information provided.
    c. Communications from regulatory agents concerning noncompliance with, or deficiencies in, financial reporting practices that could have a material effect on the financial information provided.

EXHIBIT G

KEY PERFORMANCE INDICATORS

The following data ratios should be provided for each line of business (for New Jersey business only). All of the ratios shall be calculated for the current year and preceding two years. Information on surplus as regards policyholders, accounts receivable, underwriting employees and number of adjusters shall be provided as of the last day of each year reported.

1. Salvage Recoveries/Paid Losses (Collision Only)
2. Subrogation Recoveries/Paid Losses (Liability Coverages Only)
3. Premiums Collected/Earned Premiums
4. Accounts Receivable/Earned Premiums
5. Incurred Losses (excl. IBNR)/Earned Premiums
6. Earned Premiums/Earned Exposures
7. Exposures Written/Underwriting Employees
8. Underwriting Expenses/Exposures Written
9. Paid Losses/Claims Paid and Closed
10. Claims Outstanding/Number of Adjusters
11. Claim Expenses/Claims Reported
12. Other ratios as deemed necessary by the Department of Insurance

In addition, the following data should be provided:

13. Annual Net Written Premiums/Surplus as Regards Policyholders
14. Reduction to Surplus as Regards Policyholders during the current and preceding two years.

(a)

DIVISION OF PROPERTY/LIABILITY
Standard/Non-Standard Rating Plans
Adopted Concurrent New Rules: N.J.A.C. 11:3-19

Proposed: December 17, 1990 at 22 N.J.R. 3804(a).

Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Filed: January 25, 1991 as R.1991, d.92, **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); and 17:29A-45.

Effective Date: January 25, 1991, Readoption of Emergency New Rules. February 19, 1991, Changes upon Adoption.

Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently reproposed on November 26, 1990 pursuant to N.J.S.A. 52:14B-4(c). The present adoption of the concurrent reproposed rules is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), except for the changes upon adoption, which are effective on the date of publication of this notice, February 19, 1991.

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received 12 written comments from insurers and insurance trade associations.

Initially, the Department notes that these rules are closely related to other rules contemporaneously adopted concerning the definition of "eligible person," N.J.A.C. 11:3-34, nonrenewals, N.J.A.C. 11:3-8 and automobile insurance underwriting rules, N.J.A.C. 11:3-35. Recognizing this, some commenters addressed their comments generally to all of these rules and some duplicated their comments for all of them, while other commenters did not identify the specific rule being commented upon. Often, commenters addressed a particular rule, but their comment was similar to another comment on a different rule. In preparing adoption notices for all of these rules, the Department has, in some instances, combined similar comments and responses, and those that relate to more than one of these rules may appear only once. The Department believes that not only does this avoid duplication, but also promotes clarity and consistency. In other instances, the Department found that a more cogent response to various aspects of general comments could be made by addressing each aspect in connection with a particular rule to which it related. The reader is, therefore, urged to examine also the adoption notices concerning the other rules set forth above, which appear elsewher in this issue of the New Jersey Register.

COMMENT: Many commenters restated comments previously mad to this rule when first proposed on August 6, 1990 (see 22 N.J.R. 2231(a)) or stated simply that comments to that proposal were "incorporated b reference."

RESPONSE: These commenters are referred to the Department' responses set forth when these rules were reproposed (see 22 N.J.R 3804(a)). The Department notes, however, that many of the followin comments and responses contain elements of previous comments regard ing particular aspects of these rules. Some of the following responses ma serve to promote a greater understanding of the Department's previou responses, when applicable.

COMMENT: Several commenters stated general objections to th provisions of the Fair Automobile Insurance Act of 1990, N.J.S.A 17:33B-1 et seq., or provisions of statutes that are incorporated in thes rules, including the requirement that insurers provide coverage for al eligible persons in their standard/non-standard rating plans after Apri 1, 1992.

RESPONSE: These provisions simply set forth standards required b the applicable statutes.

COMMENT: Many commenters inquired whether specific provision in a standard/non-standard rating plan would be permitted, or suggestec new or modified language that would authorize or require particula provisions of such a plan to be approved.

RESPONSE: These rules set forth general requirements that all stan dard/non-standard rating plans must satisfy, and the general standard for approval of such plans. The Department expects diversity among thes plans within the parameters set forth in these rules. Whether a particula plan meets the general rule standards is better left to the approval process in which certain provisions, rules, rates and other aspects of the plan ar considered together. It would be inappropriate to make these judgment based on a hypothetical question with limited information in the contex of a response to a rule comment.

COMMENT: Several commenters objected to the provisions o N.J.A.C. 11:3-19.3(b), which requires that merit rating surcharges, per mitted to be included in rating systems by N.J.S.A. 17:29A-35, must b incorporated into the nonstandard rates of a standard/non-standard rat ing plan. These commenters objected to the requirement that insurer must place certain business in the non-standard rate level and woulc rather place it at the standard rate level with a merit rating surcharge Some comments expressed concern that placing this business at the non standard rate level might result in the non-standard market exceeding the statutory cap of 15 percent.

RESPONSE: The Department notes that this revision was made as the result of the review of comments previously received to a prior proposal (see 22 N.J.R. 3807). The Department believes that this method represents sound public policy, as it precludes double surcharges for the same behavior (that is, when a driver is placed in the non-standard rate level as the result of an accident, and then further is surcharged through a merit rating plan). The Department further notes that a driver with an at-fault accident is assessed five eligibility points; the commenter's position appears to be that persons with five automobile insurance eligibility points should be insured at the standard rate level. The Department believes that the FAIR Act clearly provides that drivers with no recent motor vehicle violations or at-fault accidents be provided a preferred rate status. The Department believes these rules are consistent with this goal.

COMMENT: One commenter stated that the regulations governing the 135 percent rate differential need to be clarified. The commenter inquired whether the average non-standard rate refers to the base rate or the average premium charged, noting that the latter will constantly change based on the insurer's mix of business.

RESPONSE: The "135 percent rate differential" is set forth at N.J.A.C. 11:3-19.4(a)1, which provides a standard/non-standard rating plan shall be disapproved for certain reasons. When a standard/non-standard rating plan is approved, the rates are approved and are not thereafter affected by the mix of business.

COMMENT: Several insurers objected to the requirement in N.J.A.C. 11:3-19.3(a) that all insurers which write personal private passenger automobile insurance file a standard/non-standard rating plan. These insurers interpreted N.J.A.C. 17:29A-45(a) as making such plans optional.

RESPONSE: For a number of legal and policy reasons, the Department believes that the Commissioner has authority to require that all insurers file standard/non-standard rating plans and that it is desirable to do so.

COMMENT: One commenter suggested that the phrase "personal private passenger automobile" be defined, and included a suggested definition.

RESPONSE: The Department does not believe this definition is necessary; it further disagrees with certain aspects of the suggested definition.

COMMENT: Several commenters inquired whether "accident free discounts" could continue to be offered at the standard rate level. One suggested language that would amend N.J.A.C. 11:3-19.3(b) that would to provide, and further provide "for removal of the discount in the event of an at-fault accident."

RESPONSE: Nothing in these rules prohibit "accident free discounts" at the standard rate level. The Department notes, however, that at-fault accidents within the previous three years result in an accumulation of five automobile insurance eligibility points. The Department expects that individuals with five or more eligibility points would likely be insured at the non-standard rate level, and that the suggested language that the discount be removed appears superfluous and confusing. The Department, therefore, does not believe that this change is necessary or desirable.

COMMENT: Several commenters inquired about the provisions of N.J.A.C. 11:3-19.4(a)2, which requires an equitable graduated scale of non-standard rates based on accrued automobile insurance eligibility points.

RESPONSE: As stated above, these specific questions are better left to the approval process for standard/non-standard rating plans when all of the provisions of the plan are submitted for review.

COMMENT: Three commenters suggested that the rules be amended to include additional procedural provisions, including a provision that disapproval of a filing would establish a "contested case" requiring referral for a hearing.

RESPONSE: The Department is unwilling to add such procedural provisions to these rules at this time. It recognizes, of course, that filers do have, and other interested parties may have, due process rights concerning the approval and disapproval of standard/non-standard rating plans. Because these are new rules and established a new filing requirement, the Department prefers not to establish specific procedures at this time other than those set forth in N.J.A.C., 11:3-19.6. The Department will review these rules at an appropriate time in the future to determine whether additional procedural provisions should be added.

COMMENT: Several companies inquired whether multiple standard and non-standard tiers are permitted. One commenter referred to the Department's responses to previous commenters (see 22 N.J.R. 3805-06). One stated "we are not clear whether this means different rate levels within a tier, or whether the reference is to the different rate levels already in the law (standard/non-standard rate differentiation)."

RESPONSE: These rules have substituted "rate level" for "tier" in reference to standard and non-standard rate levels. The Department also notes that N.J.A.C. 11:3-19.4(a)2 provides for an equitable graduated scale of non-standard rates. The Department further recognizes that approved classification plans may affect the premium of any specific individual. Beyond this, the Department believes that the provisions of a particular standard/non-standard rating plan should be addressed in the approval process.

COMMENT: One commenter inquired whether the rules permit placement of an insured in the non-standard rate level who is not an "eligible person," but who operates a vehicle less than 10 percent of the time. Other insurers made similar inquiries concerning household members with eight or less eligibility points, but who purportedly account for less than 10 percent of the use of a vehicle.

RESPONSE: Placement of an insured and his or her vehicle at the non-standard rate level must be accomplished in accordance with the insurer's underwriting rules, which are filed and approved as an element of the standard/non-standard rating plan.

In connection with the adoption of rules addressing nonrenewals, N.J.A.C. 11:3-8, and insurer underwriting rules, N.J.A.C. 11:3-35 (see adoption notices elsewhere in this isue of the New Jersey Register), the Department has deleted N.J.A.C. 11:3-35.3(c)10 and included all of its essential provisions at N.J.A.C. 11:3-8.4(a)2. The Department believes that this change not only improves understanding of the provisions concerning nonrenewals, but also accurately reflects the intent of the FAIR Act to provide coverage in the voluntary market to the vast majority of drivers who have no, or few, recent blemishes on their driving records. Importantly, N.J.A.C. 11:3-35.4(a) and (b) remain as part of those rules and confirm that insurer underwriting rules should provide for coverage of eligible persons in the voluntary market. Additionally, some provisions of the former N.J.A.C. 11:3-35.3(c) 10 have been included as a new subsection, N.J.A.C. 11:3-35.4(c) to provide this protection for new applicants after April 1, 1992, as well as renewals.

The FAIR Act also amends N.J.A.C. 17:29A-45 to provide authority to the Commissioner to define the non-standard market (N.J.S.A. 17:29A-45f), which these rules together with N.J.A.C. 11:3-35 are intended to accomplish. The Commissioner has determined that the non-standard market shall consist of those eligible persons and their vehicles who have accrued one or more eligibility points, calculated pursuant to N.J.A.C. 11:3-34. The standard market shall consist of those eligible persons and their vehicles who have accrued no eligibility points. Based on available data, the Department believes that this definition properly executes the provisions of the FAIR Act regarding the percentage of the market in each segment and lays a foundation for the implementation of N.J.S.A. 17:33B-32, which requires that automobile insurance rates be primarily based on driving record.

Consistent with this definition of the non-standard market, eligibility points of household members who are not the primary driver of an automobile may be used to rate an automobile they drive, regardless of the percentage of use, if not used to rate any other automobile in the household. A provision so stating has been included in the rules regarding underwriting rules for standard/non-standard rating plans at N.J.A.C. 11:3-35.5(d) to clarify what underwriting rules may be approved by the Department. This provision has been substituted upon adoption for the more restrictive and burdensome provision of N.J.A.C. 11:3-35.3(c)10. It permits eligibility points of other household members to be used in connection with rating policies at the non-standard rate level without regard to the claimed amount of use. Since this added provision responses to the concerns expressed by these commenters and others, clarifies what underwriting relevance approvable, and further since it results in a reduction, to a limited degree, in the burden of compliance with these rules, it may be accomplished upon adoption without further notice and comment (see N.J.A.C. 11:30-4.3).

The specific underwriting rules and other elements of an insurer's standard/non-standard rating plan will be addressed during the process for approval of these plans.

COMMENT: Several commenters inquired about various methods for monitoring the renewal of insureds at the proper rate level, pursuant to N.J.A.C. 11:3-19.5.

RESPONSE: The Department believes that these inquiries are better addressed in the standard/non-standard rating plan approval process, noting that N.J.A.C. 11:3-19.3(c)1iv requires an insurer to submit with its filing a plan for determining upon renewal to which rate level a risk will be assigned.

COMMENT: A commenter requested clarification regarding the implementation date of the non-standard rating plan. It noted that these plans are to be filed by March 1, 1991 and asked if a company could choose any effective date.

RESPONSE: The plan cannot be implemented, of course, until approved. The Department anticipates that the filing and approval processes will establish the effective date.

COMMENT: One commenter requested clarification regarding the requirement of a graduated scale of non-standard rates based on accrued eligibility points in N.J.A.C. 11:3-19.4(a)2, asking whether the rates are to be graduated before application or a surcharge of if the surcharge can be built into the graduated rate scale.

RESPONSE: The Department anticipates that the surcharges will be built into the graduated rate scale; nevertheless, this may be addressed in the approval process.

COMMENT: One commenter reasserted its objection to the provisions of N.J.S.A. 17:29D-1(d) concerning the closing of the assigned risk plan when it reaches 10 percent of the market. It noted that this result would be extremely inequitable to good drivers and marginal drivers in the non-standard tier. In a subsequent comment, however, it also reasserted its objection to rate level placement by car rather than by policy, which it noted will require a systems change for most companies, stating that placement by policy seems more equitable, practical and better reflects the household exposure.

RESPONSE: The Department believes that rate level placement by automobile will reduce the likelihood that the assigned risk plan must be closed, and mitigate the inequity to good and marginal drivers.

COMMENT: One commenter inquired whether the State had, and would provide, data to establish the gradation of rates based on eligibility points.

RESPONSE: The Department has some data that it will use to review standard/non-standard rating plans submitted for approval. Insurers should, however, undertake to develop their own plans.

COMMENT: Several commenters stated that the provision requiring insurers to insure at the standard rate level all persons with no eligibility points over the last three years is an unauthorized attempt to establish a "take all comers" environment before April 1, 1992, as provided in N.J.S.A. 17:33B-15a.

RESPONSE: The Department disagrees; insurers are not required to accept new business from all eligible persons until April 1, 1992 and this is set forth in N.J.A.C. 11:3-35.4(b). Nevertheless, business that is accepted or written for persons with no eligibility points must be written at the standard rate level.

COMMENT: One commenter inquired how merit rating surcharges, which are to be applied uniformly on a Statewide basis, can be incorporated into non-standard rates, "and these rates be charged on a multiplicative basis."

RESPONSE: The Department anticipates that the non-standard rate level may include a graduated scale of rates, in fixed dollar amounts, reflecting various levels of eligibility points.

COMMENT: One commenter inquired how equitable gradations within the non-standard rate level would be displayed, noting that N.J.A.C. 11:3-19.3(c)3 requires manual rate pages for each rate level. The commenter inquired whether two or nine sets of rate pages are required.

RESPONSE: The Department expects two sets of rate pages, one for the standard rate level and one for the non-standard rate level.

COMMENT: One commenter suggested that the notice of reassignment to the non-standard rate level required by N.J.A.C. 11:3-19.5(a) should be deleted as superfluous, noting that the significant premium increase will be immediately apparent to the insured.

RESPONSE: The Department acknowledges that the premium increase will be apparent; the notice is intended to set forth the reason why.

COMMENT: A commenter requested that N.J.A.C. 11:3-19.5(b), which requires the policy declaration page to set forth the number of eligibility points used to rate the policy, be deleted. Alternatively, it suggests that an insurer be permitted to set forth eligibility points on some other writing accompanying the policy.

RESPONSE: While the Department believes the policy declarations page is the most appropriate place for this information, and that systems tracking eligibility points should be capable of providing this information on a policy declarations page, it has added language to permit some reasonable alternatives.

COMMENT: One commenter stated that the 135 percent differential between standard and non-standard rates should not be established by company, as this would be unfair to companies which have previously provided the lowest rates to standard insureds.

RESPONSE: The Department notes that the rules provide that the difference be established initially when the plan is approved. Future rate changes may affect that difference as initially established, based upon data submitted by the insurer when applying for a future rate change.

COMMENT: One commenter stated: "The rules should be amended to allow the 135 percent comparison to be made based upon data from a specific period of time and that such comparison, for rate making purposes, would remain in effect for another specified length of time. Otherwise, companies and the Department have a constantly shifting 'moving target,' which is impossible to hit!"

RESPONSE: The Department does not understand the comment. Rates are approved for an indeterminate time, until the next rate change is approved. Rates initially approved remain in effect until then.

COMMENT: One commenter inquired what information (policy detail, premium, etc.) will companies be required to report.

RESPONSE: The Department anticipates that information to be reported to its statistical agents may be modified; insurers will be notified of these changes by the statistical agents.

COMMENT: One commenter inquired what information must be filed to establish the standard/non-standard rating plan.

RESPONSE: An insurer should file the items set forth in N.J.A.C. 11:3-19.3(c). To the extent that other information may be necessary, the Department will request it as part of the approval process.

COMMENT: One commenter inquired whether extensions will be granted from the mandated March 1, 1991 filing date.

RESPONSE: The Department does not anticipate granting any extensions.

COMMENT: One insurer, who stated that it markets an integrated package policy which provides automobile, homeowners, seasonal dwelling, boat, personal umbrella and other coverages with a single limi inquired how these rules would affect its personal liability package policy

RESPONSE: This insurer's specific questions concerning its specifi plan are questions that are better answered in connection with the ap proval process of its standard/non-standard rating plan, and other ratin system approvals.

COMMENT: One commenter suggested that the definition of "in sured" in N.J.A.C. 11:3-19.2 be changed to state that an "insured" i "a policyholder or other person insured under another policy of auto mobile insurance and not insured elsewhere."

RESPONSE: The Department believes that the suggested amendmen changes the meaning of the definiiton, and therefore, declines to mak the change.

COMMENT: One commenter noted that the provisions of N.J.A.C 11:3-19.2, N.J.A.C. 11:3-34.4 and N.J.A.C. 11:3-35.5 appear to requir underwriting rules include eligibility points. It notes, however, that stan dards for the approval of underwriting rules place severe restrictions o the inclusion of eligibility points in underwriting rules, and states tha it is unclear how these provisions can be reconciled.

RESPONSE: The Department does not believe the provisions ar irreconcilable; to the contrary, it believes that they accurately set fortl appropriate standards. How they are accomplished for any particula insurer will be addressed and resolved in the approval process.

Summary of Agency-Initiated Changes:

The Department has made five minor changes to clarify the provision of these rules. It has deleted the word "base" from the definition o "standard/non-standard rating plan" as the word is unnecessary anc potentially confusing, and moved the revised definition to its correc alphabetical location in the definitions section. The Department has included a more specified reference to the nonrenewal rules in N.J.A.C 11:3-19.5, and the Department has provided the new address of the Office of the Public Advocate, Division of Rate Counsel.

Additionally, the Department has clarified that renewal at the proper rate level shall be based upon eligibility points accruing in the 36-month period ending 90 days prior to expiration of the current policy. This is consistent with the provisions of N.J.A.C. 11:3-8 regarding nonrenewal and provides the necessary time for complying with notice requirements.

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

SUBCHAPTER 19. STANDARD/NON-STANDARD RATING PLANS

11:3-19.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:29A-45 as amended by section 37 of P.L.1990, c.8, by establishing standards for standard/non-standard rating plans in the voluntary automobile insurance market. It sets forth the items to be filed and approved by the Commissioner in order to create a standard/non-standard rating plan; standards to be applied by the Department in approving a plan; and standards for the functioning of a plan in the market.

(b) This subchapter applies to all insurers that are licensed and authorized to transact personal private passenger automobile insurance in the voluntary market. It applies to groups of affiliated companies which insure risks through separate individual insurance companies.

11:3-19.2 Definitions

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

"Affiliated companies" means two or more individual insurance companies that are authorized to transact private passenger automobile insurance business in New Jersey and that are under both common ownership and common management.

"Applicant" means a person applying to an insurer for a policy of automobile insurance who is not currently a named insured under a policy of automobile insurance issued by that insurer.

"Automobile insurance eligibility points" or "eligibility points" means points accrued in accordance with the schedule set forth in N.J.A.C. 11:3-34.

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

"Department" means the New Jersey Department of Insurance.

"Individual insurance company" means an insurance company separately licensed and authorized to transact private passenger automobile insurance business in New Jersey, regardless whether it is one of a group of affiliated companies.

"Insured" when used as a noun means a policyholder or other person insured under a policy of automobile insurance and not insured elsewhere.

"Insurer" includes a group of affiliated companies.

"Standard/non-standard rating plan" means a rating system used by an insurer that provides different *[base]* rates for different risks to those insureds who qualify in accordance with the insurer's approved underwriting rules.

"Public Advocate" means the Division of Rate Counsel of the New Jersey Department of the Public Advocate, established pursuant to N.J.S.A. 52:27E-16.

"Renew" means to issue and deliver at the end of the policy period a policy superceding a policy previously issued and delivered, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, by the same individual insurance company, or by another of a group of affiliated companies pursuant to a standard/non-standard rating plan filed and approved in accordance with this subchapter.

"Risk" means the person or property exposed to loss or damage that is insured under an automobile insurance policy.

11:3-19.3 Filing requirements for standard/non-standard rating plans

(a) All insurers which write personal private passenger automobile insurance shall file standard/non-standard rating plans that provide different rates for risks separately described by the insurer's approved underwriting rules. No insurer shall implement or use a standard/non-standard rating plan that has not been filed and approved in accordance with N.J.S.A. 17:29A-45 and this subchapter.

(b) Merit rating surcharges, which are permitted to be included in rating systems by N.J.S.A. 17:29A-35, shall be incorporated only into the non-standard rate level of the voluntary market.

(c) An insurer shall initially establish a standard/non-standard rating plan by filing with the Commissioner the following items:

1. A narrative description of the plan, which shall include:

i. The percentage difference between the standard and non-standard rate levels;

ii. The variation of the difference by eligibility points;

iii. Any variation of the difference by coverage;

iv. The insurer's plan for determining upon renewal to which rate level a risk will be assigned; and

v. If the plan is submitted by a group of affiliated companies, the identity of all individual insurance companies in the group that transact private passenger automobile insurance business in New Jersey and the rate level to be used by each;

2. A complete set of underwriting rules that set forth qualifications for each rate level, which rules shall conform to the standards set forth in N.J.A.C. 11:3-35; and

3. Within 30 days of the date of approval of the underwriting rules or the effective date of the plan, whichever is later, manual rate pages for each rate level.

(d) A group of affiliated companies may file a standard/non-standard rating plan that provides that different individual insurance companies write risks at different rate levels.

11:3-19.4 Standards for disapproval or modification

(a) A standard/non-standard rating plan shall be disapproved for any of the following reasons:

1. If the average non-standard rate is in excess of 135 percent of the average of the combined standard and non-standard rates;

2. If the plan does not provide for an equitable graduated scale of non-standard rates based on accrued automobile insurance eligibility points;

3. If the plan does not provide that the insurer shall, after April 1, 1992, insure at either its standard or non-standard rate level all applicants and insureds defined as "eligible persons" in N.J.A.C. 11:3-34;

4. If the plan does not provide that the insurer shall insure at its standard rate level all insureds who have accrued no automobile insurance eligibility points during the previous three years;

5. If the underwriting rules do not meet the standards set forth in N.J.A.C. 11:3-35;

6. If the insurer fails to submit the items required for filing pursuant to N.J.A.C. 11:3-19.3; or

7. If the plan otherwise fails to meet any of the standards of this subchapter.

(b) The Commissioner may by rule or order direct an insurer with an approved standard/non-standard rating plan to modify its plan to conform to rules which may be adopted pursuant to N.J.S.A. 17:29A-45f that further define the non-standard voluntary market.

(c) A standard/non-standard rating plan may provide that any applicant who is not an "eligible person" as defined in N.J.A.C. 11:3-34 may be insured at the non-standard rate level during any period of time certified by the Commissioner for the cessation of the acceptance of applications or the issuance of new policies by the assigned risk plan, pursuant to N.J.S.A. 17:29D-1d.

11:3-19.5 Renewal of policy at proper rate level

(a) An insurer which has implemented a standard/non-standard rating plan shall issue and renew its policies at the appropriate rate level for which the risk qualifies in accordance with the insurer's approved underwriting rules ***based upon eligibility points accrued in the 36 month period ending 90 days prior to the expiration of the current policy***. The transfer of a risk from one rate level to another within an insurer's standard/non-standard rating plan shall not be deemed to be a nonrenewal of the policy as provided by N.J.S.A. 39:6A-3 and N.J.A.C. 11:3-8 if the insurer complies with the provisions set forth below.

1. If the insured qualifies for the standard rate level after having been insured at the non-standard rate level, the insurer shall renew the insured at the standard rate level in accordance with procedures set forth in N.J.A.C. 11:3-8.3***(a) through (e)***.

2. If the insured qualifies for the non-standard rate level after having been insured at the standard rate level, the insurer shall renew the insured at the non-standard rate level in accordance with procedures set forth in N.J.A.C. 11:3-8.3***(a) through (e)*** after providing notice to the insured as follows:

i. Written notice shall be sent to the insured at least 30, but not more than 45, days before expiration of the policy;

ii. The written notice shall advise the insured that he or she no longer meets the insurer's approved underwriting rules for the standard rate level;

iii. The notice shall set forth a summary of the provisions of the underwriting rule that applies to the insured and the specific facts upon which the insurer relies to determine that the insured no longer is qualified for the standard rate level, including the specific events that resulted in the accrual of automobile insurance eligibility points; and

iv. The notice shall advise the insured of his or her right to contact other insurers to determine whether comparable insurance can be purchased elsewhere at less cost.

(b) An insurer which has implemented a standard/non-standard rating plan shall state on the policy declaration page***, or some other writing accompanying the policy,*** the number of eligibility points that were used to rate the policy.

11:3-19.6 Procedural provisions

(a) An individual insurance company operating pursuant to a rating plan approved on or before November 14, 1989 may initially file a standard/non-standard rating plan in which the modification is expressed as a percentage increase or decrease of the existing rate level.

(b) Contemporaneously with filing a standard/non-standard rating plan with the Department, an insurer operating pursuant to a rating plan approved on or before November 14, 1989, shall deliver a copy of the filing to the Public Advocate at the following address:

Department of the Public Advocate
Division of Rate Counsel
*[744 Broad Street
Newark, New Jersey 07102]*
31 Clinton Street
P.O. Box 46005
Newark, New Jersey 07101*

1. The Public Advocate may intervene in the proceedings by filing notice with the Department within 10 days of date of receipt of the filing. A copy of the notice shall be contemporaneously sent to the insurer filing the plan.

2. The Public Advocate shall file with the Department its comments regarding the insurer's proposed rating plan and underwriting rules no later than 30 days after receipt of the filing. A copy of the comments shall be contemporaneously delivered to the insurer filing the plan.

3. The insurer may submit to the Department a response to the comments within 10 days of receipt. A copy shall be sent contemporaneously to the Public Advocate.

4. The decision of the Commissioner to approve or disapprove the rates and underwriting rules shall be based upon the documents submitted.

5. The Commissioner shall promptly notify the insurer whether the rating plan and underwriting rules have been approved or disapproved. A copy of the decision shall also be sent to the Public Advocate if it has filed a notice of its intention to intervene. Pursuant to N.J.S.A. 17:29A-45c, rates initially filed as a percentage increase or decrease of the existing rate level by an insurer which had rates approved on November 14, 1989, shall be deemed approved if not disapproved within 60 days.

(c) An individual insurance company which did not have a rating plan approved on or before November 14, 1989 may file a standard/non-standard rating plan by complying with the provisions of N.J.A.C. 11:3-19.3 and N.J.A.C. 11:3-16.5 (rate filing requirements for prior approval filings) even if it is one of a group of affiliated companies of which one or more companies has approved rates.

(d) All insurers which write personal private passenger automobile insurance shall file for approval on or before March 1, 1991 a standard/non-standard rating plan that meets the requirements of this subchapter.

11:3-19.7 Penalties

Failure to comply with the provisions of this subchapter shall subject the insurer to penalties as provided by N.J.S.A. 17:33-2.

(a)

DIVISION OF ADMINISTRATION

Medical Fee Schedules: Automobile Insurance Personal Injury Protection Coverage

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

Proposed: November 26, 1990 at 22 N.J.R. 3809(a).
Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.
Filed: January 25, 1991 as R.1991 d.96, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: January 25, 1991, Readoption of Emergency New Rules. February 19, 1991, Changes upon Adoption.
Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently reproposed on November 26, 1990, pursuant to N.J.S.A. 52:14B-4(c). The present adoption of the concurrent reproposed new rules is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), except for the changes upon adoption, which are effective upon publication of this notice, February 19, 1991.

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received 66 written comments from insurers, health care providers, health care facilities, trade associations and interested persons. Some of these comments will require research and study to determine whether recommended changes to the regulation are appropriate. These considerations will be addressed by the Department at such times as it proposes specific amendments resulting from its review. In many instances, as appropriate, the Department will also respond directly to commenters.

COMMENT: It is not clear how the proposed fee schedule will be applied to persons injured prior to January 1, 1991. It is our strong opinion that persons injured before the proposed changes to PIP go into effect not be subject to any medical fee schedules. Prior to implementation of the FAIR Act, medical expenses were not capped, nor fees regulated. Individuals purchasing an automobile contract did so with the understanding that they would be guaranteed unlimited medical expense reimbursement with no provision for a cap or schedule of acceptable fees. Any disruption in services provided to persons with ongoing and already established medical needs could be devastating to both the victims and their families.

RESPONSE: The medical fee schedules apply to medical services and equipment provided on or after January 1, 1991, regardless of when the injury took place or when the auto insurance contract was purchased. Medical expense caps preceding or subsequent to the FAIR Act have no relevance to this question. There is no more justification for a health care provider, due to the existence of medical fee schedules, to disrupt services to patients injured prior to January 1, 1991, than there is to deny services to those injured after that date. To state or imply otherwise is to mislead the public and cause unwarranted concern and duress among accident victims and their families.

Application of the medical fee schedules protects insured victims of auto accidents against medical expenses incurred. The level of fees for medical services and equipment is not a matter of contractual commitment by auto insurers to insureds or to the injured individual. The rights of the insured are not being changed in any manner whatsoever. However, the charges for medical services and equipment provided after January 1, 1991, should reflect what is usual, customary and reasonable within the limits specified by these rules.

COMMENT: The reproposed rules will not reduce significantly the cost of delivery of auto insurance in New Jersey. First, the application of the fee schedule is, by law, directed only towards Personal Injury Protection (PIP) coverage. It does not impact medical costs related to bodily injury claims, other medical benefit coverage or health insurance even if the injury arose out of the use of a motor vehicle.

RESPONSE: Medical expenses payable under PIP coverage in auto insurance policies have been among the most rapidly increasing cost elements of auto insurance in New Jersey. It is a legitimate area of concern which the Legislature has specifically addressed to the end that medical care costs should be at reasonable levels and under control.

COMMENT: The definition of "provider" at N.J.A.C. 11:3-29.2 does not seem to include pharmaceutical supplies which are neither services or equipment provided by licensed professionals.

RESPONSE: The medical fee schedules do not include pharmaceutical supplies or drugs which are subject to the New Jersey Department of Health's Drug Utilization Review Council Formulary used in the implementation of New Jersey's Prescription Drug Price and Quality Stabilization Act. The purpose of the Formulary "is to assure quality medications at the most reasonable costs." It is intended that insurers will administer reimbursement of prescription drugs in such a manner that charges for medications will be reimbursed at their reasonable costs.

COMMENT: N.J.A.C. 11:3-29.4(e) provides that the "insurer's limit of liability for any medical expense benefit for any service or equipment not set forth in the fee schedules shall be a reasonable amount considering the fee schedule for similar services or equipment in the region where the service or equipment was provided." This may be interpreted to mean that health care providers will be reimbursed on a usual, customary and reasonable basis for procedures not included in the proposed schedules. We believe that such procedures are exempt from the other provisions of the rules and that practitioners will be permitted to bill patients for the difference between their fee and the reimbursed amount.

RESPONSE: If a particular medical service or item of equipment is not included in the medical fee schedules, but a similar service or item of equipment is included, then a reasonable charge should be determined

considering the fee assigned to the similar service or equipment. If no similar service or equipment is included in the schedules, then a charge based on the provider's usual, customary and reasonable fee would be appropriate. Accordingly, the Department has added clarifying language to N.J.A.C. 11:3-29.4(e). In no event will the practice of balance billing be permitted.

COMMENT: As to services or equipment not set forth in the fee schedules, who is to determine what is usual, customary and reasonable for a given geographic area?

RESPONSE: As part of the claims paying process, auto insurers will determine in a given case based on their cumulative experience whether the charge submitted represents the usual, customary and reasonable fee.

COMMENT: In N.J.A.C. 11:3-39.4(f) the regions of the body are specified. Clarification is necessary regarding into which region the back falls or, whether the back is a region unto itself. Along those same lines, clarification is needed regarding into which subdivision of the extremities the knee and elbow fall, or if they are subdivisions unto themselves.

RESPONSE: The Department agrees and references to the back as a region of the body, and to the elbow and knee as subdivisions of extremities have been added.

COMMENT: N.J.A.C. 11:3-29.4(g) deals with surgical care and provides that: "for surgery and many other procedures, it is established practice to include follow-up care and visits as part as the basic procedure charge. Such charges shall not be subject to additional billings." We are not aware of any "established practice" with respect to follow-up care and believe that more surgeons charge for follow-up care than those who do not. We oppose this provision.

RESPONSE: Medical expenses for continuing care of a limited duration which are not reflected in the original charges have been reflected in the procedure codes set forth in the regulation. Many procedure codes do include follow-up care and expansion of the codes has helped to resolve this problem. Charges for extended periods of care following surgical procedures are not expected to be included in the original charges.

COMMENT: Proposed N.J.A.C. 11:3-29.5 prohibits balance billing in compliance with the express terms of the statute. The proposed rules are intended to have "a positive social impact" by controlling the cost of medical services and a positive "economic impact" by limiting the amount of medical expenses paid by individuals. These positive goals would be negated if medical providers were permitted to charge their patients (the victims of automobile accidents) more than allowed by the medical fee schedules. The proposed prohibition conforms to the intent of the Legislature by providing that health care providers may not bill their patients for any balance in excess of the fees allowed by the medical fee schedule.

RESPONSE: The Department agrees.

COMMENT: Banning balance billing will have no effect on the amount of the auto insurance premium. This is a matter between the patient and the physician and has nothing to do with insurance. By banning balance billing, patients are being told that they can utilize services as much as they want with no risk to them since their bill is going to be "paid in full."

RESPONSE: The prohibition on balance billing prevents health care providers from charging in excess of the usual, customary and reasonable fees permitted by the medical fee schedules. Patients remain responsible for paying any deductible or co-payment portion of their insurance coverage.

COMMENT: The balance billing prohibition appears to be limited to situations where medical fee schedules exist. Would it be possible, for example, for a specialist (where less than 50) to balance bill a claimant if the insurer limits its payment to what it has determined to be "usual, customary and reasonable"? N.J.A.C. 11:3-29.1(c)2 exempts "any other kind of insurance" from this regulation. What is the result when the other insurance is either primary or excess over PIP coverage? Does this negate the prohibition of balance billing?

RESPONSE: Balance billing is prohibited in every circumstance in which PIP coverage is involved including those circumstances where health insurance coverage, for example, is either primary or excess. However, the insured may still be responsible for any unreimbursed expenses which satisfy PIP deductible and coinsurance requirements. The fact that a specialist may be involved does not remove the limit on payments from his or her usual, customary and reasonable fee not exceeding the 75th percentile limit.

COMMENT: Health care providers having two or more offices in separate regions may have difficulty determining how to bill for their services. Requiring such a group to have two or more fee schedules for its single practice would prevent the group from conducting its billing in an efficient and non-confusing manner.

RESPONSE: The medical fee schedules have been promulgated on a geographical basis with regional variations. In accordance with the requirements of the FAIR Act, the Department has recognized these regional differences by establishing three broad bands of charges. The fact that two separate branches may be owned by the same doctor or medical group is not determinative since the question is not who owns the facility but rather, what is a reasonable charge for a given service or item of equipment in a particular area.

COMMENT: How should insurers reimburse medical services provided by more than one provider in a course of treatment that includes a professional component as well as a technical component when the medical fee schedule only contains the global charge?

RESPONSE: In every case, providers and insurers should be guided by what is the usual, customary and reasonable fee not only for the technical and professional components but also for the global charge. In no event should the global charge or the sum of the charges for the components exceed the lesser of the usual, customary and reasonable fee(s) or the amount(s) reflected in the medical fee schedule.

COMMENT: How should insurers respond to the practice commonly referred to as "unbundling"?

RESPONSE: The practice of "unbundling", that is, making a series of separate charges for procedures which have been customarily combined with the result of increasing the overall level of fees, is to be discouraged in the reimbursement of providers' charges.

COMMENT: Are there any plans to incorporate the use of modifiers into the schedule? In what format will the schedule be made available to insurers—computer file, tape or diskette, or hardcopy?

RESPONSE: The concept of modifiers is not applicable to levels of reimbursement under the medical fee schedules. At the present time, the format for the medical fee schedules is hardcopy as published from time to time originally in the New Jersey Register and codified in the New Jersey Administrative Code.

COMMENT: The reproposed rules, unlike the Medicare system, do not require providers to indicate the corresponding code on the bill for services. We believe the Department of Insurance has the power to compel medical care providers who would be reimbursed pursuant to New Jersey's PIP coverage provision to include such a code.

RESPONSE: Insurers may condition payment of claims upon receipt of a properly completed claim form including references to the appropriate codes. This regulation does not prohibit development and use of such forms.

COMMENT: May insurers provide input at the scheduled intervals for re-evalution of the CPT codes? Will there be procedures for such input? Will the annual revisions in CPT4 be promptly incorporated into the fee schedule? We request that the Department provide sufficient notice of review so that there may be a full and effective opportunity for comment.

RESPONSE: The Department will adhere to the normal regulatory process when amending and updating the medical fee schedules. The underlying statute requires biannual review (meaning twice a year) by the Commissioner of Insurance. The process will include opportunity for interested persons to submit written comments on published proposals.

COMMENT: There is no indication as to how any possible revision resulting from biannual review will be communicated and when such revisions shall be effective. We would suggest that any such revisions be published in the first issue of the New Jersey Register during the months of January and July to be effective as of the first of those months.

RESPONSE: Revisions to the medical fee schedules will be effected through the rulemaking process, published in the New Jersey Register and will ordinarily be effective within 30 days of the date of adoption publication.

COMMENT: Why has the Department separated chiropractic fees from other health care providers, that is, medical doctors and doctors of osteopathy? Why does the description of services for chiropractors not contain a CPT4 code for spinal manipulation or modalities? The legislative intent for the medical fee schedules was that there be a level playing field. Once again, it seems that either deliberately or by mistake chiropractors have been placed into a separate category which would be a violation of the "Insurance Equality Law of 1975."

RESPONSE: The Department has deleted the separate schedule for chiropractors that first appeared in the medical fee schedules published in the December 17, 1990 issue of the New Jersey Register. The principal objective of the fee schedules is to reduce the level of medical expenses

resulting from motor vehicle injuries. The Department believes that chiropractic fees can be expected to come within the range of charges listed for medical practitioners generally. The amounts appearing on the fee schedule represent the upper limits permitted by law; however, a practitioner whose reasonable and customary fee is well below this limit will not be permitted to suddenly raise his or her fee to the maximum merely because of the existence of the higher amount on the schedule. Furthermore, effective cost controls will be best accomplished by conformance to the test of medical necessity. To that end, limits on the frequency and duration of services to those which are medically necessary are of prime importance.

COMMENT: The Department received many comments concerning codes and specific procedures omitted from the fee schedules. Providers said to be most affected by omissions included anesthesiologists, osteopaths, physical therapists, psychotherapists, radiologists, psychologists, urologists, emergency physicians, speech therapists and occupational therapists. Other comments addressed medical fee schedule limits—some said to be too high, others too low. Falling into this category were specific services performed by anesthesiologists, neurologists, radiologists and physiotherapists; items of equipment provided by medical expense suppliers; and fee limits generally relating to office visits and consultation.

RESPONSE: The Department is presently addressing all of these questions and will propose appropriate solutions in the form of amendments to the fee schedules as soon as possible. In many instances, expansion of the data base available to the Department may be necessary before certain codes may be added. In the interim, insurers are expected to apply levels of reimbursement which are based on what is usual, customary and reasonable.

The Department has deleted the signs ($, #, *) preceding some of the descriptions in the medical fee schedule for physicians' services since they have no present relevance. (These are not shown as deletions in this publication, but are simply not republished.) The Department has also deleted references to "default codes" for the same reason and certain other procedures that are not applicable to injuries caused by automobile accidents. In addition, the Department has adjusted certain dollar limits where such adjustments were deemed necessary and supported by supplemental data. Finally, the Department has included a limited number of new codes that were previously published but not adopted. The Department will continue to review the completeness and adequacy of the fee schedules.

Full text of the adoption follows (additions to reproposal indicated in boldface with asterisks ***thus***; deletions from reproposal indicated in brackets with asterisks *[thus]*):

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

11:3-29.1 Purpose and scope

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

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

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

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

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

3. Medical services or equipment provided outside of the geographic boundaries of New Jersey except as set forth in N.J.A.C. 11:3-29.4(d)2.

11:3-29.2 Definitions

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

"Basic Life Support" ("BLS") means volunteer ambulance services, whose personnel are not required to be Emergency Medic Technicians, and municipal and proprietary ambulance servic whose personnel are required to be Emergency Medical Technician

"CPT-4" means Physicians Current Procedural Terminology, 4t Edition, coding system and the description of medical servic provided.

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

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

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

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

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

11:3-29.3 Regions

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

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

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

1:3-29.4 Application of Medical Fee Schedules

(a) Every policy of automobile insurance issued in this State shal provide that the automobile insurer's limit of liability for medically necessary expenses payable under PIP coverage is the fee set forth in this subchapter. Nothing in this subchapter shall, however, compel a PIP insurer to pay more for any service or equipment than the provider's usual, customary and reasonable fee, even if such fee is well below the automobile insurer's limit of liability as set forth in the fee schedules. Insurers will not be required to pay for services or equipment which are not medically necessary.

(b) The region used to determine the proper fee set forth in the schedules shall be determined by the region in which the services were rendered or the equipment was provided or, in the case of elective services or equipment provided to New Jersey residents outside the State, by the region in which the insured resides.

(c) The fees set forth in the schedule for durable medical equipment are retail prices which may include purchase prices for both new and used equipment, and/or monthly rentals.

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

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

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

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

2. When the service or equipment is provided by reason of the election by the insured to receive treatment outside the State of New Jersey, the reasonable and necessary costs shall not exceed fees set

orth in the fee schedules for the geographic region in which the nsured resides.

(e) The insurer's limit of liability for any medical expense benefit or any service or equipment not set forth in the fee schedules shall ie a reasonable amount considering the fee schedule for similar ervices or equipment in the region where the service or equipment vas provided or, in the case of elective services or equipment rovided outside the State, the region in which the insured resides. **'Where the fee schedule does not contain a reference to similar services ir equipment as set forth in the preceding sentence, the insurer's limit if liability for any medical expense benefit for any service or equipment iot set forth in the fee schedules shall not exceed the usual, customary ind reasonable fee.***

(f) When multiple procedures are performed in the same body region by the same provider at the same time, it is virtually never appropriate for the fee to be the sum of the fees for each procedure. The principal procedure at an operative session shall be paid at 100 percent of the eligible charge, the second procedure at 50 percent, and, if performed, any additional procedures at a total of 25 percent of the charge. However, if two or more providers in different specialties perform procedures or if one provider performs multiple procedures on different body regions, each individual provider, or each individual body region procedure may be reimbursed separately. For purposes of such billing, the body shall be divided into: head (including skull and brain); face; neck; chest; abdomen; ***back;*** and pelvic regions. In addition, the extremities shall be subdivided into right and left, upper arm, ***elbow,*** forearm, wrist and hand; and thigh, ***knee,*** lower leg, ankle and foot. Nothing in this subchapter shall be construed to prevent PIP insurers from paying only reasonable and appropriate fees when multiple procedures are performed at the same time or multiple services provided during the same medical visit.

(g) Artificially separating or partitioning what is inherently one total procedure into subparts which are integral to the whole for the purpose of increasing medical fees is prohibited. Such practice is commonly referred to as "unbundling" or "fragmented" billing. For surgery and many other procedures, it is established practice to include follow-up care and visits as part of the basic procedure charge. Such charges shall not be subject to additional billings. The existence of a CPT-4 code, per se, does not imply the right to receive separate compensation for the procedure/subprocedure so described. If a procedure is judged to be part of the major or principal procedure, only the charges for the principal procedure are eligible.

11:3-29.5 Balance billing prohibited

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

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
*[10000	I&D SEBACEOUS CYST; ONE LESION	91	91	96]*
10003	I&D OF LESION WITH CAVITY TREATMENT	94	91	96
*[10020	I&D OF FURUNCLE (BOIL)	91	91	91
10040	ACNE SURGERY (CYSTS, PUSTULES ETC.)	48	48	54]*
10060	I&D OF SKIN ABSCESS, SIMPLE	91	86	81
10061	I&D OF SKIN ABSCESS, COMPLICATED	275	269	269
*[10080	I&D OF PILONIDAL CYST, SIMPLE	131	131	131]*
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
*[11050	PARING/CURRETTE/SHAVING BGN LESION	46	45	54
11051	CURETTEMENT OF 2-4 BENIGN LESIONS	41	37	43
11052	CURETTEMENT OF > 4 BENIGN LESIONS	41	37	43
11100	BIOPSY 1 SKIN LESION, SUBCUTANEOUS	113	107	124
11101	BIOPSY EA ADDITIONAL SKIN LESION	75	75	75
11200	EXCISION OF UP TO 15 SKIN TAGS	98	98	120
11400	EX BGN LES, TRUNK/LIMBS, TO 0.5 CM	123	124	150
11401	EX BGN LES, TRUNK/LIMBS, 0.6-1.0 CM	139	156	162
11402	EX BGN LES, TRUNK/LIMBS, 1.1-2.0 CM	211	216	259
11403	EX BGN LES, TRUNK/LIMBS, 2.1-3.0 CM	270	271	324
11404	EX BGN LES, TRUNK/LIMBS, 3.1-4.0 CM	403	377	432
11406	EX BGN LES, TRUNK/LIMBS, OVER-4.0 CM	589	530	648
11420	EX BGN LES, SCALP/NECK ETC, TO 0.5 CM	135	161	145
11421	EX BGN LES, SCALP/NECK ETC, .6-1.0 CM	179	194	216
11422	EX BGN LES SCALP/NECK ETC, 1.1-2.0 CM	253	275	296
11423	EX BGN LES SCALP/NECK ETC, 2.1-3.0 CM	351	316	377
11424	EX BGN LES SCALP/NECK ETC, 3.1-4.0 CM	416	416	416
11426	EX BGN LES SCALP ETC, OVER 4.0 CM	516	516	539
11440	EX BGN LES FACE/EARS ETC, TO 0.5 CM	133	145	162

11441	EX BGN LES FACE/EARS ETC, 0.6-1.0 CM	167	167	19
11442	EX BGN LES FACE/EARS ETC, 1.1-2.0 CM	230	269	26
11443	EX BGN LES FACE/EARS ETC, 2.1-3.0 CM	404	364	43
11444	EX BGN LES FACE/EARS ETC, 3.1-4.0 CM	550	550	55
11446	EX BGN LES FACE ETC, OVER 4.0 CM	597	597	59
11600	EX MAL LES TRUNK/LIMBS, TO 0.5 CM	283	283	291
11601	EX MAL LES TRUNK/LIMBS, 0.6-1.0 CM	253	269	31
11602	EX MAL LES TRUNK/LIMBS, 1.1-2.0 CM	291	291	35
11603	EX MAL LES TRUNK/LIMBS, 2.1-3.0 CM	403	403	43
11604	EX MAL LES TRUNK/LIMBS, 3.1-4.0 CM	592	592	59
11606	EX MAL LES TRUNK/LIMBS, OVER 4.0 CM	678	678	67
11620	EX MAL LES SCALP/NECK ETC, TO 0.5 CM	324	324	324
11621	EX MAL LES SCALP/NECK ETC, .6-1.0 CM	315	315	315
11622	EX MAL LES SCALP/NECK ETC, 1.1-2.0 CM	311	311	311
11623	EX MAL LES SCALP/NECK ETC, 2.1-3.0 CM	439	439	439
11624	EX MAL LES SCALP/NECK ETC, 3.1-4.0 CM	388	388	388
11640	EX MAL LES FACE/EARS ETC, TO 0.5 CM	305	274	336
11641	EX MAL LES FACE/EARS ETC, 0.6-1.0 CM	292	296	357
11642	EX MAL LES FACE/EARS ETC, 1.1-2.0 CM	311	326	377
11643	EX MAL LES FACE/EARS ETC, 2.1-3.0 CM	459	459	459
11644	EX MAL LES FACE/EARS ETC, 3.1-4.0 CM	465	465	453
11700	DEBRIDEMENT NAILS, MANUAL; 5 OR LESS	28	32	32
11701	DEBRIDEMENT NAILS, EA ADD; 5 OR LESS	32	32	32
11710	DEBRIDEMENT NAILS, GRINDER; 5 OR LESS	30	32	32
11711	DEBRIDEMENT NAILS, EA ADD; 5 OR LESS	32	32	37]*
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
*[11770	EX PILONIDAL CYST/SINUS; SIMPLE	487	487	487
11771	EX PILONIDAL CYST/SINUS; EXTENSIVE	1120	1120	1120
11772	EX PILONIDAL CYST/SINUS; COMPLICATED	1467	1467	1467]*
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**	**1086**	**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
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
*[17110	DESTROY WARTS, ANY METHOD; UP TO 15	81	79	81
17200	ELECTROSURG DESTRUCTION TAGS; TO 15	109	113	107]*
17250	CHEMICAL CAUTERIZATION OF WOUND	57	57	54
17304	CHEMOSURG, 1ST STG, FRESH TISSUE TECH	826	826	826
17340	CRYOTHERAPY (C02 SLUSH, LIQUID N2)	67	70	81
*[17360	CHEMICAL EXFOLIATION, ACNE; EG, PAST	78	78	78]*
19000	PUNCTURE ASPIRATION CYST	107	118	113
19100	BIOPSY OF BREAST; NEEDLE (SEP PROC	153	151	156
*[19101	BIOPSY OF BREAST; INCISIONAL	638	638	638
19120	EX BENIGN MALIG TUMOR/TISS ETC; UNI	794	794	970
19160	MASTECTOMY, PARTIAL, UNILATERAL	1093	1129	1134
19162	MASTECTOMY PART; AXILL LYMPHADENECT	2563	2563	2563
19240	MAST, MOD RAD, INC AXILL & PECT MUSCLE	2906	2906	3196
19318	REDUCTION MAMMOPLASTY	4974	4974	4974]*
20220	BIOPSY, BONE, TROCAR OR NEEDLE; SUPER	317	317	313
20299	BONE MARROW ASPIRATION BIOPSY	313	313	313
*[20500	INJECTION SINUS TRACT; THERAPEUTIC	92	92	92]*
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
*[21030	EX BENIGN TUMOR FACIAL BONE; NO MAND	539	539	539]*
***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	*[470]**354*	*[470]**354*	*[470]**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 SHTH 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**	**4428**	**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***
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 ANKL FX, W/O MAN**	**648**	**648**	**648***
27810	TX CLOS BIMALLEOLAR ANKLE FX, W/ MAN	*[1033]*	***803***	*[1033]* ***803*** *[1033]* ***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
*[28285	HAMMERTOE OPERATION; ONE TOE	910	910	935
28290	BUNION OP; SILVER TYPE	1252	1252	1252
28292	BUNION OP; KELLER, MCBRIDE, MAYO TYPE	1656	1656	1656
28296	BUNION OP; MITCHELL OR CHEVRON TYPE	2209	2209	2209]*
***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
*[29450	CAST CLUBFOOT W/MOLD/MANIP, L/SH, UNI	113	113	113
29455	CAST CLUBFOOT W/MOLD/MANIP, L/SH, BIL	182	182	182]*
***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, INTRANSAL; 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
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
*[31625	BRONCHOSCOPY; WITH BIOPSY	728	747	864
31628	BRONCHOSCOPY; WITH LUNG BIOPSY	909	909	972]*
***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
*[36660	CATH, UMBIL ART, NEWBORN, DIAG/THERAP	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
*[37720	LIG&DIV STRIP LNG/SHORT SAPH VN, UN	1194	1194	1194
38500	BIOPSY/EX LYMPH NODE(S), SUPERFICIAL	463	463	463
38510	BX/EX LYMP NOD(S); DEEP, CERV NODE(S)	735	735	735
38745	AXILLARY LYMPHADENECTOMY; COMPLETE	2268	2268	2268

40812	EX LES MUCOSA&SUBMUCOSA; W/ SIMP REP	243	243	243
41820	GINGIVECTOMY, EX GINGIVA, EA QUADRANT	810	810	810]*
41896	OSSEOUS SURGERY	630	630	637
41897	TOOTH REMOVAL IMPACTED PARTIAL BONY	240	240	243
41898	TOOTH REMOVAL IMPACTED COMPLETE BONY	332	324	351
*[42820	TONSILLECTOMY&ADENOIDECTOMY; < 12YRS	1039	999	1080
42821	TONSILLECTOMY&ADENOIDECTOMY; > 12YRS	1103	1103	1103
42825	TONSILLECTOMY, PRIM/SECOND; < AGE12	969	969	969
42826	TONSILLECTOMY, PRIM/SECOND; 12/OVER	1075	967	1182
42830	ADENOIDECTOMY, PRIMARY; < AGE 12	761	761	761
43204	ESOPHAGOSC W/INJ SCLEROSIS VARICES	952	952	952]*
43220	ESOPHAGOSC, RIG/FIBEROPT; W/DIR DILAT	918	918	918
43235	ESOPHAGOGASTRODUODENOSCOPY; DIAGNOST	594	541	648
*[43239	ESOPHAGOGASTRODUODENOSCOPY; W/ BIOP	713	604	702]*
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
*[44950	APPENDECTOMY	1456	1404	1539
44960	APPENDECTMY RUP APPEN W/ABSCESS/PER	2036	2036	2036]*
45300	PROCTOSIGMOIDOSCOPY; DIAGNOSTIC (SEP)	129	129	124
*[45305	PROCTOSIGMOIDOSCOPY W/BIOPSY	222	222	222
45310	PROCTOSIGMOID W/REM POLYP/PAPILLOMA	284	284	284]*
45330	SIGMOIDOSCOPY, FLEX FIBEROPTIC; DIAGN	269	254	259
*[45331	SIGMOIDOSCOPY, FLEX FIBER, DIAG W/ BX	408	372	351
45333	SIGMOID, FLEXI FIBEROP REM POLYP LES	567	567	567]*
45355	COLONOSCOPY W/SIGMOID, TRANSAB/COLOT	354	377	335
45378	COLONOSCOPY, FIBER BEYOND SPLEN FLEX	809	702	783
*[45380	CLNSCPY, FIB, BEOND SPL FLEX W/BX&SPE	875	820	864
45383	COLNSCPY, FIB, BEYOND FLEX; ABLAT TUMR	1310	1310	1310
45385	CLNSCPY, FI, BE SP FLEX REM POLYP LES	1026	972	1080]*
46040	I&D ISCHIORECTAL/PERIRECTAL ABSCESS	466	466	466
46050	$I&D PERIANAL ABSCESS, SUPERFICIAL	155	155	155
*[46083	INCSN THROMBOSED HEMORROID, EXTERNAL	117	117	117
46200	FISSURECTOMY, W W/O SPHINCTEROTOMY	1080	1080	1080
46221	HEMORRHOIDECTOMY, SIMPLE LIGATURE	115	107	117
46250	HEMORROIDECTOMY, EXTERNAL, COMPLETE	324	324	324
46255	HEMORRHOIDECTOMY INT & EXT, SIMPLE	1295	1295	1295
46260	HEMORRHOIDECTOMY, INT & EXT, COMPLIC	1448	1448	1431]*
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
*[46900	DSTRCT LES(S), ANUS, SIMPLE; CHEMICAL	84	84	84
46924	DESTRCT LES, ANUS, EXTENSIVE; ANY METH	1361	1361	1361
46934	DESTRCT HEMRHD, ANY METHOD; INTERNAL	182	182	182
46945	LIGATE INT HEMORRHOIDS; SINGLE PROC	119	119	119]*
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/WO BX(S)	2114	2114	2204
49080	PERITONEOCENTESIS, ABD PARACEN; INIT	202	216	247
49421	INS INTRAPERI CANN/CATH DRAIN, PERM	1012	1012	1012
*[49500	ING HERNIA, UNDER 5, W/WO HYDRO, UNI	1561	1561	1717
49505	ING HERNIA, OVER 5, UNILATERAL	1259	1340	1502
49506	ING HERNIA, OVER 5, BILATERAL	2592	2592	2592
49520	ING HERNIA, 5 OVER; UNILAT, RECURRENT	1733	1733	1733
49530	ING HERNIA, 5 OVER; UNI, INCARCERATE	1812	1812	1812
49560	REPAIR VENTRAL (INC) HERNIA (SEPAR)	1809	1809	1890

49581	REPAIR UMBILICAL HERNIA; 5 OR OVER	1422	1422	1422
50200	RENAL BIOPSY, PERC (TROCAR, NEEDLE)	547	547	547]*
***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***
*[50590	LITHOTRIPSY, XTRACORPREAL SHOCK WAVE	2619	2619	2511]*
***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***
*[52336	CYSTOURETHROSC; W/URET/PYEL; REM CALC	1877	1877	1877]*
***52500**	**TRNSURETH RESECT OF BLADDER NECK**	**1620**	**1620**	**1620***
*[52601	TRNSURETHRAL RESECTION OF PROSTATE	2160	2109	2360]*
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
*[54050	DSTRCT LES(S), PENIS, SIMPLE; CHEMICL	83	83	81
54055	DESTR CONDYL, PENIS, MULT; ELECTRODES	163	163	163
54065	DESTRUCT LESION(S), PENIS, EXTENSIVE	351	351	351
54150	CIRCUMCISION, CLAMP PROC; NEWBORN	188	216	216
54160	CIRCUM, OT THAN CLAMP/DORS SLIT, NBRN	211	211	216
54161	CIRCUM, OT THAN CLMP/DORSLIT, XCPT NB	602	602	632]*
54235	INJ CORPORA CAVERNOSA W/PHARM AGNTS	105	105	104
*[55040	EXCISION OF HYDROCELE; UNILATERAL	1207	1207	1207
55250	VASECTOMY, UNI/BI, W POSTOP SEMEN XAM	621	539	573
55530	EX VARICOCELE/LIGATION SPERM VEINS	1897	1897	1897
55535	EX VARICO/LIG SPERM VEINS, ABDOM APP	1725	1725	1725
55700	NEEDLE/PUNCH BIOPSIE(S) OF PROSTATE	367	324	324
55821	PROSTATECTOMY, COMP; SUPRAPUBIC, SUBT	2970	2970	2970
56420	I&D BARTHOLIN GLAND ABSCESS, UNILAT	201	201	201
56440	MARSUPIALIZATION BARTHOLIN'S CYST	816	816	816
56501	DEST LESION(S), VULVA, SIMPLE; ANY MET	155	155	155
56515	DSTRCT LES, VULVA, EXTNSY, ANY METHOD	1044	1044	1044
56600	BIOPSY OF VULVA (SEPARATE PROCEDURE	158	158	158
57061	DEST VAGINAL LESION(S); SMPL; ANY MET	232	232	232
57160	INSERTION OF PESSARY	61	61	61
57452	COLPOSCOPY (VAGINOSCOPY)	240	216	210
57454	COLPOSCOPY W BIOPSIES/BIOPSY CERVI	302	286	269
57500	BIOPSY/EXC CERV LESION, W/WO FULGUR	160	162	162
57505	ENDOCERVICAL CURETTAGE	254	254	254
57510	CAUTERIZATION CERVIX, ELECTRO/THERML	154	154	151
57511	CRYOCAUTERIZATION OF CERVIX	188	188	216
57513	CAUTERIZATION CERVIX W/ LASER	780	780	780
57520	CONE BIOPSY CERVIX W/WO D&C/REPAIR	1184	1296	1188
57700	CERCLAGE UTER CERVIX, NONOBSTETRICAL	1394	1394	1394
57820	DILATION & CURETTAGE, CERVICAL STUMP	833	833	833
58100	ENDOMETRIAL BIOPSY, SUCTION TYPE	188	194	173

58101	ENDOMETRIAL WASHINGS, EG CYTOL SAMP	100	100	10(
58102	OFFICE ENDOMETRIAL CURETTAGE	211	258	21(
58120	D & C DIAG &/ THERAPEUTIC NONOBSTET	706	799	80(
58140	MYOMECTOMY, SING/MULT, ABDOM APPROACH	2939	2939	293(
58150	TOTAL HYSTERECTOMY, W/WO TUBES &/OVA	3121	3241	3781
58260	VAGINAL HYSTERECTOMY	3233	3233	323:
58265	VAG HYSTEREC W/ ANT & POST COLPORR	3382	3382	338:
58310	ARTIFICIAL INSEMINATION	159	143	17:
58311	ARTIFICIAL INSEMINATE; SPERM WASHING	208	208	19<
58340	INJ PROC FOR HYSTEROSALPINGOGRAM	179	188	16:
58600	LIG/TRANSECT FALL TUBE(S), UNI/BILAT	1669	1669	166(
58605	LIG/TRANSECT FALL TUBE POSTPARTUM	1349	1349	134(
58720	SALPINGO-OOPHORECTOMY, PAR/COM, UN/B	2809	2809	280(
58925	OVARIAN CYSTECTOMY, UNILAT/BILATERAL	2731	2731	2731
58940	OOPHORECTOMY, PART/TOTAL, UNI/BILATE	2635	2635	2635]*
58980	LAPAROSCOPY; SURGICAL	1747	1620	1922
*[58982	LAPAROSCOPY W/ FULGURATION OVIDUCTS	1576	1620	1620
58983	LAPAROSCOPY W/ OCCLUS OVID W DEVICE	1464	1464	1464
58985	LAPAROSCOPY W/ LYSIS OF ADHESIONS	2031	2031	2031
58990	HYSTEROSCOPY; DIAGNOSTIC	539	539	539
59000	AMNIOCENTESIS, ANY METHOD	297	269	307
59020	FETAL OXYTOCIN STRESS TEST	135	135	135
59025	FETAL NON-STRESS TEST	106	130	107]*
59160	D & C FOR CURETTAGE, POSTPARTUM	848	848	848
*[59400	RTE OBSTET CARE, INC ANTEPART, VAGIN	2355	2592	2781
59410	VAG DEL ONLY INC POSTPARTUM CARE	2458	2458	2485
59420	ANTEPARTUM CARE ONLY SEPARATE PROC	189	189	208
59499	OBSTETRICAL WITH CIRCUMCISION	2830	2830	2830
59502	REPEAT C-SEC, LOW CERV & IH PP CARE	3103	3103	3103
59503	REPEAT C-SEC, LOW CERV, ANT/PP CARE	3509	3509	3509
59510	OB CARE ANTE/POSTPARTUM CAR, C SECT	2794	3025	3241]*
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
*[59840	INDUCED ABORTION BY DILAT & CURETTG	744	728	756
59841	INDUCE ABORT BY DILAT & EVACUATION	756	702	809
59851	INDUCE ABORT W D&C &/EVACUATION	1026	1026	1026
60100	BIOPSY THYROID NEEDLE	212	212	216
60220	TOTAL THYROID LOBECTOMY UNILATERAL	2802	2802	2802
61070	PUNCT OF SHUNT TUBING/RESERVOIR	151	151	151
61510	CRANIEC/OTOMY, EXC BRAIN TUMOR, SUPRA	7258	7258	7258]*
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, ANESTHETIC AGENT; 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
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
*[66170	FIST SCLERA GLAUC; TRABECULECTOMY	2160	2160	2160
66761	IRIDOTMY BY PHOTOCOAG; FOR GLAUCOMA	1323	1350	1296
66821	DISCIS 2NDARY MEMB CATARACT; LASER	1036	1042	1188
66830	RM 2ND MEM CAT W/WO IRIDECTOMY	1256	1256	1256
66983	INCAP CATRACT EX W INSRT LENS PROT	2356	2356	2356
66984	EXCAP CATRACT REM W INSRT LEN PROT	2463	2485	2700
66985	INSRT INTRAOC LENS SUB TO CAT REM	2144	2144	2144]*
67101	REP RET DETACH, CRYOTHERAPY/DIATHERM	1646	1646	1646
67105	REP RET DETACH; PHOTCOAG, W/WO DRAIN	1635	1635	1635

67107	REP RETINAL DETACH; SCLERAL BUCKLIN	3714	3714	3714
*[67141	PROPHYLAXIS RET DETACH; DIATHERMY	1709	1709	1709]*
67145	PROPHY RET DETACH; PHOTOCOAGULATION	1508	1508	1508
*[67210	DESTRCT LOCAL LES RETINA; PHOTOCOAG	1321	1350	1296
67227	DESTRCT PROGRES RETNOPATHY, DIATHERM	1195	1195	1195
67228	DESTRCT PROGRES RETNOPATH; PHOTOCOAG	1296	1134	1296
67312	STRAB SURG ON NEW PAT; ANY 2 MUSCLE	1984	1984	1984]*
67500	RETROBULBAR INJECTION; MEDICATION	126	126	126
67700	BLEPHAROTOMY, DRAIN ABSCESS EYELID	86	86	86
*[67800	EXCISION CHALAZION; SINGLE	238	216	262
67801	EXCISION CHALAZION; MULTI, SAME LID	285	285	296
67820	CORECT TRCHIASIS; EPILATION, FORCE	70	70	70
67840	EX LES'N EYELID W/WO SIMPLE CLOSUR	251	251	269
68110	EXCISION LESION CONJUNCT; TO ONE CM	140	140	140
68800	DILATION LACRIM PUNCTUM, W/WO IRRI	81	81	81
68820	PROBING NASOLACRIM DUCT, W/WO IRRI	101	101	101
69200	REM F-BODY EXT AUD CANAL; W/O ANES	94	94	96
69210	REM IMPACTED CERUMEN, ONE/BOTH EARS	60	65	70]*
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/WO STEREO	67	67	67
70260	X-RAY SKULL, COMP, MIN 4 VIEWS, W/WO	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	7
72100	X-RAY LUMBOSACRAL SPINE, A/P & LAT	75	75	7
72110	X-RAY LUMBOSACRAL SPINE, COMPLETE	129	108	11
72114	X-RAY LUMB/SAC SPINE, INCL BENDING	140	133	13
72120	X-RAY LUMB/SAC SPINE, BENDING ONLY	81	81	8
72125	CAT SCAN CERVICAL SPINE WO CONTRAST	453	453	49
72128	CAT SCAN THORACIC SPINE WO CONTRAST	572	572	57
72131	CAT SCAN LUMBOSACRAL SPINE WO CONTR	550	513	57
72141	MRI, CERVICAL SPINE, W/O CONTRAST	918	864	89
72148	MRI, LUMBOSACRAL SPINE, W/O CONTRAST	914	914	91
72170	X-RAY PELVIS, ANTEROPOSTERIOR ONLY	66	59	6
72190	X-RAY PELVIS, COMP, 3 OR MORE VIEWS	67	67	6
72192	CAT SCAN PELVIS, W/O CONTRAST	413	413	37
72193	CAT SCAN PELVIS, W/CONTRAST	432	392	35
72194	CAT SCAN PELVIS, WO CONT FOL BY CONT	550	550	55
72196	MRI, PELVIS	938	938	93
72200	X-RAY SACROILIAC JOINTS, < 3 VIEWS	77	77	7
72202	X-RAY SACROILIAC JOINTS, 3 OR MORE	93	93	9
72220	X-RAY SACRUM & COCCYX, MIN 2 VIEWS	73	73	7
72265	MYELOGRAM, THORACIC, R SPINE	320	320	32
73000	X-RAY CLAVICLE, COMPLETE	61	60	6
73010	X-RAY SCAPULA, COMPLETE	62	62	6
73020	X-RAY SHOULDER, 1 VIEW	62	62	6
73030	X-RAY SHOULDER, COMPLETE, MIN 2 VIEWS	70	70	7
73041	ARTHROGRAM SHOULDER, COMPLETE PROC	295	295	29
73050	ARTHROGRAM, ACROMIOCLAVICULAR, BILAT	81	81	8
73060	ARTHROGRAM, HUMERUS, MIN 2 VIEWS	73	66	6
73070	X-RAY ELBOW, A/P & LATERAL	65	59	6
73080	X-RAY ELBOW, COMPLETE, MIN 3 VIEWS	67	65	7
73090	X-RAY FOREARM, A/P & LATERAL VIEWS	63	59	5
73100	X-RAY WRIST, A/P & LATERAL VIEWS	62	62	5
73110	X-RAY WRIST, COMPLETE, MIN 3 VIEWS	70	65	7
73120	X-RAY HAND, 2 VIEWS	59	54	5
73130	X-RAY HAND, MINIMUM 3 VIEWS	65	65	6
73140	X-RAY FINGER(S), MINIMUM 2 VIEWS	56	51	5
73220	MRI UPPER EXTREMITY, NOT JOINT	929	929	92
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
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	HYSTEROSALPINOGRAPHY, 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
*[76020	X-RAYS FOR BONE AGE	68	68	68
76090	MAMMOGRAPHY, UNILATERAL	107	96	101
76091	MAMMOGRAPHY, BILATERAL	129	125	140
76096	LOCALIZE BREAST NODULE, PREOP, SNG	263	263	266
76098	X-RAY, BREAST SURGICAL SPECIMEN	59	59	59
76100	X-RAY, SINGLE PLANE BODY SECTION	120	120	120
76125	CINERADIOGR, COMPLEMENT ROUTINE EXAM	162	162	162]*
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
*[76645	ECHOGRAM, BREAST, UNI/BI, B-SCAN/REAL	148	134	124]*
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***
*[76943	ULTRASONIC GUIDE, NEEDLE BIOPSY, COMP	446	446	446
76946	ULTRASONIC GUIDE, AMNIOCENTESIS, S/I	150	150	150
76947	ULTRASONIC GUIDE, AMNIOCENTESIS, COMP	242	242	218]*
***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
***77135**	**TELETHERAPY, ISODOSE, COMPLEX**	**287**	**287**	**287***
77336	RADIATION PHYSICS CONSULT	140	140	140
77400	DAILY MEGAVOLT THEREAPY, 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	HEPATOBILIARY 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
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
*[78999	NUCLEAR DIAGNOSTIC EXAM, DEFAULT	86	86	86]*
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***
*[80099	PANEL, NOT SPECIFIED	66	66	67]*
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
83020	ASSAY HEMOGLOBIN	13	13	12
83036	GLYCOSYLATED HEMOGLOBIN TEST	38	38	39
63540	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 TRANDAMINASE (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	2
85044	RETICULOCYTE COUNT	15	15	1
85060	BLOOD SMEAR INTERPRETATION	37	37	3
***85100**	**BONE MARROW EXAMINATION**	**269**	**269**	**269**
85580	BLOOD PLATELET COUNT	15	15	1
85595	ELECTRONIC PLATELET COUNT	14	15	1
85610	PROTHROMBIN TIME	16	15	1
85650	RBC SEDIMENTATION RATE, WINTROBE	16	15	1
85651	RBC SEDIMENTATION RATE, WESTERGREN	15	15	1
85730	THROMBOPLASTIN TIME, PART, PLAS/WHOLE	23	23	2
86006	ANTIBODY, QUALITATIVE, FIRST	26	26	2
86008	ANTIBODY, QUANT., FIRST	54	54	5
86016	RBC SALINE ANTIBODIES, HP+ANTIHUMAN	18	18	1
86038	ANTINUCLEAR ANTIBODIES, RIA	42	42	4
86060	ANTISTREPTOLYSIN O TITER	32	32	3
86082	BLOOD TYPING, ABO & RHO(D)	23	23	2
86100	BLOOD TYPING, RHO(D) ONLY	6	6	6
86128	BLOOD AUTOTRANSFUSION	432	432	43
86140	C-REACTIVE PROTEIN	25	25	2
86149	CARCINOEMBRYONIC ANTIGEN, GEL	66	66	6
86151	CEA ASSAY, RIA OR EIA	74	74	7
86171	COMPLEMENT FIXATION, EACH	58	58	6
86225	DNA ANTIBODY	62	62	6
86244	ASSAY ALPHA-1 FETROPROTEIN	65	65	6
86255	FLUORESCENT ANTIBODY; SCREEN	78	78	8
86256	FLUORESCENT ANTIBODY; TITER	68	68	6
86280	HEMAGGLUTINATION INHIBITION	30	30	3
86287	HEPATITIS HAA, RIA, OR EIA	32	32	3
86289	HEPATITIS BC ANTIBODY TEST, HBCAB	49	49	4
86291	HEPATITIS BS ANTIBODY TEST, HBSAB	37	37	3
86296	HEPATITIS A ANTIBODY TEST, HAAB	51	51	5
86300	HETEROPHILE ANTIBODY SCREEN	20	20	2
68310	HETEROPHILE ANTIBODIES	35	35	3
86312	HIV ANTIBODY DETECTION	51	51	5
86316	IMMUNOASSAY, TUMOR ANTIGEN	61	61	6
86317	IMMUNOASSAY, INFECTIOUS AGENT	67	74	6
***86319**	**IMMUNOASSAY TECHNIQUE FOR DRUGS**	**54**	**54**	**54**
86329	IMMUNODIFFUSION, EACH	67	67	6
86357	LYMPHOCYTES, T&B DISTINCTION	179	179	17
86403	RAPID TEST, INFECTIOUS AGENT	20	20	1
86421	RADIOALLERGOSORBENT TESTS, 5/ <	34	34	3
86422	RADIOALLERGOSORBENT TESTS, 6/ >	346	346	34
86423	RADIOIMMUNOSORBENT TEST IGE, QUANT	58	58	5
86430	RHEUMATOID FACTOR TEST	18	18	1
86580	TB INTRADERMAL TEST	15	15	1
86585	TB TINE TEST	14	13	1
86592	BLOOD SEROLOGY, QUALITATIVE	15	15	1
86999	IMMUNOLOGY PROCEDURE	82	82	8
***87015**	**SPECIMEN CONCENTRATION**	**32**	**32**	**32**
87040	BLOOD CULTURE FOR BACTERIA	51	51	5
87045	STOOL CULTURE FOR BACTERIA	45	45	4
87060	NOSE/THROAT CULTURE, BACTERIA	15	15	1
87070	CULTURE SPECIMEN, BACTERIA	35	32	3
87072	CULTURE OF SPECIMEN BY KIT	20	18	2
87081	BACTERIA CULTURE SCREEN	18	16	1
87082	CULTURE OF SPECIMEN BY KIT, SINGLE	19	19	1
87084	CULTURE OF SPECIMEN BY KIT, COL EST	19	19	1
***87085**	**CULTURE OF SPECIMEN BY KIT, COL CNT**	**15**	**15**	**15**
87086	URINE CULTURE, COLONY COUNT	30	26	3
87087	URINE BACTERIA CULTURE, COMMERC KIT	22	22	2
87088	URINE BACTERIA CULTURE, ID+COM KIT	26	26	2
87101	SKIN FUNGUS CULTURE	25	25	2
87102	FUNGUS ISOLATION CULTURE	38	38	3
87106	FUNGUS IDENTIFICATION	26	26	2
87109	MYCOPLASMA CULTURE	74	74	7
87110	CULTURE, CHLAMYDIA	80	80	8
87177	OVA AND PARASITES SMEARS	63	63	6
87184	ANTIBIOTIC SENSITIVITY, EACH, DISC	25	25	2
87186	ANTIBIOTIC SENSITIVITY, MIC	16	16	1
87205	SMEAR, STAIN & INTERPRET, ROUTINE	17	17	1

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/WO 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, COMPLX, DIS	269	269	269
***88311**	**DECALCIFY TISSUE**	**21**	**21**	**21**
88312	**SPECIAL STAINS, GROUP 1**	**65**	**65**	**65***
88313	SPECIAL STAINS, GROUP2+OTHERS	21	21	21
*[88331	CONSULT DURING SURG, FROZEN SECTIONS	147	147	145]*
88346	IMMUNOFLUORESCENT STUDY	42	42	42
88399	SURGICAL PATHOLOGY PROCEDURE	43	43	43
*[89300	SEMEN ANALYSIS, PRES+/MOT, HUHNER	72	72	72
89320	SEMEN ANALYSIS, COMPLETE	114	114	114
89389	LABORATORY, DEFAULT CODE	75	62	67
89399	PATHOLOGY, DEFAULT CODE	40	40	36]*
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	67	107
90020	OFFICE/OP VISIT, NEW, COMPRH	129	107	118
*[90025	OFFICE VISIT, NEW/ESTAB, DEFAULT CODE	52	54	60]*
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
*[90140	HOME VISIT, BRIEF	189	189	189]*
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	*[58]* ***50***	*[63]* ***50***	*[65]* ***60***
90250	HOSPITAL VISIT, LIMITED	55	*[59]* ***55***	*[65]* ***61***
90260	HOSPITAL VISIT, INTERMEDIATE	*[54]* ***58***	*[54]* ***55***	*[65]* ***61***
90270	HOSPITAL VISIT, EXTENDED	*[82]* ***73***	*[84]* ***69***	*[96]* ***81***
90280	HOSPTIAL VISIT, COMPREHENSIVE	*[97]* ***91***	*[88]* ***82***	*[86]* ***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
*[90635	CONSULT (INIT/FUP), DEFAULT CODE	116	116	116]*
90640	BRIEF FOLLOW-UP CONSULT	68	68	68
90641	LIMITED FOLLOW-UP CONSULT	76	76	81

90642	INTERMEDIAT 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
*[90799	THERAPEUTIC INJ, DEFAULT CODE	30	30	27]*
**90801	**DIAGNOSTIC INTERVIEW, PSYCH**	**197**	**197**	**237***
*[90841	INDIVIDUAL PSYCHOTHERAPY, UNSPEC	95	95	95]*
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
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	*[224]* ***122***	*[224]* ***116***	*[224]* ***122***
95904	SENSORY NERVE CONDUCTION TESTING, EA	*[189]* ***116***	*[189]* ***110***	*[189]* ***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	*[43]* ***55***	*[43]* ***60***	*[43]* ***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	*[13]* ***33***	*[13]* ***37***	*[13]* ***37***
***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***
*[97799	PHYSICAL MEDICINE, DEFAULT CODE	43	43	43]*
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
*[99070	SPECIAL SUPPLIES	91	91	100]*
99172	CRITICAL CARE, FOLLOW-UP, LIMITED	140	140	140
99173	CRITICAL CARE, FOLLOW-UP, INTERMED	220	220	220
*[99199	OTHER MEDICAL SERV, DEFAULT CODE	92	92	93]*

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 chiropractors' services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE—CHIROPRACTORS' SERVICES

Description of Services	Region 1 Fee	Region 2 Fee	Region 3 Fee
Initial visit—with or without adjustment and/or PT modalities	79	81	85
Routine visit, incl. adjustment	32	36	36
Extended visit—including adjustment and phys therapy	53	52	52
Interim complete visit—eval'n to validate need for extd. addl trtmt; w/wo adj & PT modalities	69	71	76]*

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

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE
NURSING AND ALLIED PROFESSIONAL HEALTH SERVICES

Service	Fee		
PRIVATE NURSING CARE (PER HOUR)		HOME HEALTH VISITS (PER VISIT)	
Registered nurse	40.00	Registered nurse	82.0(
Licensed practical nurse	35.00	Licensed practical nurse	58.0(
Home health aide	15.50	Physical therapist	77.0(
Live-in attendant (per 24-hour shift)	136.00	Speech therapist	77.0(
		Occupational therapist	77.0(

*[(e)]**(d)* The following is the Medical Fee Schedule for ambulance services:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE
AMBULANCE SERVICES

Code	Description	Fee
A0010	Ambulance service basic life support (BLS), base rate, emergency transport, one way	110.00
A0020	Ambulance service (BLS) per mile, transport, one way	4.50
A0070	Ambulance service, oxygen administration and supplies life sustaining situation	30.00
Z0224	Cardiac monitoring during an ambulance trip	50.00

*[(f)]**(e)* The following is the Medical Fee Schedule for durable medical equipment and prosthetic devices:

STATE OF NEW JERSEY
PERSONAL AUTO INJURY FEE SCHEDULE
DURABLE MEDICAL EQUIPMENT AND PROSTHETIC DEVICES
CODES BEGINNING WITH 'A'

HCPCS Code	Description	Fee for New Equipmer
A4214	Sterile saline or water, 30 cc vial	.81
A4310	Insertion tray without drainage bag and without catheter (accessories only)	6.61
A4311	Insertion tray without drainage bag with indwelling catheter, Foley type, two-way latex with coating (teflon, silicone, silicone elastometer, or hydrophilic, etc.)	8.34
A4312	Insertion tray without drainage bag with indwelling catheter, Foley type, two-way, all silicone	8.34
A4313	Insertion tray without drainage bag with indwelling catheter, Foley type, three-way, for continuous irrigation	8.34
A4314	Insertion tray with drainage bag with indwelling catheter, Foley type, two-way latex with coating (Teflon, silicone, silicone elastometer, or hydrophilic, etc.)	15.46
A4315	Insertion tray with drainage bag with indwelling catheter, Foley type, two-way, all silicone	15.46
A4316	Insertion tray with drainage bag with indwelling catheter, Foley type, three-way, for continuous irrigation	15.46
A4320	Irrigation tray for bladder irrigation with bulb or piston syringe	5.00
A4322	Irrigation syringe, bulb or piston	2.50
A4323	Sterile saline irrigation solution, 1000 ml	8.00
A4328	Female external urinary collection device; pouch, each	10.00
A4329	External catheter starter set, male/female, includes catheters/urinary collection device, bag/pouch and accessories (tubing, clamps, etc.) 7-day supply	39.95
A4338	Indwelling catheter: Foley type, two-way latex with coating (Teflon, silicone, silicone elastometer or hydrophilic, etc.)	8.14
A4340	Indwelling catheter; specialty type, (e.g., Coude, Mushroom, Wing, etc.)	10.00
A4344	Indwelling catheter, Foley type, two-way, all silicone	15.52
A4346	Indwelling catheter, Foley type, three-way, for continuous irrigation	10.34
A4347	Male external catheter with or without adhesive, with or without anti-reflux device; per dozen	30.51
A4351	Intermittent urinary catheter; straight tip	5.00
A4352	Intermittent urinary catheter; Coude (curved) tip	5.00
A4354	Insertion tray with drainage bag but without catheter	13.73
A4355	Irrigation tubing set for continuous bladder irrigation through a three-way indwelling Foley catheter	11.90
A4356	External urethral clamp or compression device (not to be used for catheter clamp)	37.03
A4357	Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube	7.93
A4358	Urinary leg bag; vinyl, with or without tube	7.12
A4359	Urinary suspensory; without leg bag	31.90
A4361	Ostomy faceplate	31.53
A4362	Skin barrier; solid, 4 X 4 or equivalent; each	5.03
A4363	Skin barrier; liquid (spray, brush, etc.) powder or paste; per oz.	4.07
A4364	Adhesive for ostomy or catheter; liquid (spray, brush, etc.) cement, powder or paste; any composition (e.g., silicone, latex, etc.); per oz.	4.58

4367	Ostomy belt	6.98
4398	Irrigation supply, bags	2.25
4399	Irrigation supply, cone/catheter	11.25
4400	Ostomy irrigation set	19.07
4402	Lubricant	4.32
4404	Ostomy rings	1.22
4611	Battery, heavy duty; replacement for patient-owned ventilator	180.00
4612	Battery cables; replacement for patient-owned ventilator	44.00
4615	Cannula, nasal	7.50
4617	Mouth piece	5.00
4618	Breathing circuits	9.15
4619	Face tent	10.00
.4620	Variable concentration mask	10.00
.4621	Tracheotomy mask or collar	10.17
.4622	Tracheostomy or laryngectomy tube	75.00
.4623	Tracheostomy, inner cannula (replacement only)	6.00
.4624	Tracheal suction catheter, any type, each	2.00
.4625	Tracheostomy care or cleaning starter kit	8.00
.4626	Tracheostomy cleaning brush, each	3.00
.5051	Pouch, closed; with barrier attached (1 piece)	3.05
.5052	Pouch, closed; without barrier attached (1 piece)	3.05
.5053	Pouch, closed; for use on faceplate	3.05
.5054	Pouch, closed; for use on barrier with flange (2 piece)	3.05
.5055	Stoma cap	2.00
.5061	Pouch, drainable; with barrier attached (1 piece)	4.07
.5062	Pouch, drainable; without barrier attached (1 piece)	4.07
.5063	Pouch, drainable; for use on barrier with flange (2 piece system)	4.07
.5064	Pouch, drainable; with faceplate attached; plastic or rubber	4.07
.5065	Pouch, drainable; for use on faceplate; plastic or rubber	4.07
.5071	Pouch, urinary; with barrier attached (1 piece)	4.07
.5072	Pouch, urinary; without barrier attached (1 piece)	4.07
.5073	Pouch, urinary; for use on barrier with flange (2 piece)	4.07
.5074	Pouch, urinary; with faceplate attached; plastic or rubber	4.07
.5075	Pouch, urinary; for use on faceplate; plastic or rubber	4.07
.5081	Continent device; plug for continent stoma	3.50
.5082	Continent device; catheter for continent stoma	11.00
.5093	Ostomy accessory; convex insert	1.65
.5012	Bedside drainage bottle, rigid or expandable	28.00
.5105	Urinary suspensory; with leg bag, with or without tube	31.90
.5112	Urinary leg bag; latex	7.12
.5113	Leg strap; latex, per set	4.00
.5114	Leg strap; foam or fabric, per set	8.95
.5119	Skin barrier; wipes, box per 50	9.50
.5121	Skin barrier; solid, 6 × 6 or equivalent, each	5.03
.5122	Skin barrier; solid, 8 × 8 or equivalent, each	5.03
.5123	Skin barrier; with flange (solid, flexible or accordion), any size, each	6.00
.5126	Adhesive: disc or foam pad	1.25
.5131	Appliance cleaner, incontinence and ostomy appliances, per 16 oz.	16.25

CODES BEGINNING WITH 'E'

HCPCS Code	Description	Fee For New Eqpt	Fee For Used Eqpt	Monthly Rental
E0100	Cane, includes canes of all materials, adjustable or fixed, with tip	14.44	11.18	1.44
E0105	Cane, quad or three prong, includes canes of all materials, adjustable or fixed, with tips	38.07	27.89	3.81
E0110	Crutches, forearm, includes crutches of various materials, adjustable or fixed, pair, complete with tips and handgrips	55.85	41.88	5.59
E0111	Crutch forearm, includes crutches of various materials, adjustable or fixed, each, with tip and handgrip	63.10	47.33	6.31
E0112	Crutches underarm, wood, adjustable or fixed, pair, with pads, tips and handgrips	45.77	34.33	4.58
E0113	Crutch underarm, wood, adjustable or fixed, each, with pad, tip and handgrip	18.81	14.10	1.88
E0114	Crutches underarm, aluminum, adjustable or fixed, pair with pads, tips and handgrips	66.11	49.58	6.61
E0116	Crutch underarm, aluminum, adjustable or fixed, each, with pad, tip and handgrip	18.31	13.73	1.83
E0130	Walker, rigid (pickup), adjustable or fixed height	53.94	40.42	5.39
E0135	Walker, folding (pickup), adjustable or fixed height	57.31	42.08	5.73
E0141	Walker, wheeled, without seat	92.44	69.33	9.24

E0142	Rigid walker, wheeled, with seat	331.54	248.66	33.15
E0143	Folding walker, wheeled, without seat	105.16	78.87	10.52
E0145	Walker, wheeled, with seat and crutch attachments	170.30	127.72	17.03
E0146	Walker, wheeled, with seat	306.88	230.16	30.69
E0147	Heavy duty, multiple breaking system, variable wheel resistance walker	199.33	149.50	19.93
E0150	Underarm pad, crutch, replacement, each	10.07	7.55	1.01
E0151	Handgrip, crane, crutch, or walker replacement, each	2.44	1.83	.24
E0152	Tip, cane or crutch, walker replacement, each	1.67	1.25	.17
E0153	Platform attachment, forearm crutch, each	53.39	40.04	5.34
E0154	Platform attachment, walker, each	66.11	49.58	6.61
E0155	Wheel attachment, rigid pick-up walker attachments	24.71	18.53	2.47
E0156	Seat attachment, walker	20.34	15.26	2.03
E0157	Crutch attachment, walker, each	53.39	40.04	5.34
E0158	Leg extensions for a walker	32.54	24.41	3.25
E0160	Sitz type bath, portable, fits over commode seat	9.16	6.87	.92
E0161	Sitz type bath, portable, fits over commode seat, with faucet attachments	50.85	38.14	5.09
E0163	Commode chair, stationary, with fixed arms	85.98	59.22	8.60
E0164	Commode chair, mobile, with fixed arms	203.40	66.39	20.34
E0165	Commode chair, stationary with detachable arms	174.55	157.90	17.46
E0166	Commode chair, mobile with detachable arms	255.88	191.90	25.59
E0167	Pail or pan for use with commode chair	9.83	7.37	.98
E0175	Foot rest, for use with commode chair, each	42.50	31.88	4.25
E0180	Pressure pad, alternating with pump	231.86	181.22	23.19
E0181	Pressure pad, alternating with pump, heavy duty	254.32	181.53	25.43
E0182	Pump for alternating pressure pad	280.69	155.60	28.07
E0183	Flotation pad, for wheelchair	85.46	64.10	8.55
E0184	Flotation mattress, dry	66.11	49.58	6.61
E0185	Decubitus care pad, flotation or gel pad with foam leveling pad (mattress size)	60.00	60.00	6.00
E0188	Synthetic sheepskin pad	20.34	15.26	2.03
E1089	Lambswool sheepskin pad, any size	20.34	15.26	2.03
E0190	Decubitus care mattress, includes flotation or gel mattress	241.87	203.19	24.19
E0191	Heel or elbow protector, each	9.97	7.48	1.00
E0192	Low pressure and positioning pad for wheelchair	315.00	236.25	31.50
E0193	Powered air flotation bed (low air loss therapy)	7113.92	5335.44	711.39
E0195	Replacement pad for use with medically necessary alternating pressure pad owned by the patient	46.03	34.52	4.60
E0200	Heat lamp, without stand (table model), includes bulb, or infrared element	35.60	26.70	3.56
E0205	Heat lamp, with stand, includes bulb, or infrared element	35.60	26.70	3.56
E0210	Electric heat pad, standard	25.11	18.83	2.51
E0215	Electric heat pad, moist	34.60	25.95	3.46
E0225	Hydrocollator unit, includes pads	30.51	22.88	3.05
E0235	Paraffin bath unit, portable	187.44	119.94	18.74
E0238	Non-electric heat pad moist	30.51	22.88	3.05
E0249	Pad for water circulating heat unit	120.00	90.00	12.00
E0250	Hospital bed, with side rails, fixed height, with mattress	849.97	749.97	85.00
E0251	Hospital bed, with side rails, fixed height, without mattress	648.34	648.34	64.83
E0252	Hospital bed, fixed height, with mattress	1045.98	935.33	104.60
E0255	Hospital bed, with side rails, variable height, Hi-Lo, with mattress	929.80	864.32	92.98
E0260	Hospital bed, with side rails, semi-electric, head and foot adjustment, with mattress	1487.23	1217.35	148.72
E0265	Hospital bed, total electric with side rails (head, foot and height adjustments, with mattress)	1841.08	1450.45	184.11
E0266	Hospital bed, with side rails, total electric head, foot, and height adjustments without mattress	1871.28	1403.46	187.13
E0271	Mattress, innerspring	162.52	121.89	16.25
E0272	Mattress, foam rubber	150.00		15.00
E0275	Bed pan, standard, metal or plastic	15.26	11.41	1.53
E0276	Bed pan, fracture, metal or plastic	12.15	9.12	1.22
E0280	Bed, cradle, any type	28.48	21.36	2.85
E0305	Bed side rails, half length	138.64	103.98	13.86
E0310	Bed side rails, full length	158.86	119.15	15.89
E0325	Urinal: male, jug type, any material	6.30	4.73	.63
E0326	Urinal: female, jug type, any material	8.95	6.71	.90
E0450	Volume ventilator; stationary	10170.00	7627.50	1017.00
E0451	Volume ventilator; portable (includes battery, battery charger, and battery cables)	5524.34	4143.26	552.43
E0456	Chest shell (cuirass)	400.00		40.00
E0458	Negative pressure pump	4803.99		480.40
E0459	Chest Wrap	520.00		52.00
E0461	Negative pressure ventilator; stationary (e.g., Iron-lung)	1830.60	1372.95	183.06
E0480	Percussor, electric or pneumatic, home model	269.50	171.81	26.95

E0500	IPPB machines with manual valves, external power source, includes cylinder regulator, built-in nebulization	452.57	339.42	45.26
E0505	IPPB machines with manual valves, electrically driven with internal power source, built-in nebulization	661.05	495.79	66.11
E0510	IPPB machines with automatic valves, external power source includes cylinder regulator, built-in nebulization	661.05	495.79	66.11
E0515	IPPB machines with automatic valves, electrically driven with internal compressor, built-in nebulization	452.57	339.43	45.26
E0550	Humidifier, durable for extensive supplemental humidification during IPPB treatment or oxygen delivery; e.g., Cascade	304.08	228.06	30.41
E0560	Humidifier, durable for supplemental humidification during IPPB treatment or oxygen delivery; e.g., Cascade Jr.	62.33	46.75	6.23
E0565	Compressor, air power source for equipment which is not self-contained or cylinder driven	488.01	291.75	48.80
E0570	Nebulizer, with compressor; e.g., DeVilbiss Pulmo-Aid	160.26	114.29	16.03
E0575	Nebulizer, self-contained, ultrasonic	706.82	530.12	70.68
E0580	Nebulizer, durable, glass or autoclavable plastic bottle type, for use with regulator or flowmeter	116.96	87.72	11.70
E0585	Nebulizer, with compressor and heater	116.96	87.72	11.70
E0600	Suction pump, home model, portable	395.10	296.33	39.51
E0601	Nasal continuous airway pressure (CPAP) device	1017.00	762.75	101.70
E0605	Vaporizer, room type	29.49	22.12	2.95
E0606	Postural drainage board	152.55	114.41	15.26
E0607	Home blood glucose monitor	150.91	113.18	15.09
E0609	Blood glucose monitor with special features (e.g., voice synthesizers, automatic timers, etc.)	488.16	366.12	48.82
E0610	Pacemaker monitor self-contained, (checks battery depletion, includes audible and visible check systems)	324.42	243.32	32.44
E0615	Pacemaker monitor self-contained, (checks battery depletion and other pacemaker components, includes digital/visible check systems)	324.42	243.32	32.44
E0620	Seat lift chair, motorized to assist patient in standing and sitting	799.31	530.37	79.93
E0621	Sling or seat, patient lift, canvas or nylon	61.10	45.83	6.11
E0630	Patient lift, hydraulic, with seat or sling	899.38	690.50	89.94
E0635	Patient lift, electric with seat or sling	742.67	411.70	74.27
E0650	Pneumatic compressor, non-segmental home model, (lymphedema pump)	503.42	377.57	50.34
E0651	Pneumatic compressor, segmental home model (lymphedema pump) without calibrated gradient pressure	706.82	530.12	70.68
E0652	Pneumatic compressor, segmental home model (lymphedema pump) with calibrated gradient pressure	3254.40	3024.31	325.44
E0655	Pneumatic appliance for use with pneumatic compressor, half arm	80.44	60.33	8.04
E0660	Pneumatic appliance for use with pneumatic compressor, full leg	132.21	84.95	13.22
E0665	Pneumatic appliance for use with pneumatic compressor, full arm	86.55	64.91	8.66
E0666	Pneumatic appliance for use with pneumatic compressor, half leg	127.13	95.35	12.71
E0667	Pneumatic appliance for use with segmental pneumatic compressor, leg	249.17	186.87	24.92
E0668	Pneumatic appliance for use with segmental pneumatic compressor, arm	218.66	171.62	21.87
E0720	TENS, two lead, localized stimulation	531.79		53.18
E0730	TENS, four lead, larger area/multiple nerve stimulation	527.15		52.72
E0740	Replacement batteries for medically necessary TENS owned by the patient	2.74		.27
E0744	Neuromuscular stimulator for scoliosis	995.00	746.25	99.50
E0745	Neuromuscular stimulator, electronic shock unit	1011.92	758.94	101.19
E0746	Electromyography (EMG), biofeedback device	670.00	502.50	67.00
E0747	Osteogenesis stimulator (non-invasive)	2644.20		264.42
E0776	IV pole	89.66	67.25	8.97
E0781	Ambulatory infusion pump with administrative equipment, worn by patient	608.46	456.35	60.85
E0791	Parenteral infusion pump, stationary	1895.00	1421.25	189.50
E0840	Traction frame, attached to headboard, simple cervical traction	35.60	26.70	3.56
E0850	Traction stand, free standing, simple cervical traction	35.60	26.70	3.56
E0860	Traction equipment, overdoor, cervical	26.20	19.65	2.62
E0870	Traction frame, attached to footboard, simple extremity traction (e.g., Buck's)	80.85	60.64	8.09
E0880	Traction stand, free standing, simple extremity traction (e.g., Buck's)	66.11	49.58	6.61
E0890	Traction frame, attached to footboard, simple pelvic traction	77.60	58.20	7.76
E0900	Traction stand, free standing, simple pelvic traction (e.g., Buck's)	77.60	58.20	7.76
E0910	Trapeze bars, A/K/A patient helper, attached to bed, with grab bar	157.90	157.90	15.79
E0920	Fracture frame, attached to bed, includes weights	380.36	285.27	38.04
E0930	Fracture frame, free standing, includes weights	380.36	285.27	38.04
E0940	Trapeze bar, free standing, complete with grab bar	303.55	213.32	30.36
E0941	Gravity assisted traction device, any type	371.21	278.41	37.12
E0942	Cervical head harness/halter	15.26	11.45	1.53
E0943	Cervical pillow	40.00	30.00	4.00
E0944	Pelvic belt/harness/boot	31.57	23.68	3.16
E0945	Extremity belt/harness	35.60	26.70	3.56

E0946	Fracture, frame, dual with cross bars, attached to bed, (e.g., Balken, 4 poster)	862.42	646.82	86.24
E0950	Tray	80.00	60.00	8.00
E0951	Loop heel, each	14.50	10.88	1.45
E0952	Loop toe, each	14.50	10.88	1.45
E0953	Pneumatic tire, each	89.29	66.97	8.93
E0954	Semi-pneumatic caster, each	45.77	34.33	4.58
E0958	Wheelchair attachment to convert any wheelchair to one arm drive	406.29	260.86	40.63
E0959	Amputee adapter (device used to compensate for transfer of weight due to lost limbs to maintain proper balance)	71.19	53.39	7.12
E0961	Brake extension, for wheelchair	11.20	8.40	1.12
E0962	1" cushion, for wheelchair	45.77	34.33	4.58
E0963	2" cushion, for wheelchair	58.99	44.24	5.90
E0964	3" cushion, for wheelchair	68.14	51.11	6.81
E0965	4" cushion, for wheelchair	76.28	57.21	7.63
E0966	Hook on head rest extension	49.83	37.37	4.98
E0967	Wheelchair hand rims with 8 vertical rubber tipped projection, pair	101.70	76.28	10.17
E0968	Commode seat, wheelchair	174.92	131.19	17.49
E0970	No. 2 footplates, except for elevating legrest	91.53	68.65	9.15
E0971	Anti-tipping device wheelchairs	48.49	36.37	4.85
E0973	Adjustable height detachable arms, desk or full length, wheelchair	88.48	66.36	8.85
E0974	"Grade-Aid" (device to prevent rolling back on an incline) for wheelchair	66.11	49.58	6.61
E0975	Reinforced seat upholstery, wheelchair	53.90	40.43	5.39
E0976	Reinforced back upholstery, wheelchair	53.90	40.43	5.39
E0977	Wedge cushion, wheelchair	47.80	35.85	4.78
E0978	Belt, safety with airplane buckle, wheelchair	35.60	26.70	3.56
E0979	Belt, safety with velcro closure, wheelchair	25.00	25.43	2.50
E0980	Safety vest, wheelchair	25.43	19.07	2.54
E0990	Elevating legrest, each	74.39	55.79	7.44
E0991	Upholstery seat	35.60	26.70	3.56
E0992	Solid seat insert	41.94	31.46	4.19
E0993	Back, upholstery	26.97	20.23	2.70
E0994	Arm rest, each	12.94	9.71	1.29
E0995	Calf rest, each	20.34	15.26	2.03
E0996	Tire, solid, each	22.25	16.69	2.23
E0997	Caster with a fork	54.92	41.19	5.49
E0998	Caster without fork	30.51	22.88	3.05
E0999	Pneumatic tire with wheel	88.48		8.85
E1000	Tire, pneumatic caster	47.80	35.85	4.78
E1001	Wheel, single	89.50	67.13	8.95
E1005	Replacement, batteries for medically necessary electric wheelchair owned by the patient	73.34	55.00	7.33
E1050	Fully-reclining wheelchair, fixed full length arms, swing away detachable elevating legrests	1178.91	653.52	117.89
E1060	Fully-reclining wheelchair, detachable arms, desk or full length, swing away detachable elevating legrests	1178.91	658.06	117.89
E1065	Power attachment (to convert any wheelchair to motorized wheelchair; e.g., Solo)	2318.76	1739.07	231.88
E1066	Battery charger	233.91	175.43	23.39
E1069	Deep cycle battery	89.67	67.25	8.97
E1070	Fully-reclining wheelchair, detachable arms, desk or full length, swing away detachable footrest	877.16	648.34	87.72
E1083	Hemi-wheelchair, fixed full length arms, swing away detachable elevating legrest	691.56	668.40	69.16
E1084	Hemi-wheelchair, detachable arms desk or full length arms, swing away detachable elevating legrests	1011.85	759.70	101.19
E1085	Hemi-wheelchair, fixed full length arms, swing away detachable foot rests	799.62	742.06	79.96
E1086	Hemi-wheelchair, detachable arms desk or full length, swing away detachable footrests	1065.97	635.38	106.60
E1087	High strength lightweight wheelchair, fixed full length arms, swing away detachable elevating legrests	1111.58	747.53	111.16
E1088	High strength lightweight wheelchair, detachable arms desk or full length, swing away detachable elevating legrests	1481.97	968.62	148.20
E1089	High strength lightweight wheelchair, fixed length arms, swing away detachable footrest	1093.53	706.04	109.35
E1090	High strength lightweight wheelchair, detachable arms desk or full length, swing away detachable footrests	1445.56	801.35	144.56
E1091	Youth wheelchair, any type	1287.42	965.64	128.74
E1092	Wide heavy duty wheelchair, detachable arms, desk or full length, swingaway detachable elevating legrests	1318.44	1119.72	131.84
E1093	Wide heavy duty wheelchair, detachable arms, desk or full length, swingaway detachable footrests	1210.23	907.67	121.02

100	Semi-reclining wheelchair, fixed full length arms, swing away detachable elevating legrests	1017.00	762.75	101.70
1130	Standard wheelchair, fixed full length arms, fixed or swing-away detachable footrests	409.34	394.14	40.93
1140	Wheelchair, detachable arms, desk or full length, swing-away detachable footrests	672.38	476.74	67.24
1150	Wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests	748.81	615.52	74.88
1160	Wheelchair, fixed full length arms, swing-away detachable elevating legrests	580.09	507.64	58.01
1170	Amputee wheelchair, fixed full length arms, swing-away detachable elevating legrests	1137.61	853.21	113.76
1171	Amputee wheelchair, fixed full length arms, without footrests or legrests	658.00	493.50	65.80
1172	Amputee wheelchair, detachable arms (desk or full length) without footrests or legrests	846.14	634.61	84.61
1180	Amputee wheelchair, detachable arms (desk or full length), swing-away detachable footrests	904.45	749.78	90.45
1190	Amputee wheelchair, detachable arms (desk or full length), swingaway detachable elevating legrests	1044.97	855.23	104.50
1195	Heavy duty wheelchair, fixed full length arms, swingaway detachable elevating legrests	992.39	744.29	99.24
1200	Amputee wheelchair, fixed full length arms, swing-away detachable footrest	778.34	636.90	77.83
1210	Motorized wheelchair, fixed full length arms, swing-away detachable elevating legrests	3516.58	2637.44	351.66
1211	Motorized wheelchair, detachable arms, desk or full length, swingaway detachable elevating legrest	3152.70	2364.53	315.27
1212	Motorized wheelchair, fixed full length arms, swingaway detachable footrests	2809.97	2107.48	281.00
1213	Motorized wheelchair, detachable arms, desk or full length, swingaway detachable footrests	3152.70	2364.53	315.27
1230	Power-operated vehicle (3-wheel non-highway), indicate brand name & model number	1566.18	991.58	156.62
1240	Lightweight wheelchair, detachable arms (desk or full length), swingaway detachable elevating legrest	1019.42	599.71	101.94
1250	Lightweight wheelchair, fixed full length arms, swingaway detachable footrest	608.17	559.43	60.82
1260	Lightweight wheelchair, detachable arms (desk or full length), swingaway detachable footrest	839.74	839.74	83.97
1270	Lightweight wheelchair, fixed full length arms, swingaway detachable elevating legrests	701.73	701.73	70.17
1280	Heavy duty wheelchair, detachable arms (desk or full length), elevating legrests	1226.65	1226.65	122.67
1285	Heavy duty wheelchair, fixed full length arms, swingaway detachable footrest	963.99	615.92	96.40
1290	Heavy duty wheelchair, detachable arms (desk or full length), swingaway detachable footrest	1336.79	741.05	133.68
1295	Heavy duty wheelchair, fixed full length arms, elevating legrest	909.40	682.05	90.94
1296	Special wheelchair seat height from floor	272.56	204.42	27.26
1297	Special wheelchair seat depth, by upholstery	58.99	44.24	5.90
1298	Special wheelchair seat depth and/or width, by construction	293.91	220.43	29.39
1310	Whirlpool, non-portable (built-in type)	3152.70	2364.53	315.27
1355	Stand/rack	45.00	33.75	4.50
1372	Immersion external heater for nebulizer	172.89	15.65	17.29
1375	Nebulizer portable with small compressor, with limited flow	167.81	125.86	16.78

CODES BEGINNING WITH 'L'

HCPCS Code	Description	Fee for New Equipment
L0100	Cervical, craniostenosis, helmet molded to patient model	279.68
L0110	Cervical, craniostenosis, helmet, non-molded	76.28
L0120	Cervical, flexible, non-adjustable (foam collar)	14.03
L0130	Cervical, flexible, thermoplastic collar, molded to patient	66.11
L0140	Cervical, semi-rigid, adjustable (plastic collar)	30.51
L0150	Cervical, semi-rigid, adjustable molded chin up (plastic collar with mandibular/occipital piece)	93.97
L0160	Cervical, semi-rigid, wire frame occipital/mandibular support	127.13
L0170	Cervical, collar, molded to patient model	274.59
L0172	Cervical, collar, semi-rigid, thermoplastic foam, two-piece	85.43
L0174	Cervical, collar, semi-rigid, thermoplastic foam, two-piece with thoracic extension	142.38
L0180	Cervical, multiple post collar, occipital/mandibular supports, adjustable	208.23
L0190	Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars (SOMI, Guilford, Taylor types)	305.10
L0200	Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars, and thoracic extension	249.17
L0210	Thoracic, rib belt, custom fitted	14.05
L0220	Thoracic, rib belt, custom fabricated	30.51

L0300	Thoracic-lumbar-sacral-orthoses, (TLSO), flexible dorso-lumbar surgical support, custom fitted	106.37
L0310	TLSO, flexible dorso-lumbar surgical support, custom fabricated	268.49
L0315	TLSO, flexible dorso-lumbar surgical support, elastic type, with rigid posterior panel	150.00
L0317	TLSO, flexible dorso-lumbar surgical support, hyperextension, elastic type, with rigid posterior panel	175.00
L0320	TLSO, anterior-posterior control (Taylor type), with apron front	345.27
L0330	TLSO, anterior-posterior-lateral control (Knight-Taylor type), with apron front	349.29
L0340	TLSO, anterior-posterior-lateral-rotary control (Arnold, Magnuson, Steindler types), with apron front	584.78
L0350	TLSO, anterior-posterior-lateral-rotary control, flexion compression jacket, custom fitted	864.45
L0360	TLSO, anterior-posterior-lateral-rotary control, flexion compression jacket, molded to patient model	1,017.00
L0370	TLSO, anterior-posterior-lateral-rotary control, hyperextension (Jewett, Lennox, Baker, Cash types)	313.24
L0380	TLSO, anterior-posterior-lateral-rotary control, with extensions	584.78
L0390	TLSO, anterior-posterior-lateral control (body jacket), molded to patient model	1,067.85
L0400	TLSO, anterior-posterior-lateral control (body jacket), molded to patient model, with interface material	1,210.94
L0410	TLSO, anterior-posterior-lateral control (body jacket), two-piece construction, molded to patient model	940.73
L0420	TLSO, anterior-posterior-lateral control (body jacket), two-piece construction, molded to patient model, with interface material	971.24
L0430	TLSO, anterior-posterior-lateral control (body jacket), with interface material, custom fitted	610.20
L0440	TLSO, anterior-posterior-lateral control (body jacket), with overlapping front section, spring steel front, custom fitted	813.60
L0500	Lumbar-sacral-orthoses, (LSO), flexible, (lumbo-sacral surgical support), custom fitted	82.36
L0510	LSO, flexible (lumbo-sacral surgical support), custom fabricated	118.75
L0515	LSO, flexible (lumbo-sacral surgical support), elastic type, with rigid posterior panel	86.45
L0520	LSO, anterior-posterior-lateral control (Knight, Wilcox types), with apron front	320.36
L0530	LSO, anterior-posterior control (Macausland type), with apron front	244.08
L0540	LSO, lumbar flexion, (Williams flexion type)	406.80
L0550	LSO, anterior-posterior-lateral control (body jacket), molded to patient model	966.15
L0560	LSO, anterior-posterior-lateral control (body jacket), molded to patient model, with interface material	1,118.70
L0565	LSO, anterior-posterior-lateral control (body jacket), custom fitted	533.93
L0600	Sacroiliac, flexible (sacroiliac surgical support), custom fitted	50.85
L0610	Sacroiliac, flexible (sacroiliac surgical support), custom fabricated	113.50
L0700	Cervical-thoracic-lumbar-sacral-orthoses (CTLSO), anterior-posterior-lateral control, molded to patient model (Minerva type)	1,474.65
L0710	CTLSO, anterior-posterior-lateral control, molded to patient model, with interface material (Minerva type)	1,627.20
L0810	Halo procedure, cervical halo incorporated into jacket vest	2,542.50
L0820	Halo procedure, cervical halo incorporated into plaster body jacket	1,525.50
L0830	Halo procedure, cervical halo incorporated into Milwaukee type orthosis model	2,745.90
L0860	Addition to halo procedures, magnetic resonance image compatible system	575.00
L0900	Torso support, ptosis support, custom fitted	147.47
L0910	Torso support, ptosis support, custom fabricated	355.95
L0920	Torso support, pendulous abdomen support, custom fitted	259.34
L0930	Torso support, pendulous abdomen support, custom fabricated	381.38
L0940	Torso support, post surgical support, custom fitted	152.55
L0950	Torso support, post surgical support, custom fabricated	305.10
L0960	Torso support, post surgical support, pads for post surgical support	76.28
L0972	LSO, corset front	86.45
L0976	LSO, full corset	169.84
L0978	Axillary crutch extension	122.04
L0980	Peroneal straps, pair	20.34
L1000	Cervical-thoracic-lumbar-sacral orthosis (CTLSO) (Milwaukee), inclusive of furnishing initial orthosis, including model	1,441.60
L1010	Addition to cervical-thoracic-lumbar-sacral orthosis (CTLSO) of scoliosis, axilla sling	86.45
L1020	Addition to CTLSO or scoliosis orthosis, kyphosis pad	35.60
L1025	Addition to CTLSO or scoliosis orthosis, kyphosis pad, floating	96.62
L1030	Addition to CTLSO or scoliosis orthosis, lumbar bolster pad	81.36
L1040	Addition to CTLSO or scoliosis, lumbar of lumbar rib pad	45.77
L1050	Addition to CTLSO or scoliosis orthosis, sternal pad	76.28
L1060	Addition to CTLSO or scoliosis orthosis, thoracic pad	76.28
L1070	Addition to CTLSO or scoliosis orthosis, trapeze sling	91.53
L1080	Addition to CTLSO or scoliosis orthosis, outrigger	40.68
L1085	Addition to CTLSO or scoliosis orthosis, outrigger, bilateral with vertical extensions	175.00
L1090	Addition to CTLSO or scoliosis orthosis, lumbar sling	71.19
L1100	Addition to CTLSO or scoliosis orthosis, ring flange, plastic or leather	111.87
L1110	Addition to CTLSO or scoliosis orthosis, ring flange, plastic or leather, molded to patient model	142.38
L1120	Addition to CTLSO or scoliosis orthosis, cover for upright, each	20.34
L1210	Addition to TLSO (low profile), lateral thoracic extension	152.55
L1220	Addition to TLSO (low profile), anterior thoracic extension	264.42
L1230	Addition to TLSO (low profile), Milwaukee type superstructure	406.80
L1240	Addition to TLSO (low profile), lumbar derotation pad	55.94
L1250	Addition to TLSO (low profile), anterior asis pad	55.94
L1260	Addition to TLSO (low profile), anterior thoracic derotation pad	55.94
L1270	Addition to TLSO (low profile), abdominal pad	55.94

1280	Addition to TLSO (low profile), rib gusset (elastic), each	76.28
1290	Addition to TLSO (low profile), lateral trochanteric pad	50.85
1300	Other scoliosis procedure, body jacket molded to patient model	1,525.50
1310	Other scoliosis procedure, post-operative body jacket	1,525.50
1500	Thoracic-hip-knee-ankle orthoses (THKAO), mobility frame, (Newington, Parapodium types)	1,678.05
1510	THKAO, standing frame	1,296.68
.1500	Hip orthosis (HO), abduction control of hip joints, flexible, freika type with cover	51.26
.1610	HO, abduction control of hip joints, flexible, frejka cover only	77.30
.1620	HO, abduction control of hip joints, flexible, Pavlik harness	101.70
.1630	HO, abduction control of hip joints, semi-flexible (Von Rosen type)	254.25
.1640	HO, abduction control of hip joints, static pelvic band or spreader bar, thigh cuffs	256.28
.1650	HO, abduction control of hip joints, static, adjustable, custom fitted (llfled type)	152.72
.1660	HO, abduction control of hip joints, static, plastic, custom fitted	93.56
.1680	HO, abduction control of hip joints, dynamic, pelvic control, adjustable hip motion control, thigh cuffs (Rancho hip action type)	1,525.50
.1685	HO, abduction control fo hip joint, post-operative hip abduction type, custom fabricated	762.75
.1686	HO, abduction control of hip joint, post-operative hip abduction type, custom fitted	750.00
.1700	Legg Perthes orthosis, Toronto type	1,525.50
.1730	Legg Perthes orthosis, Scottish Rite type	1,017.00
.1755	Legg Perthes orthosis, patten bottom type	1,067.85
.1800	Knee orthosis, KO, elastic with stays	34.17
.1810	KO, elastic with joints	56.66
.1815	KO, elastic with condylar pads	91.53
.1820	KO, elastic with condylar pads and joints	90.51
.1825	KO, elastic knee cap	35.60
.1830	KO, immobilizer, canvas longitudinal	89.50
.1832	KO, adjustable knee joints, positional orthosis, rigid support, custom fitted	400.00
.1834	KO, without knee joint, rigid, molded to patient model	485.00
.1840	KO, derotation, medial-lateral, anterior cruciate ligament, custom fabricated to patient model	661.05
.1845	KO, double upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, custom fitted	584.78
L1846	KO, double upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, molded to patient model	661.05
L1850	KO, Swedish type	188.15
L1855	KO, molded plastic, thigh and calf sections, with double upright knee joints, molded to patient model	762.75
L1858	KO, molded plastic, polycentric knee joints, pneumatic knee pads (CTL)	762.75
L1860	KO, modification of supracondylar prosthetic socket, molded to patient model (SK)	694.61
L1870	KO, double upright, thigh and calf lacers, molded to patient model with knee joints	610.20
L1880	KO, double upright, non-molded thigh and calf cuffs/lacers with knee joints	457.65
L1990	Ankle-foot orthosis (AFO), spring wire, dorsiflexion assist, calf band	228.83
L1902	AFO, ankle gauntlet, custom fitted	61.02
L1904	AFO, molded ankle gauntlet, molded to patient model	355.95
L1906	AFO, multiligamentus ankle support	61.02
L1910	AFO, posterior, single bar, clasp attachment to shoe counter	254.25
L1920	AFO, single upright with static or adjustable stop, (Phelps or Perlstein type)	198.32
L1930	AFO, custom fitted, plastic	203.40
L1940	AFO, molded to patient model, plastic	569.98
L1945	AFO, molded to patient model, plastic, rigid anterior tibial section (floor reaction)	675.00
L1950	AFO, spiral, molded to patient model, (IRM type), plastic	813.60
L1960	AFO, posterior, solid ankle, molded to patient model, plastic	490.26
L1970	AFO, plastic molded to patient model, with ankle joint	711.90
L1980	AFO, single upright, free dorsiflexion, solid stirrup, calf band/cuff (single bar "BK" orthosis)	291.88
L1990	AFO, double upright, free plantar dorsiflexion, solid stirrup, calf band/cuff (double bar "BK" orthosis)	365.10
L2000	Knee-ankle-foot-orthosis (KAFO), single upright, free ankle, solid stirrup, thigh and calf bands/cuffs (single bar "AK" orthosis)	722.93
L2010	KAFO, single upright, free ankle, solid stirrup, thigh and calf bands/cuffs (single bar "AK" orthosis), without knee joint	966.15
L2020	KAFO, double upright, free knee, free ankle, solid stirrup, thigh and calf bands/cuffs (double bar "AK" orthosis)	690.72
L2030	KAFO, double upright, free ankle, solid stirrup, thigh and calf bands/cuffs, (double bar "AK" orthosis), without knee joint	1,118.70
L2036	KAFO, full plastic, double upright, free knee, molded to patient model	1,271.50
L2037	KAFO, full plastic, single upright, free, molded to patient model	1,125.00
L2038	KAFO, full plastic, without knee joint, multi-axis, molded to patient model (lively orthosis or equal)	1,250.00
L2040	HKAFO, torsion control, bilateral rotation straps, pelvic band/belt	177.98
L2050	HKAFO, torsion control, bilateral torsion cables, hip joint, pelvic band/belt	223.74
L2060	HKAFO, torsion control, bilateral torsion cables, ball bearing hip joint, pelvic band/belt	264.42
L2070	HKAFO, torsion control, unilateral rotation straps, pelvic band/belt	152.55
L2080	HKAFO, torsion control, unilateral, torsion cable, hip joint, pelvic band/belt	284.05
L2090	HKAFO, torsion control, unilateral torsion cable, ball bearing hip joint, pelvic band/belt	193.23

L2102	Ankle-foot-orthosis (AFO), fracture orthosis, tibial fracture cast orthosis, plaster type casting material, molded to patient	203.40
L2104	AFO, fracture orthosis, tibial fracture cast orthosis, synthetic type casting material, molded to patient	254.25
L2106	AFO, fracture orthosis, tibial fracture cast orthosis, thermoplastic type casting material, molded to patient	355.95
L2108	AFO, fracture orthosis, tibial fracture cast orthosis, molded to patient model	711.90
L2112	AFO, fracture orthosis, tibial fracture orthosis, soft custom fitted	305.10
L2114	AFO, fracture orthosis, tibial fracture orthosis, semi-rigid custom fitted	401.72
L2116	AFO, fracture orthosis, tibial fractures orthosis, rigid custom fitted	457.65
L2122	Knee-ankle-foot-orthosis (KAFO), fracture orthosis, femoral fracture cast orthosis, plaster type casting material, molded to patient	635.63
L2124	KAFO, fracture orthosis, femoral fracture cast orthosis, synthetic type casting material, molded to patient	711.90
L2126	KAFO, fracture orthosis, femoral fracture cast orthosis, thermoplastic type casting material, molded to patient	813.60
L2128	KAFO, fracture orthosis, femoral fracture cast orthosis, molded to patient model	1,118.70
L2132	KAFO, fracture orthosis, femoral fracture cast orthosis, soft custom fitted	610.20
L2134	KAFO, fracture orthosis, femoral fracture cast orthosis, semi-rigid custom fitted	661.02
L2136	KAFO, fracture orthosis, femoral fracture cast orthosis, rigid custom fitted	788.18
L2180	Addition to lower extremity fracture orthosis, plastic shoe insert with ankle joints	67.12
L2182	Addition to lower extremity fracture orthosis, drop lock knee joint	61.02
L2184	Addition to lower extremity fracture orthosis, limited motion knee joint	86.45
L2186	Addition to lower extremity fracture orthosis, adjustable motion knee joint, lerman type	127.13
L2188	Addition to lower extremity fracture orthosis, quadrilateral brim	254.25
L2190	Addition to lower extremity fracture orthosis, waist belt	61.02
L2192	Addition to lower extremity fracture orthosis, hip joint, pelvic band, thigh flange, and pelvic belt	254.25
L2200	Addition to lower extremity, limited ankle motion, each joint	42.94
L2210	Addition to lower extremity, dorsiflexion assist, (plantar flexion resist), each joint	54.07
L2220	Addition to lower extremity, dorsiflexion and plantar flexion assist/resist, each joint	113.21
L2230	Addition to lower extremity, split flat caliper stirrups and plate attachment	79.32
L2240	Addition to lower extremity, round caliper and plate attachment	77.29
L2250	Addition to lower extremity, foot plate, molded to patient model, stirrup attachment	277.02
L2260	Addition to lower extremity, reinforced solid stirrup (Scott-Craig type)	381.38
L2265	Addition to lower extremity, long tongue stirrup	40.00
L2270	Addition to lower extremity, varus/valgus correction ("T") strap, padded/lined or malleolus pad	66.06
L2280	Addition to lower extremity, molded inner boot	254.25
L2300	Addition to lower extremity, abduction bar (bilateral hip involvement), jointed, adjustable	190.07
L2310	Addition to lower extremity, abduction bar, straight	116.96
L2320	Addition to lower extremity, non-molded lacer	122.04
L2330	Addition to lower extremity, lacer, molded to patient model	193.23
L2335	Addition to lower extremity, anterior swing band	152.55
L2340	Addition to lower extremity, pre-tibial shell, molded to patient model	380.36
L2350	Addition to lower extremity, prosthetic type "BK" socket, molded to patient model (used for "PTB" "AFO" orthosis	559.35
L2360	Addition to lower extremity, extended steel shank	45.22
L2370	Addition to lower extremity, patten bottom	228.93
L2375	Addition to lower extremity, torsion control, ankle joint and half solid stirrup	116.96
L2380	Addition to lower extremity, torsion control, straight knee joint, each joint	40.00
L2385	Addition to lower extremity, straight knee joint, heavy duty, each joint	66.11
L2390	Addition to lower extremity, offset knee joint, each joint	101.45
L2395	Addition to lower extremity, offset knee joint, heavy duty, each joint	91.53
L2405	Addition to knee joint, drop lock, each joint	30.51
L2415	Addition to knee joint, cam lock (Swiss, French, Bail types), each joint	127.13
L2425	Addition to knee joint, disc or dial lock for adjustable knee flexion, each joint	142.38
L2435	Addition to knee joint, polycentric joint, each joint	122.04
L2492	Addition to knee joint, lift loop for drop lock ring	101.70
L2500	Addition to lower extremity, thigh/weight bearing, gluteal/ischial weight bearing, ring	149.50
L2510	Addition to lower extremity, thigh/weight bearing, quadrilateral brim, molded to patient model	762.75
L2520	Addition to lower extremity, thigh/weight bearing, quadrilateral brim, custom fitted	427.14
L2525	Addition to lower extremity, thigh/weight bearing, ischial containment/narrow M-L brim, molded to patient model	825.00
L2526	Addition to lower extremity, thigh/weight bearing, ischial containment/narrow M-L brim, custom fitted	475.00
L2530	Addition to lower extremity, thigh/weight bearing, lacer, non-molded	183.06
L2540	Addition to lower extremity, thigh/weight bearing, lacer, molded to patient model	247.13
L2550	Addition to lower extremity, thigh/weight bearing, high roll cuff	76.28
L2570	Addition to lower extremity, pelvic control, hip joint, clevis type, two position hip joint, each	355.95
L2580	Addition to lower extremity, pelvic control, pelvic sling	305.10
L2600	Addition to lower extremity, pelvic control, hip joint, clevis type or thrust bearing, free, each	172.99
L2610	Addition to lower extremity, pelvic control, hip joint, clevis type or thrust bearing, lock, each	137.30
L2620	Addition to lower extremity, pelvic control, hip joint, heavy duty, each	203.40
L2622	Addition to lower extremity, pelvic control, hip joint, adjustable flexion, each	213.57
L2624	Addition to lower extremity, pelvic control, hip joint, adjustable flexion, extension, abduction control, each	152.55
L2627	Addition to lower extremity, pelvic control, plastic, molded to patient model, reciprocating hip joint and cables	1,050.00
L2628	Addition to lower extremity, pelvic control, metal frame, reciprocating hip joint and cables	1,050.00

L2630	Addition to lower extremity, pelvic control, band and belt unilateral	225.77
L2640	Addition to lower extremity, pelvic control, band and belt bilateral	256.28
L2650	Addition to lower extremity, pelvic and thoracic control, gluteal pad, each	112.12
L2660	Addition to lower extremity, thoracic control, thoracic band	42.71
L2670	Addition to lower extremity, thoracic control, paraspinal uprights	116.96
L2680	Addition to lower extremity, thoracic control, lateral support uprights	111.87
L2750	Addition to lower extremity orthosis, plating chrome or nickle, per bar	66.11
L2760	Addition to lower extremity orthosis, extension, per extension, per bar (for lineal adjustment for growth)	40.68
L2770	Addition to lower extremity orthosis, stainless steel, per bar or joint	81.36
L2780	Addition to lower extremity orthosis, non-corrosive finish, per bar	50.85
L2785	Addition to lower extremity orthosis, drop lock retainer, each	20.34
L2795	Addition to lower extremity orthosis, knee control, full knee cap	77.77
L2800	Addition to lower extremity orthosis, knee control, knee cap, medial or lateral pull	81.36
L2810	Addition to lower extremity orthosis, knee control, condylar pad	81.36
L2820	Addition to lower extremity orthosis, soft interface for molded plastic, below knee section	50.85
L2830	Addition to lower extremity orthosis, soft interface for molded plastic, above knee section	50.85
L2840	Addition to lower extremity orthosis, tibial length sock, fracture or equal, each	35.00
L2850	Addition to lower extremity orthosis, femoral length sock, fracture or equal each	42.00
L3300	Lift-elevation, heel, tapered to metatarsals, per inch	36.61
L3310	Lift-elevation, heel and sole, neoprene, per inch	40.68
L3320	Lift-elevation, heel and sole, cork, per inch	61.02
L3330	Lift-elevation, metal extension (skate)	81.36
L3334	Lift-elevation, heel, per inch	15.25
L3340	Heel wedge, Sach	50.85
L3350	Heel wedge	15.25
L3360	Sole wedge—outside sole	20.34
L3370	Sole wedge—between sole	34.58
L3380	Clubfoot wedge	30.51
L3390	Outflare wedge	30.51
L3400	Metatarsal bar wedge—rocker	20.34
L3410	Metatarsal bar wedge—between sole	35.60
L3420	Full sole and heel wedge—between sole	40.68
L3580	Miscellaneous shoe addition, convert instep to velcro closure	24.41
L3600	Transfer of an orthosis from one shoe to another, caliper plate existing	61.02
L3610	Transfer of an orthosis from one shoe to another, caliper plate new	96.62
L3620	Transfer of an orthosis from one shoe to another, solid stirrup existing	45.00
L3630	Transfer of an orthosis from one shoe to another, solid stirrup new	96.62
L3640	Transfer of an orthosis from one shoe to another, Dennis Browne splint (Riveton), both shoes	35.60
L3650	Shoulder orthosis (SO), figure of "8" design abduction restrainer	40.68
L3660	SO figure of "8" design abduction restrainer, canvas and webbing	76.28
L3670	SO, acromio/clavicular (canvas and webbing type)	122.04
L3700	Elbow orthosis (EO), elastic with stays	45.77
L3710	EO, elastic with metal joints	76.28
L3720	EO, double upright with forearm/arm cuffs, free motion	655.97
L3730	EO, double upright with forearm/arm cuffs, extension/flexion assist	793.26
L3740	EO, double upright with forearm/arm cuffs, adjustable position lock with active control	1,306.85
L3800	Wrist-hand-finger-orthosis (WHFO) short opponens, no attachments	45.32
L3805	WHFO, long opponens, no attachment	254.25
L3810	WHFO, addition to short and long opponens, thumb abduction "C" bar	35.60
L3815	WHFO, addition to short and long opponens, second M.P. abduction assist	35.60
L3820	WHFO, addition to short and long opponens, I.P. extension assist with M.P. extension stop	76.28
L3825	WHFO, addition to short and long opponens, M.P. extension stop	35.60
L3830	WHFO, addition to short and long opponens, M.P. extension assist	55.94
L3835	WHFO, addition to short and long opponens, M.P. spring extension assist	76.28
L3840	WHFO, addition to short and long opponens, spring swivel thumb	40.68
L3845	WHFO, addition to short and long opponens, thumb I.P. extension assist, with M.P. stop	45.77
L3850	WHFO, addition to short and long opponens, action wrist with dorsiflexion assist	81.36
L3855	WHFO, addition to short and long opponens, adjustable M.P. flexion control	101.70
L3860	WHFO, addition to short and long opponens, adjustable H.P. flexion control and I.P.	152.55
L3900	WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, wrist or finger driven	1,017.00
L3901	WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, cable driven	1,123.79
L3902	WHFO, external powered, compressed gas	1,118.70
L3904	WHFO, external powered, electric	788.18
L3906	WHFO, wrist gauntlet, molded to patient model	462.74
L3907	WHFO, wrist gauntlet with thumb spica, molded to patient model	355.95
L3908	WHFO, wrist extension control cock-up, canvas or leather design, non-molded	91.36
L3910	WHFO, Swanson design	274.60
L3912	WHFO, flexion glove with elastic finger control	91.53
L3914	WHFO, wrist extension cock-up	76.28
L3916	WHFO, wrist extension cock-up, with outrigger	91.53
L3918	WHFO, knuckle bender	66.11

L3920	WHFO, knuckle bender, with outrigger	76.28
L3922	WHFO, knuckle bender, two segment to flex joints	81.36
L3924	WHFO, Oppenheimer	76.28
L3926	WHFO, Thomas suspension	81.36
L3928	WHFO, finger extension with clock spring	50.85
L3930	WHFO, finger extension, with wrist support	76.28
L3932	WHFO, safety pin, spring wire	40.68
L3934	WHFO, safety pin, modified	40.68
L3936	WHFO, Palmer	61.02
L3938	WHFO, dorsal wrist	61.02
L3940	WHFO, dorsal wrist, with outrigger attachment	76.28
L3942	WHFO, reverse knuckle bender	66.11
L3944	WHFO, reverse knuckle bender, with outrigger	76.28
L3946	WHFO, composite elastic	81.36
L3948	WHFO, finger knuckle bender	45.77
L3950	WHFO, combination Oppenheimer, with knuckle bender and two attachments	122.04
L3952	WHFO, combination Oppenheimer, with reverse knuckle bender and two attachments	122.04
L3954	WHFO, spreading hand	66.11
L3960	Shoulder-elbow-wrist-hand orthosis SEWHO, abduction positioning, airplane design	584.78
L3962	SEWHO, abduction positioning, Erbs Palsey design	533.93
L3963	SEWHO, molded shoulder, arm, forearm, and wrist, with articulating elbow joint	864.45
L3964	SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, adjustable	661.05
L3965	SEWHO, radial arm support attached to wheelchair, balanced and fitted to patient, adjustable Rancho type	762.75
L3966	SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, reclining	666.14
L3968	SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, friction arm support, (friction dampening to proximal and distal joints)	813.60
L3969	SEWHO, mobile arm support, monosuspension arm and hand support, overhead elbow forearm hand sling support, yoke type arm suspension support	508.50
L3970	SEWHO, addition to mobile arm support, elevating proximal arm	254.25
L3972	SEWHO, addition to mobile arm support, offset or lateral rocker arm with elastic balance control	203.40
L3974	SEWHO, addition to mobile arm support, supinator	203.40
L3980	Upper extremity fracture orthosis, humeral	325.44
L3982	Upper extremity fracture orthosis, radius/ulner	406.80
L3984	Upper extremity fracture orthosis, wrist	406.80
L3985	Upper extremity fracture orthosis, forearm, hand with wrist hinge	457.65
L3986	Upper extremity fracture orthosis, combination of humeral, radius/ulnar, wrist, (example—Colles fracture)	833.94
L3995	Addition to upper extremity orthosis, sock, fracture or equal, each	18.50
L4000	Replace girdle for Milwaukee orthosis	884.79
L4010	Replace trilateral socket brim	676.31
L4020	Replace quadrilateral socket brim, molded to patient model	355.95
L4030	Replace quadrilateral socket brim, custom fitted	244.08
L4040	Replace molded thigh lacer	421.80
L4045	Replace non-molded thigh lacer	127.13
L4050	Replace molded calf lacer	142.38
L4055	Replace non-molded calf lacer	76.28
L4060	Replace high roll cuff	152.55
L4070	Replace proximal and distal upright for "AKO"	213.57
L4080	Replace metal bands "KAFO", proximal thigh	91.53
L4090	Replace metal bands "KAFO-AFO", calf or distal thigh	53.90
L4100	Replace leather cuff "KAFO", proximal thigh	101.70
L4110	Replace leather cuff "KAFO-AFO", calf or distal thigh	66.11
L4130	Replace pretibial shell	279.68
L4310	Multi-Podus or equal orthotic preparatory management system for lower extremities	250.00
L4320	Addition to AFO, Multi-Podus (or equal) orthotic preparatory management system for lower extremities, flexible foot positioner w/soft interface for AFO, with velcro closure, custom fitted	90.00
L4350	Pneumatic ankle control splint (Aircast or equal)	65.00
L4360	Pneumatic walking splint (aircast or equal)	200.00
L4370	Pneumatic full leg splint (aircast or equal)	110.00
L4380	Pneumatic knee splint (Aircast or equal)	70.00
L5000	Partial foot, shoe insert with longitudinal arch, toe filler	491.95
L5010	Partial foot, molded socket, ankle height, with toe filler	864.45
L5020	Partial foot, molded socket, tibial tubercle height, with toe filler	1,322.10
L5050	Ankle Symes, molded socket, Sach foot	1,728.90
L5060	Ankle Symes, metal frame, molded leather socket, articulated ankle/foot	2,542.50
L5100	Below knee, molded socket, shin, Sach foot	1,223.14
L5105	Below knee, plastic socket, joints and thigh lacer, Sach foot	2,500.00
L5150	Knee disarticulation (or through knee), molded socket, external knee joints, shin, Sach foot	3,457.80
L5160	Knee disarticulation (or through knee), molded socket, bent knee configuration, external knee joints, shin, Sach foot	3,457.80
L5200	Above knee, molded socket, single axis constant friction knee, shin, Sach foot	1,528.10
L5210	Above knee, short prosthesis, no knee joint ("stubbies"), with foot blocks, no ankle joints, each	1,728.90

L5220	Above knee, short prosthesis, no knee joint ("stubbies"), with articulated ankle/foot, dynamically aligned, each	2,135.70
L5230	Above knee, for proximal femoral focal deficiency, constant friction knee, shin, Sach foot	2,008.58
L5250	Hip disarticulation, Canadian type; molded socket, hip joint, single axis constant friction knee, Sach foot	3,864.60
L5300	Below knee, molded socket, Sach foot, endoskeletal system including soft cover and finishing	1,700.14
L5310	Knee disarticulation (or through knee), molded socket, Sach foot endoskeletal system, including soft cover and finishing	3,559.50
L5320	Above knee, molded socket, open end, Sach foot, endoskeletal system, single axis knee, including soft cover and finishing	1,983.02
L5330	Hip disarticulation, Canadian type; molded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing	3,559.50
L5340	Hemipelvectomy, Canadian type; molded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing	5,085.00
L5400	Immediate post surgical or early fitting, application of initial rigid dressing including fitting, alignment, suspension, and one cast change, below knee	894.96
L5410	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, below knee, each additional cast change and realignment	1,322.10
L5420	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension and one cast change "AK" or knee disarticulation	915.30
L5430	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, "AK" or knee disarticulation, each cast change and realignment	457.65
L5450	Immediate post surgical or early fitting, application of non-weight bearing rigid dressing, below knee	254.25
L5460	Immediate post surgical or early fitting, application of non-weight bearing rigid dressing, above knee	305.10
L5500	Initial, below knee "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, direct formed	923.70
L5505	Initial, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, direct formed	1,228.03
L5510	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, plaster cover, molded to model	923.70
L5520	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed	1,220.40
L5530	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, molded to model	1,423.80
L5535	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated, adjustable open end socket	1,250.00
L5540	Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model	1,260.84
L5560	Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, molded to model	1,423.80
L5570	Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed	1,525.50
L5580	Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, molded to model	1,678.05
L5585	Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated adjustable open end socket	1,561.10
L5590	Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model	1,475.29
L5595	Preparatory, hip disarticulation-hemipelvectomy, pylon, no cover, Sach foot, thermoplastic or equal, molded to patient model	2,650.00
L5600	Preparatory, hip disarticulation-hemipelvectomy, pylon, no cover, Sach foot, laminated socket, molded to patient model	2,800.00
L5611	Addition to lower extremity, above knee-knee disarticulation, "OHC" 4-bar linkage, with friction swing phase control	960.00
L5613	Addition to lower extremity, above knee-knee disarticulation, "OHC" 4-bar linkage, with hydraulic swing phase control	1,550.00
L5616	Addition to lower extremity, above knee, universal multiplex system, friction swing phase control	915.30
L5618	Addition to lower extremity, test socket, Symes	203.40
L5620	Addition to lower extremity, test socket, below knee	234.04
L5622	Addition to lower extremity, test socket, knee disarticulation	305.10
L5624	Addition to lower extremity, test socket, above knee	301.98
L5626	Addition to lower extremity, test socket, hip disarticulation	381.38
L5628	Addition to lower extremity, test socket, hemipelvectomy	432.23
L5629	Addition to lower extremity, below knee, acrylic socket	350.00
L5630	Addition to lower extremity, Symes type, expandable wall socket	355.95
L5631	Addition to lower extremity, above knee or knee disarticulation, acrylic socket	400.00
L5632	Addition to lower extremity, Symes type, "PTB" brim design socket	177.98
L5634	Addition to lower extremity, Symes type, posterior opening (Canadian) socket	330.53
L5636	Addition to lower extremity, Symes type, medial opening socket	559.35
L5637	Addition to lower extremity, below knee, total contact	200.00
L5638	Addition to lower extremity, below knee, leather socket	406.80
L5639	Addition to lower extremity, below knee, wood socket	750.00
L5640	Addition to lower extremity, knee disarticulation, leather socket	508.50

L5642	Addition to lower extremity, above knee, leather socket	508.50
L5643	Addition to lower extremity, hip disarticulation, flexible inner socket, external frame	864.45
L5644	Addition to lower extremity, above knee, wood socket	508.50
L5645	Addition to lower extremity, below knee, flexible inner socket, external frame	406.80
L5646	Addition to lower extremity, below knee, air cushion socket	330.53
L5647	Addition to lower extremity, below knee, socket suction	279.68
L5648	Addition to lower extremity, above knee, air cushion socket	381.38
L5649	Addition to lower extremity, ischial containment/narrow M-L socket	1,423.80
L5650	Addition to lower extremity, total contact, above knee or knee disarticulation socket	472.81
L5651	Addition to lower extremity, above knee, flexible inner socket, external frame	661.05
L5652	Addition to lower extremity, suction suspension, above knee or knee disarticulation, socket	515.13
L5653	Addition to lower extremity, knee disarticulation, expandable wall socket	610.20
L5654	Addition to lower extremity, socket insert, Symes (Kemblo, Pelite, Aliplast, Plastazote or equal)	330.53
L5655	Addition to lower extremity, socket insert, below knee (Kemblo, Pelite, Aliplast, Plastazote or equal)	217.57
L5656	Addition to lower extremity, socket insert, knee disarticulation (Kemblo, Pelite, Aliplast, Plastazote or equal)	347.05
L5658	Addition to lower extremity, socket insert, above knee (Kemblo, Pelite, Aliplast, Plastazote or equal)	331.03
L5660	Addition to lower extremity, socket insert, Symes, silicone gel or equal	406.80
L5661	Addition to lower extremity, socket insert, multi-durometer, Symes	432.23
L5662	Addition to lower extremity, socket insert, below knee, silicone gel or equal	381.38
L5663	Addition to lower extremity, socket insert, knee disarticulation, silicone gel or equal	483.08
L5664	Addition to lower extremity, socket insert, above knee, silicone gel or equal	483.08
L5665	Addition to lower extremity, socket insert, multi-durometer, below knee	279.68
L5666	Addition to lower extremity, below knee, cuff suspension	48.67
L5668	Addition to lower extremity, below knee, molded distal cushion	75.95
L5670	Addition to lower extremity, below knee, molded supracondylar suspension ("PTS" or similar)	255.77
L5672	Addition to lower extremity, below knee, removable medial brim suspension	279.68
L5674	Addition to lower extremity, below knee, latex sleeve suspension, each	59.67
L5675	Addition to lower extremity, below knee, latex sleeve suspension or equal, heavy duty, each	50.85
L5676	Addition to lower extremity, below knee, knee joints, single axis; pair	201.21
L5677	Addition to lower extremity, below knee, knee joints, polycentric, pair	254.25
L5678	Addition to lower extremity, below knee, joint covers, pair	23.42
L5680	Addition to lower extremity, below knee, thigh lacer, non-molded	208.28
L5682	Addition to lower extremity, below knee, thigh lacer, gluteal/ischial, molded	483.08
L5684	Addition to lower extremity, below knee, fork strap	39.93
L5686	Addition to lower extremity, below knee, back check (extension control)	40.68
L5688	Addition to lower extremity, below knee, waist belt, webbing	51.01
L5690	Addition to lower extremity, below knee, waist belt, padded and lined	82.65
L5692	Addition to lower extremity, above knee, pelvic control belt, light	87.97
L5694	Addition to lower extremity, above knee, pelvic control belt, padded and lined	146.35
L5695	Addition to lower extremity, above knee, pelvic control, sleeve suspension, neoprene or equal, each	125.00
L5696	Addition to lower extremity, above knee or knee disarticulation, pelvic joint	145.50
L5697	Addition to lower extremity, above knee or knee disarticulation, pelvic band	40.47
L5698	Addition to lower extremity, above knee or knee disarticulation, silesian bandage	83.99
L5699	All lower extremity prosthesis, shoulder harness	144.16
L5710	Addition, exoskeletal knee-shin system, single axis, manual lock	211.09
L5711	Addition, exoskeletal knee-shin system, single axis, manual lock, ultra-light material	355.95
L5712	Addition, exoskeletal knee-shin system, single axis, friction swing and stance phase control (safety knee)	282.37
L5714	Addition, exoskeletal knee-shin system, single axis, variable friction swing phase control	355.95
L5716	Addition, exoskeletal knee-shin system, polycentric mechanical stance phase lock	533.93
L5718	Addition, exoskeletal knee-shin system, polycentric friction swing and stance phase control	533.93
L5722	Addition, exoskeletal knee-shin system, single axis, pneumatic swing, friction stance phase control	915.30
L5724	Addition, exoskeletal knee-shin system, single axis, fluid swing phase control	1,118.70
L5726	Addition, exoskeletal knee-shin system, single axis, external joints, fluid swing phase control	813.60
L5728	Addition, exoskeletal knee-shin system, single axis, fluid swing and stance phase control	1,957.73
L5780	Addition, exoskeletal knee-shin system, single axis, pneumatic/hydrapneumatic swing phase control	762.75
L5785	Addition, exoskeletal system, below knee, ultra-light material (Titanium, carbon fiber or equal)	254.25
L5790	Addition, exoskeletal system, above knee, ultra-light material (Titanium, carbon fiber or equal)	381.38
L5795	Addition, exoskeletal system, hip disarticulation, ultra-light material (Titanium, carbon fiber or equal)	508.50
L5810	Addition, endoskeletal knee-shin system, single axis, manual lock	330.53
L5811	Addition, endoskeletal knee-shin system, single axis, manual lock, ultra-light material	406.80
L5812	Addition, endoskeletal knee-shin system, single axis, friction swing and stance phase control (safety knee)	355.95
L5814	Addition, endoskeletal knee-shin system, single axis, variable friction swing phase control	500.00
L5816	Addition, endoskeletal knee-shin system, polycentric, mechanical stance phase lock	493.08
L5818	Addition, endoskeletal knee-shin system, polycentric, friction swing and stance phase control	690.00
L5822	Addition, endoskeletal knee-shin system, single axis, pneumatic swing, friction stance phase control	1,400.00
L5824	Addition, endoskeletal knee-shin system, single axis, fluid swing phase control	762.75
L5828	Addition, endoskeletal knee-shin system, single axis, fluid swing and stance phase control	1,800.00
L5830	Addition, endoskeletal knee-shin system, single axis, pneumatic swing phase control	1,345.00
L5850	Addition, endoskeletal system, above knee or hip disarticulation, knee extension assist	50.85
L5910	Addition, endoskeletal system, below knee, alignable system	342.00
L5920	Addition, endoskeletal system, above knee or hip disarticulation, alignable system	350.00

L5940	Addition, endoskeletal system, below knee, ultra-light material (Titanium, carbon fiber or equal)	279.68
L5950	Addition, endoskeletal system, above knee, ultra-light material (Titanium, carbon fiber or equal)	331.03
L5960	Addition, endoskeletal system, hip disarticulation, ultra-light material (Titanium, carbon fiber or equal)	584.78
L5970	All lower extremity prosthesis, foot, external keel, Sach foot	97.83
L5972	All lower extremity prosthesis, flexible keel foot (Safe, Sten, Bock Dynamic or equal)	152.55
L5974	All lower extremity prosthesis, foot, single axis ankle/foot	136.76
L5976	All lower extremity prosthesis, energy storing foot (Seattle Carbon Copy II or equal)	355.95
L5978	All lower extremity prosthesis, foot, multi-axial ankle/foot (Greissinger or equal)	159.18
L5980	All lower extremity prosthesis, flex foot system	2,542.50
L5982	All exoskeletal lower extremity prosthesis, axial rotation unit	508.50
L5984	All endoskeletal lower extremity prosthesis, axial rotation unit	381.38
L5986	All lower extremity prosthesis, multi-axial rotation unit ("MCP" or equal)	381.38
L6010	Partial hand, Robin-Aids, little and/or ring finger remaining (or equal)	1,271.25
L6050	Wrist disarticulation, molded socket, flexible elbow hinges, triceps pad	1,423.80
L6055	Wrist disarticulation, molded socket with expandable interface, flexible elbow hinges, triceps pad	1,983.15
L6100	Below elbow, molded socket, flexible elbow hinge, triceps pad	1,423.80
L6110	Below elbow, molded socket (Muenster or Northwestern suspension types)	1,805.18
L6120	Below elbow, molded double wall split socket, step-up hinges, half cuff	1,932.30
L6130	Below elbow, molded double wall split socket, stump activated locking hinge, half cuff	2,542.50
L6200	Elbow disarticulation, molded socket, outside locking hinge, forearm	1,830.60
L6205	Elbow disarticulation, molded socket with expandable interface, outside locking hinges, forearm	3,152.70
L6250	Above elbow, molded double wall socket, internal locking elbow, forearm	2,008.58
L6300	Shoulder disarticulation, molded socket, shoulder bulkhead, humeral section, internal locking elbow, forearm	2,695.05
L6310	Shoulder disarticulation, passive restoration (complete prosthesis)	2,339.10
L6320	Shoulder disarticulation, passive restoration (shoulder cap only)	1,525.50
L6350	Interscapular theracic, molded socket, shoulder bulkhead, humeral section internal locking elbow, forearm	3,025.58
L6360	Interscapular thoracic, passive restoration (complete prosthesis)	1,932.30
L6370	Interscapular thoracic, passive restoration (shoulder cap only)	1,779.75
L6380	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting alignment and suspension of components and one cast change, wrist disarticulation or below elbow	864.45
L6382	Immediate post surgical or early fitting, application of initial rigid dressing including fitting alignment and suspension of components and one cast change, elbow disarticulation or above elbow	1,017.00
L6384	Immediate post surgical or early fitting, application of initial rigid dressing, including fitting alignment and suspension of components, and one cast change, shoulder disarticulation or	1,220.40
L6386	Immediate post surgical or early fitting, each additional cast change and realignment	279.68
L6388	Immediate post surgical or early fitting, application of rigid dressing only	254.25
L5400	Below elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,505.16
L5450	Elbow disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,627.20
L6500	Above elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping	1,922.13
L6550	Shoulder disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue shaping	2,237.40
L6570	Interscapular thoracic, molded socket, endoskeletal system, including soft prosthetic tissue shaping	2,745.90
L6580	Preparatory, wrist disarticulation or below elbow, single wall plastic socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowden cable control, USMC or equal pylon, no cover, molded to patient model	1,017.00
L6582	Preparatory, wrist disarticulation or below elbow, single wall socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowden cable control, USMC or equal pylon, no cover, direct formed	864.45
L6584	Preparatory, elbow disarticulation or below elbow, single wall plastic socket, friction wrist, locking elbow, figure of eight harness, fair lead cable control, USMC or equal pylon, no cover, molded to patient model	1,449.23
L6586	Preparatory, elbow disarticulation or above elbow, single wall socket, friction wrist, locking elbow, figure of eight harness, fair lead cable control, USMC or equal pylon, no cover, direct formed	1,245.83
L6588	Preparatory shoulder disarticulation or interscapular thoracic, single wall plastic socket, shoulder joint, locking elbow, friction wrist, chest strap, fair lead cable control, USMC or equal pylon, no cover, molded to patient model	2,166.21
L6590	Preparatory, shoulder disarticulation or interscapular thoracic, single wall socket, shoulder joint, locking elbow, friction wrist, chest strap, fair lead cable control, USMC or equal pylon, no cover, direct formed	1,983.15
L6600	Upper extremity additions, polycentric hinge, pair	122.04
L6605	Upper extremity additions, single pivot hinge, pair	147.47
L6610	Upper extremity additions, flexible metal hinge, pair	132.21
L6615	Upper extremity addition, disconnect locking wrist unit	76.28
L6616	Upper extremity addition, additional disconnect insert for locking wrist unit, each	75.00
L6620	Upper extremity addition, flexible-friction wrist unit	315.27
L6623	Upper extremity addition, spring assisted rotational wrist unit with latch release	483.08
L6625	Upper extremity addition, rotation wrist unit with cable lock	200.00
L6628	Upper extremity addition, quick disconnect hook adapter, Otto Bock or equal	355.95
L6630	Upper extremity addition, stainless steel, any wrist	86.45
L6632	Upper extremity addition, latex suspension sleeve, each	40.68
L6635	Upper extremity addition, lift assist for elbow	152.55
L6637	Upper extremity addition, nudge control elbow lock	371.21
L6640	Upper extremity additions, shoulder abduction joint, pair	162.72
L6641	Upper extremity addition, excursion amplifier, pulley type	122.04
L6642	Upper extremity addition, excursion amplifier, lever type	172.89

L6645	Upper extremity addition, shoulder flexion-abduction joint, each	193.23
L6650	Upper extremity addition, shoulder universal joint, each	190.00
L6655	Upper extremity addition, standard control cable, each	71.19
L6660	Upper extremity addition, heavy duty control cable	50.85
L6665	Upper extremity addition, teflon or equal, cable lining	30.51
L6670	Upper extremity addition, hook to hand, cable adapter	61.02
L6672	Upper extremity addition, harness, chest or shoulder, saddle type	137.30
L6675	Upper extremity addition, harness, figure of "8" type, for single control	111.87
L6676	Upper extremity addition, harness, figure of "8" type, for dual control	142.38
L6680	Upper extremity addition, test socket, wrist disarticulation or below elbow	203.40
L6682	Upper extremity addition, test socket, elbow disarticulation or above elbow	228.83
L6684	Upper extremity addition, test socket, shoulder disarticulation or interscapular thoracic	188.15
L6686	Upper extremity addition, suction socket	508.50
L6687	Upper extremity addition, frame type socket, below elbow or wrist disarticulation	305.10
L6688	Upper extremity addition, frame type socket, above elbow or elbow disarticulation	355.95
L6689	Upper extremity addition, frame type socket, shoulder disarticulation	406.80
L6690	Upper extremity addition, frame type socket, interscapular thoracic	457.65
L6691	Upper extremity addition, removable insert, each	305.10
L6692	Upper extremity addition, silicone gel insert or equal, each	300.00
L6700	Terminal device, hook, dorrance, or equal Model #3	269.51
L6705	Terminal device, hook, dorrance, or equal Model #5	188.15
L6710	Terminal device, hook, dorrance, or equal Model #5X	264.42
L6715	Terminal device, hook, dorrance, or equal Model #5XA	183.06
L6720	Terminal device, hook, dorrance, or equal Model #6	544.10
L6725	Terminal device, hook, dorrance, or equal Model #7	210.52
L6730	Terminal device, hook, dorrance, or equal Model #7LO	236.15
L6775	Terminal device, hook, dorrance, or equal Model #555	265.00
L6780	Terminal device, hook, dorrance, or equal Model #SS555	304.00
L6790	Terminal device, hook, "ACCU" hook or equal	376.29
L6795	Terminal device, hook "2" load or equal	884.80
L6800	Terminal device, hook—APRL VC or equal	701.73
L6805	Terminal device, modifier, wrist flexion unit	234.93
L6806	Terminal device, hook, TRS grip, VC	1,169.55
L6807	Terminal device, hook, TRS adept, child, VC	889.88
L6808	Terminal device, hook, TRS adept, infant, VC	737.33
L6809	Terminal device, hook, TRS Super Sport, passive	244.08
L6810	Terminal device, hook, pincher tool, Otto Bock or equal	127.13
L6825	Terminal device, hand, dorrance, VO	355.95
L6830	Terminal device, hand, APRL, VC	986.50
L6835	Terminal device, hand, Sierra, VO	864.45
L6860	Terminal device, hand, Robin-Aids, VO soft	508.50
L6865	Terminal device, hand, passive hand	213.57
L6867	Terminal device, hand, Detroit infant hand, (mechanical)	762.75
L6868	Terminal device, hand, Passive infant hand, (Steeper, Hosmer or equal)	152.55
L6872	Terminal device, hand, NYU child hand	711.90
L6873	Terminal device, hand, mechanical infant hand, Steeper or equal	203.40
L6875	Terminal device, hand, Bock, VC	686.48
L6880	Terminal device, hand, Bock, VO	406.80
L6890	Terminal device, glove for above hands, production glove	106.79
L6895	Terminal device, glove for above hands, custom glove	376.29
L6900	Hand restoration (cast, shading and measurements included), partial hand, with glove, thumb or one finger remaining	1,271.25
L6905	Hand restoration (casts, shading and measurements included), partial hand, with glove, multiple fingers remaining	1,271.25
L6910	Hand restoration (cast, shading and measurements included), partialhand, with glove no fingers remaining	1,271.25
L6915	Hand restoration (shading, and measurements included), replacement glove for above	406.80
L7010	Electronic hand, Otto Bock, Steeper or equal switch controlled	1,728.90
L7015	Electronic hand, Systemteknik, Variety Village or equal switch controlled	3,966.30
L7020	Electronic Greifer, Otto Bock or equal switch controlled	2,440.80
L7025	Electronic hand, Otto Bock or equal, myoelectronically controlled	2,339.10
L7030	Electronic hand, Sytemteknik, Variety Village or equal, myoelectronically controlled	4,068.00
L7035	Electronic Greifer, Otto Bock or equal, myoelectronically controlled	2,339.10
L7040	Prehensile actuator, Hosmer or equal, switch controlled	1,830.60
L7045	Electronic hook, child, Michigan or equal, switch controlled	889.88
L7170	Electronic elbow, Hosmer or equal, switch controlled	3,712.05
L7185	Electronic elbow, child, Variety Village or equal, switch controlled	6,000.00
L7191	Electronic elbow, child, Variety Village or equal, myoelectronically controlled	6,340.00
L7260	Electronic wrist rotator, Otto Bock or equal	1,678.05
L7261	Electronic wrist rotator, for Utah arm	3,051.00
L7266	Servo control, Steeper or equal	610.20
L7272	Analogue control, UNB or equal	1,423.80

L7274	Proportional control, 12 volt, Utah or equal	4,576.50
L7360	Six volt battery, Otto Bock or equal, each	203.40
L7362	Battery charger, six volt, Otto Bock or equal	172.89
L7364	Twelve volt battery, Utah or equal, each	325.44
L7366	Battery charger, twelve volt, Utah or equal	432.23
L8000	Breast prosthesis, mastectomy bra	21.59
L8010	Breast prosthesis, mastectomy sleeve	59.42
L8020	Breast prosthesis, mastectomy form	67.31
L8030	Breast prosthesis, silicone or equal	156.79
L8300	Truss, single with standard pad	56.12
L8310	Truss, double with standard pad	114.49
L8320	Truss, addition to standard pad, water pad	30.51
L8330	Truss, addition to standard pad, scrotal pad	31.53
L8400	Prosthetic sheath, below knee, each	15.26
L8410	Prosthetic sheath, above knee, each	14.29
L8415	Prosthetic sheath, upper limb, each	14.24
L8420	Prosthetic sock, wool, below knee, each	16.95
L8430	Prosthetic sock, wool, above knee, each	18.35
L8435	Prosthetic sock, woold, upper limb, each	10.17
L8440	Prosthetic shrinker, below knee, each	36.61
L8460	Prosthetic shrinker, above knee, each	46.51
L8465	Prosthetic shrinker, upper limb, each	42.21
L8470	Stump sock, single ply, fitting, below knee, each	3.22
L8480	Stump sock, single ply, fitting, above knee, each	3.16

CODES BEGINNING WITH 'Q' THROUGH 'Z'

HCPCS Code	Description	Fee for New Eqpt	Fee for Used Eqpt	Rental Per Month
Q0036	Oxygen concentrator high humidity			287.90
Q0037	Oxygen and water vapor enriching system			287.90
Q0038	Oxygen contents, gaseous, per unit (for use with owned gaseous stationary systems or when both a stationary and portable gaseous system are owned; 1 unit = 50 cubic feet)	195.84		
Q0039	Oxygen contents, liquid, per unit (for use with owned stationary liquid systems or when both a stationary and portable liquid system are owned; 1 unit = 10 lbs.)	195.84		
Q0040	Portable oxygen contents, gaseous per unit (for use only with portable gaseous systems when no stationary gas system is used; 1 unit = 5 cubic ft.)	27.73		
Q0041	Portable oxygen contents, liquid, per unit (for use only with portable liquid systems when no stationary liquid system is used; 1 unit = 1 lb.)	27.73		
Q0042	Stationary compressed gas system rental, includes contents (per unit), regulator with flow gauge, humidifier, nebulizer, cannula or mask and tubing, 1 unit = 50 cubic feet.			287.90
Q0043	Stationary liquid oxygen system rental, includes content (per unit), use of reservoir, contents indicator, flowmeter, humidifier, nebulizer, cannula or mask and tubing; 1 unit of contents = 10 lbs.			287.90
Q0046	Portable liquid oxygen system rental, includes flowmeter, refill adapter, contents gauge, cannula and tubing			57.80
V2620	Prosthetic, eye, glass, stock	76.28		
V2621	Prosthetic, eye, plastic, stock	76.28		
V2622	Prosthetic, eye, glass, custom	606.13		
V2623	Prosthetic, eye, plastic, custom	606.13		
Y2624	Reglazing of ocular prosthesis	30.51		
Z0010	Hospital bed, variable height, Hi-Lo, with mattress	948.33	691.59	94.83
Z0015	Hospital bed, semi-electric, head and foot adjustment, with mattress	1304.00	1133.29	130.40
Z0020	Hospital bed, total electric, head, foot, and height adjustment, with mattress	1841.08	1450.45	184.11
Z0460	Hand-held nebulizer	5.09		
Z0462	Regulator (replacement)	94.90	71.18	9.49
Z0520	Aerosol therapy unit with compressor	147.88	110.91	14.79
Z0783	Drug maintenance/supply kit for home infusion therapy—subcutaneous line or implanted access device	40.00		
Z3255	Orthopedic shoes attached to brace	74.96		
Z4330	Catheter plug	.86		
Z4331	Irrigation solution, 500 ml	9.72		
Z4332	Irrigation solution, 1000 ml	11.38		
Z4351	Catheter irrigation tray with bulb syringe	5.09		
Z4352	Urethral catheter tray	6.10		
Z4353	Foley catheter tray	6.10		
Z4405	Ostomy wafers	10.17		

Z4406	Ostomy deodorant	8.01
Z4407	Skin prep wipes	6.31
Z4442	Tracheostomy suction kit	6.41

(a)

DIVISION OF ADMINISTRATION

Eligible Persons Qualifications and Automobile Insurance Eligibility Points Schedule

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

Proposed: December 17, 1990 at N.J.R. 3847(a).
Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.
Filed: January 25, 1991 as R.1991 d.93, **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. 17:33B-13 and 14; N.J.S.A. 17:1C-6(e).

Effective Date: January 25, 1991, Readoption of Emergency New Rules. February 19, 1991, Changes upon Adoption.
Operative Date: April 1, 1991.
Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently reproposed on November 26, 1990 pursuant to N.J.S.A. 52:14B-4(c) (see 22 N.J.R. 3847(a)). The present adoption of the current reproposed new rules is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), except for changes upon adoption, which are effective on the date of publication of this notice, February 11, 1991.

Summary of Public Comments and Agency Responses:

The Department of Insurance received comments from 11 separate insurers, insurance trade organizations and a consumer.

Initially, the Department notes that these rules are closely related to other rules contemporaneously adopted concerning automobile insurance policy nonrenewals, N.J.A.C. 11:3-8; standard/non-standard rating plans, 11:3-19; and automobile insurance underwriting rules, N.J.A.C. 11:3-35. All of these rules implement provisions of the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 et seq. (FAIR Act). Recognizing this, some commenters addressed their comments generally to all of these rules and some duplicated their similar comments to all of them; other commenters did not identify the specific rule being commented upon. Often, commenters addressed a particular rule but their comment was similar to another comment on a different rule. In preparing adoption notices for all of these rules, the Department has in some instances combined similar comments and responses, and those that relate to more than one of these rules may appear only once. The Department believes that not ony does this avoid duplication, but also promotes clarity and consistency. In other instances, the Department found that a more cogent response could be provided to general comments by addressing each aspect in connection with the particular rule to which it related. The reader is therefore urged to examine also the adoption notices concerning the other rules set forth above for a more complete understanding of these rules (see adoption notices for N.J.A.C. 11:3-8, 11:3-19 and 11:3-35 appearing elsewhere in this issue of the New Jersey Register.)

COMMENT: Many commenters restated comments previously made to this rule when it was first proposed on July 16, 1990 (see 22 N.J.R. 2108(a)), or stated simply that comments to that proposal were "incorporated by reference."

RESPONSE: These commenters are referred to the Department's responses set forth when these rules were reproposed (see 22 N.J.R. 3847(a)). The Department notes, however, that many of the following comments and responses contain elements of previous comments regarding particular aspects of these rules. Some of the following responses may serve to promote greater understanding of the Department's previous responses when applicable.

COMMENT: Several commenters suggested that N.J.A.C. 11:3-34.4(a) be changed to provide that, to be an "eligible person," a person must be both an owner or registrant and hold a New Jersey driver's license.

The commenters note that the reproposed definition, which added the requirement that a registered automobile be principally garaged in New Jersey, still allows a car registered out-of-State to be insured if the insure holds a valid New Jersey license; they suggested that this may promot rate evasion.

RESPONSE: This definition is provided, in pertinent part, by N.J.S.A 17:33B-13. The Department has addressed in the adopted rule that th licensed New Jersey driver must also be a resident in this State, whic is comparable to the requirement that a vehicle registered also be princ pally garaged in this State.

COMMENT: Several commenters reiterated their suggestion tha eligibility points be assigned to households. These commenters generall suggested that total household points be added together to determin eligibility of all residents of the same household and urge that this is proper and authorized construction of N.J.S.A. 17:33B-14.

RESPONSE: The Department disagrees that this is authorized by th statute which, among other things, seeks to promote appropriate individ ual treatment based upon an individual's driving history. Moreover, th Department does not believe that establishing "household points" woul be wise. Declaring all members of a household ineligible as the resul of the driving behavior of some of them would substantially increase th number of persons required to be insured in the residual market. Becaus N.J.S.A. 17:29D-1 provides for the closing of the residual market whe it reaches 10 percent of the total market, drivers with poor driving record would then supplant in the voluntary market those drivers whose in eligibility was premised solely on the record of another household mem ber. The Department believes that these adopted rules are more consisten with the legislative intent.

COMMENT: Several commenters objected to various provisions o these rules that incorporate statutory standards, particularly: the failur to assess points for accidents in which the insured is responsible, but doe not involve a claim payment by an insurer; the failure to assess point for comprehensive claims; and failue to assess points for age alone.

RESPONSE: With regard to these comments, the rules simply set fort standards required by the applicable statutes.

COMMENT: Several commenters requested that the provision con cerning accrual of eligibility points for motor vehicle violations, N.J.A.C 11:3-34.5(b), be amended to provide that points for convictions of moto vehicle violations be accrued when the insurer obtains "internal documen tation received from reliable sources." These insurers stated that some times motor vehicle violations do not appear on Division of Moto Vehicle (DMV) abstracts of driving records. One commenter stated that "the problem here is that an insurer may learn of convictions or instances of being illegally uninsured that are not in DMV records." Another commenter stated that DMV records may become less accurate in the future "since insureds will be more reluctant to report accidents in order to avoid eligibility points."

One commenter stated it was unclear whether eligibility points assessed in accordance with Schedule I and based on the past three years driving status were to accrue based on a DMV abstract.

RESPONSE: The Department does not find that such a change is warranted at this time. First, the Department notes that accrual of eligibility points for motor vehicle violations requires conviction in accordance with law. Convictions in New Jersey are routinely reported by municipal courts to the DMV, and recorded in DMV records. Although the conviction itself may be delayed (for example, when a municipal court conviction is appealed), the Department is not convinced that any significant number of actual motor vehicle violation convictions do not appear on DMV records. The Department is, however, willing to review this matter if there is evidence that DMV records are inadequate with respect to motor vehicle convictions.

Secondly, with respect to motor vehicle accidents, the Department notes that points for at-fault accidents accrue when payment by the insurer equals or exceeds $500.00. Points for at-fault accidents accrue as stated regardless of whether the accident is reported to the DMV or appears on a DMV abstract.

Finally, with respect to the accrual of points based on driving status during the last three years, the Department notes that the basis for assessment of these points is not the DMV abstract, but the retrospective view of the individual's driving status from the time that application for insurance is made. To the extent necessary to clarify that points so assessed are based neither on an at-fault accident (accrued pursuant to

N.J.A.C. 11:3-34.5(b)1) nor a specific motor vehicle violation (accrued pursuant to N.J.A.C. 11:3-34.5(b)2), the Department has added a new provision, N.J.A.C. 11:3-34.5(b)3, that these points "accrue" on the date of application for insurance.

COMMENT: Several commenters objected to the accrual of eligibility points for at-fault accidents when total payment by the insurer equals or exceeds $500.00. Some commenters expressed concern that information about at-fault accidents may not be forthcoming from other insurers, or that the information received from others may be incorrect. Some commenters stated that the use of the accident payment date is inconsistent with their present systems, which would be expensive to modify. One commenter suggested that the rule be amended to provide insurers the option of using the event date, although not actually assessing points until payment of at least $500.00 had been made. This commenter acknowledged that use of this option would require the insurer to forego some amount of premium when the payment threshold was not reached until long after the accident date. The commenter stated that the cost savings of the system would more than offset this lost premium.

RESPONSE: This provision was developed in its present form in response to comments made when the rule was originally proposed (see 22 N.J.R. 3849). The Department believes that it includes the statutory requirements for an "at-fault" accident in that the date of accrual of points requires both that an accident occurs for which the insured was responsible and that payment by the insurer equals or exceeds the threshold amount. Nevertheless, the commenters suggestion is valid, although only as an option by an insurer. In taking the option, the insurer acknowledges that it may lose some premium income, since the points would expire three years from the date of the accident regardless when payment was made. An appropriate provision has been added at N.J.A.C. 11:3-34.5(b)1 on adoption to provide insurers with this option.

The Department fully expects that insurers will cooperate with one another and exchange necessary information. If, however, the Department determines that there exists among the industry a serious problem concerning exchange of such information, it would consider promulgating a rule to compel specific methods of exchange.

COMMENT: One commenter suggested a "graduated point schedule" for at-fault accidents, as a "fair approach for consumers, especially long standing insureds."

RESPONSE: The commenter neither suggested a scale, nor provided any information about how it would work. The Department generally believes that such an approach would make administration much more difficult.

COMMENT: Several commenters suggested that the schedule include eligibility points for license suspensions of less than one year.

RESPONSE: The Department does not believe this is necessary. First, the Department notes that eligibility points based solely on license suspension are to be assessed only when the suspension is court-imposed. (Any person who is currently suspended by either a court or the DMV Director is not an eligible person pursuant to N.J.A.C 11:3-34.4(a)3.) Additional eligibility points for court-imposed license suspensions of less than one year are not necessary, since points accrue for the convictions themselves. The provision of Schedule 1 that provides three points for each year of court-imposed driver's license suspension within the preceding three years is intended to prevent the immediate eligibility for insurance at standard rates when a driver that was subject to a long-term suspension is relicensed.

COMMENT: Several insurers suggested that point values for some violations be changed. Many suggested higher point values for some of the serious moving violations; others suggested different point values for Schedule 2, which sets forth the DMV point schedule.

RESPONSE: The Department believes that the use of DMV points on Schedule 2 is not only reasonable, but will improve efficiency, reduce error and avoid confusion. The Department further believes that the point values assigned in Schedule 1 are likewise reasonable; none of the commenters provided compelling reasons for making a change upon readoption.

COMMENT: Several commenters suggested that the Schedule 1 points for inexperience (that is, one point for each full year within the immediately preceding three years that a person has not held a driver's license) be amended to require not only licensure, but operation of a motor vehicle.

RESPONSE: The Department disagrees, noting that the commenters suggest neither an appropriate "threshold" of the amount of operation required, nor how such a requirement could be reasonably administered.

COMMENT: Two commenters suggested that these rules should include the language of the nonrenewal rule, N.J.A.C. 11:3-8.3, which provides that points are to be considered for nonrenewal if they accrue in the 36 month period ending three months before the date the policy is to be renewed.

RESPONSE: The Department notes that these rules primarily define "eligible person" and set forth the eligibility point schedule. The rules concerning nonrenewal (N.J.A.C. 11:3-8), rules concerning standard/non-standard rating plans (N.J.A.C. 11:3-19) and rules concerning automobile insurance underwriting rules (N.J.A.C. 11:3-35) apply the "eligible person" standard to the market. Eligibility points are only significant when application for insurance is made, or upon renewal. At these times, the insurer may review the new or renewal applicant's driving record for the past three years, and determine whether the applicant is eligible for the voluntary market and, if so, at what rate level. For new applicants, the three year period immediately precedes the date of application. Therefore, the change suggested by the commenter would not be appropriate as to new applicants.

For renewals, the three year period is fixed so as to end three months before the date of renewal in order to provide insurers with the time necessary to provide notice of nonrenewal in accordance with N.J.A.C. 11:3-8.3(f), which requires the notice be sent 60-90 days prior to the renewal date. The Department believes that including appropriate provision in the rules concerning application of the points is adequate. The Department will, however, add a similar provision to the rules concerning standard/non-standard rating plans, since assignment to a particular rate level is also accomplished upon renewal.

COMMENT: One commenter suggested that the Department delete the list of "no-fault" accidents set forth in N.J.A.C. 11:3-34.3.

RESPONSE: These were included as the result of a comment from a previous proposal (see 22 N.J.R. 3847) and set forth circumstances in which fault has not traditionally been found.

COMMENT: A consumer reiterated his comment concerning the alleged "retroactivity" of the point schedule, in that violations and accidents occurring prior to the effective date of the rules may result in eligibility points.

RESPONSE: This comment was addressed when these rules were reproposed (see 22 N.J.R. 3849). The language of the rule tracks the provisions of N.J.S.A. 11:33B-13 and 14 which direct that points be assessed for incidents in the previous three years.

COMMENT: Two commenters stated that the eligibilty threshold of eight points is too high. These commenters stated that, in their view, a person with eight eligibility points is a bad driver that should be insured in the residual market.

RESPONSE: The Department believes that, based on available information, approximately 90 percent of the drivers in New Jersey are "eligible persons" as defined in these rules. Because N.J.S.A. 17:29D-1 limits the residual market (assigned risk plan) to 10 percent of the total market, the Department believes these rules are reasonable and appropriate. Should the Department's estimates prove incorrect, or should new data suggest a different threshold, the Department would consider amending the rules at that time.

COMMENT: One commenter stated that it foresees a problem regarding the date of accrual of motor vehicle violations based on abstracts from other states, which may show only the dates of the violation and conviction. The commenter suggested the rules state the conviction date is the date that should be used.

RESPONSE: Conviction dates do not appear on New Jersey DMV abstracts which include the "event date" and the "posting date." Because the event date may be significantly before the date of conviction, the Department has determined to use the posting date, which is when an inquiring insurer would be able to obtain notice or confirmation of the offense.

Because information on driving record abstracts may vary widely among the 50 states, it would be unworkable to set forth in this rule standards for every state. If the posting date is not shown on another state's abstract, then the conviction date may be used.

COMMENT: One commenter questioned the Department's response at 22 N.J.R. 3852 regarding an out-of-State conviction for driving under the influence. The commenter had inquired whether such a conviction would receive nine points in accordance of Schedule 1, or two points in accordance with Schedule 2. The Department responded that the offense should be assigned nine points under Schedule 1. The commenter suggested the Department "expand and clarify" its position by amending N.J.A.C. 11:3-34.5(c) to provide that out-of-State offenses generally shall

accrue the greater of two points or the number of points on Schedules 1 or 2.

RESPONSE: A person convicted of driving under the influence in another state is not eligible for three years after conviction, pursuant to N.J.A.C. 11:3-34.4(a)1, which includes not only convictions of New Jersey statutes, but also "an offense of a substantially similar nature committed in another jurisdiction." Because this offense is specifically mentioned in that provision of the rules (in accordance with N.J.S.A. 17:33B-13), it is appropriate that the nine points on Schedule 1 be applied, rather than the "catch-all" two points on Schedule 2. This likewise applies to "refusal to submit to a chemical test," in violation of N.J.S.A. 39:4-50.4. For all other offenses, however, a moving violation out-of-State is assessed two points.

COMMENT: Several commenters addressed the eligibility of persons applying for insurance who could not demonstrate continuous coverage. One suggested assignment of eligibility points regardless of whether the person was ever convicted of driving without insurance; another suggested that such persons should be deemed ineligible in accordance with N.J.S.A. 17:33B-13g, as possessing "such other risk factors as determined to be relevant by rule or regulation of the Commissioner."

RESPONSE: The Department will not amend its definition of "eligible person" at this time to exclude persons who cannot demonstrate continuous coverage. In such circumstances there is no "conviction" of an offense as set forth in N.J.S.A. 17:33B-14.

COMMENT: One commenter inquired whether the phrase "when the event is recorded in the agency's records as evidenced by an abstract" in N.J.A.C. 11:3-34.5(b)2 meant the "offense date," "conviction date," or the date the offense is posted on the driver's DMV record.

RESPONSE: The date the offense is "recorded in the agency's records" is when it is posted. The Department believes that this provides insurers with the ability to confirm convictions for motor vehicle violations.

COMMENT: One commenter requested clarification of N.J.A.C. 11:3-34.5(c), which provides that eligibility points are cumulative.

RESPONSE: The word "cumulative" refers to multiple convictions, or accidents and convictions, which arise out of the same set of circumstances. For example, a driver may be convicted of reckless driving (five points) and failure to stop for a traffic light (two points) as a result of a continuous episode of driving behavior. The points are totaled and the driver accrues seven points. Similarly, a person responsible for an at-fault accident which resulted in a payment by the insurer of at least $500.00 (five points) who is also convicted of careless driving as a result of the accident (two points) would have accrued seven points. Additionally, if the accident involved a death, and the driver was determined to be subject to sanction by the Director of the Division of Motor Vehicles (NFTL Code, two points), the driver would have accrued nine points as the result of this one incident.

COMMENT: One insurer suggested an amendment to Schedule 1 of N.J.A.C. 11:3-34 regarding "inexperience points". The commenter stated that it does not reunderwrite or rerate policies in the middle of the year to reflect the newly licensed driver. The commenter stated that midterm rerating and midterm reunderwriting are illegal.

The commenter suggested that the phrase to the language in Schedule 1 "with any remaining fraction thereof being counted as a full year." With this addition, it suggested, a newly licensed driver would receive points for each of the three years anticipated by the rule.

RESPONSE: The Department does not believe this change is necessary, since insurers may rerate a policy when a new driver is added.

Summary of Agency-Initiated Changes

The Department has made some minor editorial changes to Schedule 1. First, it has added the phrase "If applicable" to the N.J.S.A. section number and DMV event identifiers, in recognition of the fact that certain items on the Schedule have neither. Secondly, an N.J.S.A. section number has been added to better define the offense "misrepresentation of insurance coverage." Thirdly, "DMV" has been deleted from "event description" since it does not apply to "at-fault" accidents and points imposed based on driver's license status in the preceding three years.

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 34. ELIGIBLE PERSONS QUALIFICATIONS AND AUTOMOBILE INSURANCE ELIGIBILITY POINTS SCHEDULE

11:3-34.1 Purpose

The purpose of this subchapter is to set forth the requirements for determining who can qualify as an "eligible person", and to provide the schedule for "automobile insurance eligibility points" pursuant to P.L. 1990, c.8 (N.J.S.A. 17:33B-13 and 14).

11:3-34.2 Scope

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

11:3-34.3 Definitions

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

"At-fault accident" is any accident involving a driver insured under the policy which resulted in a payment by the insurer of at least $500.00, and for which the driver is at least proportionately responsible based on the number of vehicles involved. A driver is proportionately responsible if 50 percent responsible for an accident involving two drivers; if 33⅓ percent responsible for an accident involving three drivers; etc. An at-fault accident shall not include the following:

1. Involvement in an accident in which the motor vehicle owned or operated by the insured or other driver insured under the policy was lawfully parked;

2. Involvement in an accident in which the motor vehicle was struck by a hit and run driver, if such accident was reported to the proper authorities within 24 hours;

3. Involvement in an accident in connection with which neither the named insured nor any other driver insured under the policy was convicted of a moving traffic violation and the owner or operator of another vehicle involved in such accident was so convicted;

4. For physical damage losses other than collision;

5. For an accident in which the motor vehicle was struck in the rear by another vehicle and a driver insured under the policy has not been convicted of a moving violation in connection with the accident; or

6. For an accident occurring as a result of operation of any motor vehicle in response to an emergency if the operator at the time of the accident was responding to the call to duty as a paid or volunteer member of any police or fire department, first aid squad or any law enforcement agency.

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

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

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

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

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

"State" means the State of New Jersey.

11:3-34.4 Eligible person qualifications

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

1. Who, during the three-year period immediately preceding application for, or renewal of, an automobile insurance policy has been convicted pursuant to N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.4a or for an offense of a substantially similar nature committed in another jurisdiction;

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

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

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

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

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

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

iii. If the incident was not reported to the New Jersey Department of Insurance, Fraud Division pursuant to N.J.S.A. 17:33A-9 it shall be presumed that there was no evidence of fraud or intent to defraud;

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

7. Who fails to obtain or maintain membership or qualification for membership in a club, group, or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance, and if the dues or charges, if any, or other conditions for membership or qualifications for membership are applied uniformly throughout this State, are not expressed as a percentage of the insurance premium, and do not vary with respect to the rating classification of the member or potential member except for the purpose of offering a membership fee to family units. Membership fees, if applicable, may vary in accordance with the amount or type of coverage if the purchase of additional coverage, either as to type or amount, is not a condition for reduction of dues or fees; or

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

11:3-34.5 Automobile insurance eligibility points

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

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

1. Points for an at-fault accident shall accrue on the date that total payment by the insurer equals or exceeds $500.00. ***An insurer may, at its option, use the date of the accident or date of first payment provided, however, that the insurer shall not underwrite or rate any policy based on the accident until total payment by the insurer equals or exceeds $500.00; and further provided that the insurer shall use the optional date consistently in all cases.***

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

3. Points for each full year of court-imposed driver's license suspension within the preceding three years and points for each full year within the immediately preceding three years that a person has not held a driver's license shall accrue on the date of application for insurance.

(c) Automobile insurance eligibility points are cumulative and accrue for all offenses set forth on Schedules 1 and 2, except as noted on Schedule 1.

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

APPENDIX

Schedule of Automobile Insurance Eligibility Points

Schedule 1

N.J.S.A. SECTION NUMBER *if applicable*	*[DMV]* EVENT DESCRIPTION	DMV EVENT IDENTIFIER(S) *if applicable*	POINTS
39:4-50	Operating a motor vehicle under the influence of alcohol or drugs	0450; 3261	9
39:4-50.4	Refusal to submit to a chemical test	4504	9
2C:11-2	Vehicular homicide	C115	9
39:3-40	Operating a motor vehicle while driving privilege is suspended	0340	9
39:6B-2	Operating a motor vehicle without liability insurance	06B2	9
39:6A-15	Misrepresentation of insurance coverage	6A15	9
	Each at fault accident		5
	*For each full year of a court imposed driver's license suspension within the preceding 3 years		3
	*For each full year within the immediately preceding 3 years that a person has not held a driver's license		1
	Involved in a fatal accident	EFTL;	4
		NFTL	2
39:3-37	Obtaining a driver's license or registration through deception	0337; 0312; 05D5; 1312; MSNJ; MSOS	5
39:3-38	Make or use counterfeit plate or plates other than issued	0338	5
39:3-38.1	Make, alter or counterfeit driver's license or registration	3381	5
	Failure to verify insurance involved in an automobile accident	FVIA	2

*Points for failure to hold a driver's license in the previous three years are not cumulative to points for driver's license suspension.

Schedule 2

N.J.S.A. Section Number	Offense	Points
27:23-29	Moving against traffic—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
27:23-29	Improper passing—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	4
27:23-29	Unlawful use of median strip—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway	2
39:3-20	Operating constructor vehicle in excess of 30 mph	3
39:3-76.7 & 39:4-14.3q	Operating motorcycle or motorized bicycle without protective helmet	2
39:4-14.3	Operating motorized bicycle on a restricted highway	2
39:4-14.3d	More than one person on a motorized bike	2
39:4-35	Failure to yield to pedestrian in crosswalk	2
39:4-36	Failure to yield to pedestrian in crosswalk; passing a vehicle yielding to pedestrian in crosswalk	2
39:4-41	Driving through a safety zone	2
39:4-52 & 39:5C-1	Racing on highway	5
39:4-55	Improper action or omission on grades and curves	2
39:4-57	Failure to observe direction of officer	2
39:4-66	Failure to stop vehicle before crossing sidewalk	2
39:4-66.1	Failure to yield to pedestrians or vehicles while entering or leaving highway	2
39:4-71	Operating a motor vehicle on a sidewalk	2
39:4-80	Failure to obey direction of officer	2
39:4-81	Failure to observe traffic signals	2
39:4-82	Failure to keep right	2
39:4-82.1	Improper operating of vehicle on divided highway or divider	2
39:4-83	Failure to keep right at intersection	2
39:4-84	Failure to pass to right of vehicle proceeding in opposite direction	5
39:4-85	Improper passing on right or off roadway	4
39:4-85.1	Wrong way on a one-way street	2
39:4-86	Improper passing in no passing zone	4
39:4-87	Failure to yield to overtaking vehicle	2
39:4-88	Failure to observe traffic lanes	2
39:4-89	Tailgating	5
39:4-90	Failure to yield at intersection	2
39:4-90.1	Failure to use proper entrances to limited access highways	2
39:4-91 & 39:4-92	Failure to yield to emergency vehicles	2
39:4-96	Reckless driving	5
39:4-97	Careless driving	2
39:4-97a	Destruction of agricultural or recreational property	2
39:4-97.1	Slow speed blocking traffic	2
39:4-98 & 39:4-99	Exceeding maximum speed 1-14 mph over limit	2
	Exceeding maximum speed 15-29 mph over limit	4
	Exceeding maximum speed 30 mph or more over limit	5
39:4-105	Failure to stop for traffic light	2
39:4-115	Improper turn at traffic light	3
39:4-119	Failure to stop at flashing red signal	2
39:4-122	Failure to stop for police whistle	2
39:4-123	Improper right or left turn	3
39:4-124	Improper turn from approved turning course	3
39:4-125	Improper "U" turn	3
39:4-126	Failure to give proper signal	2
39:4-127	Improper backing or turning in street	2
39:4-127.1	Improper crossing of railroad grade crossing	2
39:4-127.2	Improper crossing of bridge	2
39:4-128	Improper crossing of railroad grade crossing by certain vehicles	2
39:4-128.1	Improper passing of school bus	5

9:4-128.4	Improper passing of a frozen dessert truck	4
9:4-129	Leaving the scene of an accident	
	No personal injury	2
	Personal injury	8
9:4-144	Failure to observe "stop" or "yield" signs	2
9:5D-4	Moving violation out-of-state	2

(a)

DIVISION OF PROPERTY/LIABILITY

Private Passenger Automobile Insurance Underwriting Rules

Adopted Concurrent New Rules: N.J.A.C. 11:3-35

Proposed: December 17, 1990 at 22 N.J.R. 3856(a).

Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Filed: January 25, 1991 as R.1991 d.94 **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-6e; 17:22-6.14(a); 17:29A-46, as amended, P.L. 1990, c.8.

Effective Date: January 25, 1991, Readoption of Emergency New Rules February 19, 1991, Changes upon Adoption.

Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently reproposed on November 26, 1990 pursuant to N.J.S.A. 52:14B-4(c) (see 22 N.J.R. 3856(a)). The present adoption of these concurrent reproposed rules is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), except for the changes upon adoption, which are effective upon publication of this notice, February 19, 1991.

Summary of Public Comments and Agency Responses:

Six timely comments were received from insurers and an insurance trade association.

Initially, the Department of Insurance (Department) notes that these rules are closely related to other rules contemporaneously adopted concerning the definition of "eligible person," N.J.A.C. 11:3-34; automobile insurance nonrenewals, N.J.A.C. 11:3-8; and standard/nonstandard rating plans, N.J.A.C. 11:3-19 (see notices of adoption elsewhere in this issue of the New Jersey Register.) Recognizing this, some commenters addressed comments generally to all of these rules and some duplicated their comments, while other commenters did not identify the specific rule being commented upon. Often, commenters addressed a particular rule but their comment was similar to another comment on a different rule. In preparing adoption notices for all of these rules, the Department has in some instances combined similar comments and responses, and those that relate to more than one of these rules may appear only once. The Department believes that not only does this avoid duplication, but it also promotes clarity and consistency. In other instances the Department found that a more cogent response could be provided to general comments by addressing each aspect in connection with the particular rule to which it related. The reader is therefore urged to read also the adoption notices for the other related rules indicated above.

COMMENT: Many commenters restated comments previously made to this rule when proposed on August 6, 1990 (see 22 N.J.R. 2233(a)), or stated simply that comments to that proposal were "incorporated by reference."

RESPONSE: These commenters are referred to the Department's responses set forth when these rules were reproposed (see 22 N.J.R. 3856-59). The Department notes, however, that many of the following comments and responses contain elements of previous comments regarding particular aspects of these rules. Some of the following responses may serve to promote a better understanding of the Department's previous responses, when applicable.

COMMENT: One commenter objected to N.J.A.C. 11:3-35.3(a), which requires all insurers to file their underwriting rules for approval. The commenter expressed its interpretation of N.J.S.A. 17:29A-46, which it stated requires only those insurers that file standard/nonstandard rating plans to file underwriting rules for approval.

RESPONSE: The commenter is referred to the Department's previous response to a similar comment, set forth at 22 N.J.R. 3856. Additionally, the Department notes that N.J.A.C. 11:3-19, adopted elsewhere in this issue of the New Jersey Register, requires all personal automobile insurers to file standard/nonstandard rating plans.

COMMENT: One commenter stated that the term "personal private passenger automobile insurance" should be defined, and suggested a specific definition.

RESPONSE: The Department does not believe a definition is necessary for clarity, noting that the word "personal" in the phrase was inserted in response to a prior comment to distinguish the applicability of these rules from "commercial" insurance. "Personal" and "commercial" lines of insurance are sufficiently distinct in that each is subject to a completely separate rating system. Moreover, the Department disagrees with the definition supplied by the commenter which excludes "fleet policies" from personal lines, noting that some insurers issue personal lines "fleet policies" to individuals who, for example, collect automobiles as a hobby.

COMMENT: One commenter suggested that the word "demonstrable" be deleted from N.J.A.C. 11:3-35.3(c)2, which requires tht underwriting rules be based upon "reasonable and demonstrable" relationships. The commenter stated that the word was unnecessary and may imply that underwriting rules must be actuarially justified.

RESPONSE: The commenter is referred to the Department's response to a similar comment made previously (see 22 N.J.R. 3857). The Department further notes that, in appropriate instances, the Department may require some actuarial justification of proposed underwriting rules as a part of the approval process.

COMMENT: Two commenters objected to N.J.A.C. 11:3-35.3(c)5, which prohibits underwriting rules based on whether an insured was previously insured by a residual market mechanism, or terminated by another insurer. One commenter stated that this provision would "impermissibly restrict" the application of N.J.S.A. 17:33B-12, which permits insurers to charge Market Transition Facility (MTF) rates to insureds depopulated from the MTF. Another commenter opined that previous insurance through a residual market mechanism was a valid measurement of risk.

RESPONSE: The Department does not believe any change is warranted. First, the Department notes that this rule does not prohibit an insurer from charging MTF rates as permitted by N.J.S.A. 17:33B-12. This subchapter addresses underwriting rules used to accept or reject new or renewal business and to assign a risk to the standard or non-standard rate level of an insurer's approved rating plan. Secondly, the Department notes that these rules prohibit an insurer from considering previous coverage in a residual market mechanism but do not prohibit considering the driving behavior from which that coverage resulted.

COMMENT: Several commenters strongly objected to the provisions of N.J.A.C. 11:3-35(c)10, which prohibits underwriting rules based upon the driving record of a member of a household which does not account for 10 percent or more of the use of any vehicle in the household. These commenters uniformly recommend "household" underwriting, by which the driving behavior of one "not-eligible" household member would be attributable to all. The commenters stated that this method of treating households would prevent fraud and avoid improper subsidies of the "bad" drivers by the "good" drivers.

RESPONSE: The Department disagrees with these commenters, noting that the "household" underwriting suggested by them is likely to result in the residual market (assigned risk plan) becoming quickly filled with drivers whose only reason for being so placed is the driving behavior of other household members. The Department notes that when the assigned risk plan exceeds 10 percent of the entire market, the Commissioner is directed by N.J.S.A. 17:29D-1d to close it to further applications and renewals. In that event the voluntary market must provide insurance for "not-eligible" drivers. The Department believes that it is preferable to limit the assigned risk plan to the "not-eligible" drivers in the first instance.

Nevertheless, the Department has decided to delete this provision from N.J.A.C. 11:3-35.3(c), in favor of including it in N.J.A.C. 11:3-8.4 regarding nonrenewals of eligible persons and in N.J.A.C. 11:3-35.4 concerning underwriting rules applicable to eligible persons on or after April 1, 1992. In doing so, the Department notes that the change to N.J.A.C. 11:3-35 is not substantial, in that N.J.A.C. 11:3-35.4(a) and (b) require insurers to include the "eligible person" definition of N.J.A.C. 11:3-34 in their underwriting rules, as provided by N.J.S.A. 17:33B-15.

The Department further has provided additional language at N.J.A.C. 11:3-35.5(d) regarding the use of eligibility points for rating automobiles in the non-standard market to clarify what underwriting rules may be approved by the Department. This provision has been substituted upon

adoption for the move restrictive provision of N.J.A.C. 11:3-35.3(c)10. It permits eligibility points of other household members to be used in connection with rating policies at the non-standard rate level without regard to the claimed amount of use. As applied it will address the potential problems of fraud and subsidies cited by the commenters. Since this new provision responds to the concerns expressed by these commenters in a manner that results in a reduction, to a limited degree, in the burden of compliance with these rules, it may be accomplished as an amendment upon adoption without additional notice and public comment (see N.J.A.C. 1:30-4.3).

COMMENT: Four commenters objected to the provisions of N.J.A.C. 11:3-35.6 which requires insurers to file their underwriting rules for approval no later than March 1, 1991. Three reiterated a request for a "deemer" provision, by which underwriting rules filed would be deemed approved if not disapproved within a certain time. Two suggested that this rule be expanded to set forth procedures for approval and disapproval, for a hearing to resolve disputes and for the method of appeal. One commenter suggested that the Department amend the rule to provide the underwriting rule filings be spread over a period of six months beginning March 1, 1991, but did not suggest a method for determining which insurers must file sooner rather than later. One inquired whether March 1 was the "filing" date or the "implementation" date.

RESPONSE: The Department is not willing to include a "deemer" or other procedural provisions at this time for reasons previously stated (see 22 N.J.R. 3859) and stated elsewhere in connection with the concurrent adoption of N.J.A.C. 11:3-19 (see adoption notice set forth elsewhere in this issue of the New Jersey Register.)

N.J.A.C. 11:3-35.6(a) provides penalties for failure to file by March 1, 1991. Implementation will occur upon approval and at a date developed in that process.

COMMENT: Two commenters restated objections to N.J.A.C. 11:3-35.3(c)8, which prohibits underwriting rules based on a change in the insured's employment. One commenter restated objections to N.J.A.C. 11:3-35.3(c)6, which prohibits underwriting rules based on the purchase of other products from the insurer.

RESPONSE: These commenters provided no additional reasons why the Department should change its previous responses which are set forth at 22 N.J.R. 3858.

COMMENT: One commenter stated that N.J.A.C. 11:3-35.3(c)6 was inconsistent and conflicts with N.J.S.A. 17:33B-13, which defines "eligible person" in a manner to permit membership in a club or organization.

RESPONSE: The Department does not believe the provisions are irreconcilable. Any theoretical conflict may be addressed appropriately in the process of approving a particular insurer's underwriting rules.

COMMENT: Two commenters stated that N.J.A.C. 11:3-35.4(a) and (b) were an impermissible attempt to implement prematurely N.J.S.A. 17:33B-15, which requires insurers to provide coverage in the voluntary market for all "eligible persons" on and after April 1, 1992.

RESPONSE: These commenters are reminded that N.J.A.C. 11:3-35.4(a) refers to renewals of those currently insured, while 11:3-35.4(b) refers to new business. The Department believes this rule properly sets forth the statutory requirements regarding the provision of coverage to eligible persons (see 22 N.J.R. 3856).

COMMENT: One commenter stated that certain provisions of the standard for approval of underwriting rules (for example, N.J.A.C. 11:3-35.3(c)9 concerning physical disabilities) were inconsistent with the requirement that insurers provide coverage to "eligible persons."

RESPONSE: The Department does not believe these provisions are irreconcilable. Development of proper language is initially left to insurers, to be refined if necessary during the approval process.

COMMENT: Two commenters reiterated previous comments that the make and model of a vehicle should be permitted as an underwritring rule standard to assign a risk to the standard or non-standard rate level.

RESPONSE: As noted at 22 N.J.R. 3859, the Department recognizes that while rates for different vehicles may vary in accordance with approved classification plans, the market segment or rate level to which the risk is assigned (standard or non-standard) shall be based upon the characteristics of the driver.

COMMENT: One commenter objected generally to the requirement that underwriting rules be reduced to writing, stating that this would eliminate the necessary judgmental factors involved in proper underwriting.

RESPONSE: These rules set forth standards of approval and filing requirements for underwriting rules which are required to be filed, and to be applied consistently, by N.J.S.A. 17:29A-46. The Department notes that the statutory scheme permits limited discretion to be exercised in connection with the nonrenewal of business in accordance with N.J.S.A. 17:29C-7.1 and N.J.A.C. 11:3-8.5.

Full text of the adoption follows (additions to proposal indicate in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 35. PRIVATE PASSENGER AUTOMOBILE INSURANCE UNDERWRITING RULES

11:3-35.1 Purpose and scope

(a) This subchapter implements N.J.S.A. 17:29A-46 which requires that personal private passenger automobile insurers file for approval their underwriting rules used to accept or reject new or renewal business or to assign risks to the standard or non-standard rate levels. Approval of underwriting rules shall serve to confirm that each insurer's business practices are consistent with law regarding the acceptance of new business, the renewal of current business and the assignment of a risk to an insurer's standard or non-standard rate level.

(b) This subchapter applies to all insurers that are licensed and authorized to transact personal private passenger automobile insurance in the voluntary market. It applies to affiliated companies which insure risks through different individual insurance companies.

11:3-35.2 Definitions

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

"Affiliated companies" means two or more individual insurance companies that are authorized to transact private passenger automobile insurance business n New Jersey and that are under both common ownership and common management.

"Automobile insurance eligibility points" means points accrued as provided in accordance with the schedule set forth in N.J.A.C. 11:3-34.

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

"Department" means the New Jersey Department of Insurance.

"Individual insurance company" means an insurance company licensed and authorized to transact private passenger automobile insurance business in New Jersey, regardless of whether it is one of a group of affiliated companies.

"Insurer" includes a group of affiliated companies.

"Renew" means to issue and deliver at the end of the policy period a policy superseding a policy previously issued and delivered, or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, by the same individual insurance company, or by another of a group of affiliated companies pursuant to a standard/non-standard rating plan filed and approved in accordance with N.J.A.C. 11:3-19.

11:3-35.3 General requirements and filing format

(a) All insurers which write personal private passenger automobile insurance in New Jersey shall file for approval their underwriting rules used to accept or reject new business, to renew or nonrenew current business and to assign business to the standard or non-standard rate level of an approved standard/non-standard rating plan, in accordance with N.J.S.A. 17:29A-46 and this subchapter. No insurer shall use or implement any underwriting rule not filed and approved as set forth herein.

(b) Underwriting rules shall be submitted on 8½ by 11 inch paper using one side of the page. Each page shall be consecutively numbered. The first page shall show the filer's company name, the filer's identifying number for this filing, National Association of Insurance Commissioners (NAIC) company number(s), and NAIC group number. The underwriting rules filing shall clearly identify the rate level to which the underwriting rules will be applied and whether the underwriting rules apply to new business, renewal business or both. All tables shall be clearly labeled.

(c) Underwriting rules shall meet the following standards:

1. No underwriting rule shall be based on the territory in which an insured resides.

2. An underwriting rule shall be based on a reasonable and demonstrable relationship between the risk characteristics of the driver(s) insured and the hazards insured against.

3. An underwriting rule shall be based on specific and verifiable measurements. No underwriting rule shall be based on subjective judgments such as "pride of ownership evident," "poor attitude," "unsatisfactory environment to conduct business," etc.

4. No underwriting rule shall be based on race, color, creed, national origin or ancestry.

5. No underwriting rule shall be based on whether the applicant or insured was previously insured as a non-standard or sub-standard risk, was previously insured by a residual market mechanism, or whether another insurer declined to insure or terminated insurance.

6. No underwriting rule shall be based on whether the insured or a member of the insured's household purchases or continues to purchase other insurance or services from the insurer or its affiliates, agents or other companies under common management or ownership, except that this provision shall not prohibit a rate discount.

7. No underwriting rule shall be based on the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer which limits all its insureds to one lawful occupation or profession, or to several related lawful occupations or professions.

8. No underwriting rule shall be based on whether the insured has changed employment in the recent past, except that this provision shall not prohibit a rate discount to an insurer's employees or agents.

9. No underwriting rule shall be based on whether the insured is impaired by physical or mental disabilities except those disabilities that impair the ability to operate an automobile safely.

*[10. No underwriting rule shall be based on whether a member of the insured's household is not an "eligible person" as defined in N.J.A.C. 11:3-34 or has accumulated one or more automobile insurance eligibility points, unless the member of the household usually accounts for 10 percent or more of the use of the automobile insured or to be insured. For the purpose of this section:

i. Any driver who is the principal driver of an automobile shall be presumed not to account for 10 percent or more of the use of any other automobile in the household.

ii. Except when there are more automobiles than drivers in the household, a person shall be presumed not to be the principal driver of more than one automobile.]*

11:3-35.4 Underwriting rules for eligible persons

(a) All insurers shall file for approval underwriting rules that provide that the insurer will make an offer to renew any of its insureds who is defined as an "eligible person" in N.J.A.C. 11:3-34.

(b) All insurers shall file for approval underwriting rules that provide that on or after April 1, 1992, the insurer shall not refuse to insure, refuse to renew or limit coverage available to any of its insureds, or to any applicant for insurance, which is defined as an "eligible person" in N.J.A.C. 11:3-34.

(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure any person not defined as an "eligible person" in N.J.A.C. 11:3-34.

***(d) Underwriting rules for eligible persons applicable on and after April 1, 1992 shall not provide that coverage will be declined based on whether a member of the insured household is not an "eligible person" as defined in N.J.A.C. 11:3-34 unless the member of the insured household accounts for 10 percent or more of the use of the automobile insured or to be insured. For the purposes of this section:**

1. Any driver who is the principal driver of an automobile shall be presumed not to account for 10 percent or more of the use of any other automobile in the household.

2. Except when there are more automobiles than drivers in the household, a person shall be presumed not to be the principal driver of more than one automobile.*

11:3-35.5 Underwriting rules for standard/non-standard rating plans

(a) Insurers shall file underwriting rules applicable to each rate level of a standard/non-standard rating plan in accordance with N.J.A.C. 11:3-19.3(c) which filing shall be made in accordance with, and in satisfaction of, the requirements of this subchapter.

(b) Insurers shall file underwriting rules that provide that its insureds and applicants who have accrued no automobile insurance eligibility points shall be assigned to its standard rate level.

(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure at its standard rate level any person who has accrued one or more automobile insurance eligibility points.

(d) Underwriting rules for standard/non-standard rating plans shall provide that an automobile insured at the non-standard rate level shall be rated based upon the eligibility points of the principal driver; eligibility points of other household members may additionally be used to rate the automobile only if not used to rate any other automobile in the household.

11:3-35.6 Penalties

(a) An insurer which fails to file its underwriting rules for approval pursuant to N.J.S.A. 17:29A-46 and this subchapter by March 1, 1991 shall be subject to penalties as provided by N.J.S.A. 17:33-2.

(b) An insurer which knowingly fails to transact automobile insurance business consistently with its approved underwriting rules shall be subject to a fine of not less than $500. for each violation, pursuant to N.J.S.A. 17:29A-46a.

(a)

DIVISION OF FRAUD

Automobile Physical Damage Insurance Inspection Procedures

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

Proposed: December 17, 1990 at 22 N.J.R. 3861(a).

Adopted: January 25, 1991, by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Filed: January 25, 1991 as R.1991 d.95, **with substantive change and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:33B-33.

Effective Date: January 25, 1991, Readoption of Emergency New Rules. February 19, 1991, Changes upon Adoption.

Operative Date: March 1, 1991.

Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently reproposed on November 26, 1990, pursuant to N.J.S.A. 52:14B-4(c). The present adoption of the concurrent reproposed rules is effective upon acceptance for filing at the Office of Administrative Law (See N.J.A.C. 1:30-4.4(d)), except for changes upon adoption which are effective on the date of publication of this notice, February 19, 1991.

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received 24 written comments from insurers, insurance trade associations and automobile inspection services.

COMMENT: One commenter suggests that the Department amend the definition of an "authorized representative" in N.J.A.C. 11:3-36.2. The commenter suggests the following language:

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

The commenter further states that the Department should not leave this issue to the workings of the market place, because some of the cost incurred to perform inspections may be imposed upon producers without compensation, which would prevent some producers from maintaining financial viability as private passenger automobile insurance producers.

RESPONSE: The Department does not believe this amendment is necessary. The Department does not regulate the contractual relationship between producers and insurers. If insurers request producers to perform inspections, it is a matter that should be resolved between the producer and the insurer.

COMMENT: One commenter objects to the definition of an "insurer" in N.J.A.C. 11:3-36.2. The commenter suggests defining an insurer to include "all affiliated companies within a group." The commenter recommends that the Department adopt the definition of "affiliated companies" from N.J.A.C. 11:3-19, Standard/Non-standard Rating Plans.

RESPONSE: The Department agrees and has amended this section accordingly.

COMMENT: One commenter states that the definition of a private passenger automobile in N.J.A.C. 11:3-36.2 should be the same as the definition in N.J.S.A. 39:6A-2. The commenter suggests that if the semicolon after "pickup body" in the rule is changed to a comma, the definition would be exactly the same.

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

COMMENT: Several commenters expressed concern with N.J.A.C. 11:3-36.3(a)1. One commenter notes that when these rules were reproposed, the Department stated that the reference to "endorsements" in N.J.A.C. 11:3-36.3(a)1 included the adding of coverages as well as automobiles to a policy. The commenter believes that the rules should be amended to clarify that an inspection is required when physical damage coverages are added to a policy. Two commenters suggested revising N.J.A.C. 11:3-36.3(a)1 to read:

When a new policy or endorsement adding physical damage coverage to a private passenger automobile is effected . . .

A fourth commenter states that this provision should address endorsements when an insured elects to add physical damage coverage to an inspectible vehicle that already exists on a policy.

RESPONSE: The Department agrees and has added the clarifying language suggested.

COMMENT: One commenter states that when a vehicle is inspected as a result of an accident in accordance with N.J.A.C. 11:3-36.3(b)1, there should be a time restriction in which the insured is required to have the repairs completed or have physical damage coverage suspended.

RESPONSE: The Department disagrees; such a provision would be outside the scope of these rules.

COMMENT: One commenter questions how renewals for the Market Transition Facility will be conducted in accordance with N.J.A.C. 11:3-36.3(b)2, which permits an insurer to inspect an automobile as a condition of renewal. The commenter inquiries whether the intent of the regulation is to inspect MTF vehicles when the renewal offer is accepted and a declaration page is issued or is the inspection to be completed before or during the offer period.

RESPONSE: This will be addressed in the Servicing Carriers rules of practice in the Plan of Operation for the MTF; it is outside the scope of these rules.

COMMENT: One commenter states that it does not interpret "operative date" as the renewal date for the policies noted in N.J.A.C. 11:3-36.3(c).

RESPONSE: The Department has deleted this provision, which makes the question moot.

COMMENT: Several commenters expressed their objections to N.J.A.C. 11:3-36.3(c), which requires an insurer to randomly inspect at least one seventh of the insurer's total number of automobiles insured for physical damage coverage on renewal. One commenter believes that mandatory inspections of vehicles other than new business, additional or replacement vehicles, exceeds the scope of the FAIR Act.

A second commenter suggests that the Department should require that 20 percent of insured automobiles be inspected annually. A third commenter believes that the random, one-in-seven requirement is insufficient. The commenter believes a 25 percent mandated inspection of the current book of business will enable the industry to exercise tighter control on fraud in a shorter time frame.

RESPONSE: The Department has reviewed this requirement and has determined that this provision should be deleted. It has amended this section accordingly. The Department does not believe that it is necessary to inspect one out of seven automobiles on renewal, at this time.

COMMENT: One commenter objects to N.J.A.C. 11:3-36.4, which does not permit the waiver of an inspection when no inspection site is located within 10 miles of the insured. The commenter notes that the rule permits only a deferral of inspection, not a waiver. The commenter believes that this rule has the potential of significantly increasing underwriting expenses by increasing the number of inspection sites and costly "house calls" to reach insureds who are not located close to an inspection site. The commenter suggests that the Department permit waivers under these circumstances.

RESPONSE: The Department does not believe that insurers shoul be permitted to waive inspections by failing to establish an adequa number of inspection facilities.

COMMENT: Two commenters object to N.J.A.C. 11:3-36.4(a) whic addresses hardship exemptions. One commenter states that repropose N.J.A.C. 11:3-36.4(a) does not give an exemption for cases involvir individual hardship as determined by the insurer. The commenter stat its policyholders may be out of the country or out-of-State for month and have either taken their vehicle with them, have stored the vehic but are maintaining comprehensive coverage on the vehicle, or hav purchased a vehicle out-of-State. These may include military personn or reservists (including those serving in Saudi Arabia), or others wh travel during certain seasons of the year. Compliance by these people wit inspection requirements at renewal or even on new buisness may b physically impossible. Additionally, the commenter does not believe the will be able to conduct inspections outside of New Jersey. The commente suggests that N.J.A.C. 11:3-36.4(a) should be amended to add a ne subsection (q) to state:

Where there is an indivdual hardship in complying with the vehicl inspection, requirements as determined by the insurer and documente in the policy records.

RESPONSE: The Department believes this problem is significantl mitigated by the deletion of the mandated inspection upon renewal.

COMMENT: One commenter notes that the MTF will be conductin automobile inspections pursuant to these rules. The commenter suggest that a waiver be granted pursuant to N.J.A.C. 11:3-36.4(a). The com menter contends that when an insurer writes a former MTF insure vehicle, the MTF inspection will be recent enough to be usable by th voluntary market insurer. A producer placing a risk in the MTF will kno if an inspection has been conducted for the MTF. The commenter sug gests that the MTF could upon inquiry provide the voluntary insurer wit a copy of the vehicle inspection form and photographs. The commente suggests amending N.J.A.C. 11:3-36.4(a) to add a new subsection whic reads:

When the automoible was previously insured and inspected by th MTF and the MTF is not otherwise using its copy of the vehicle inspec tion forms to adjust an outstanding claim.

RESPONSE: The Department does not believe this amendment i necessary nor does the Department want the MTF to absorb the cos of providing inspection reports to voluntary insurers. The risk is to b inspected or waived in accordance with these rules.

COMMENT: One commenter recommends that the Departmen amend N.J.A.C. 11:3-36.4(a)1, which permits a waiver of a mandator inspection for new autos if the specified documentation is supplied. Th commenter notes that since N.J.A.C. 11:3-36.7 requires the suspensio of an insured's physical damage coverage on a new auto "due to th insureds failure to provide the documents within seven calendar days N.J.A.C. 11:3-36.4(a)1 should require the documents at the time of appli cation or "within seven days thereafter."

RESPONSE: The Department agrees with the commenter and ha amended this section accordingly.

COMMENT: One commenter questions whether all three document mentioned in N.J.A.C. 11:3-36.4 must be provided in order to waive ar inspection on a new automobile.

RESPONSE: N.J.A.C. 11:3-36.4(a)1 only requires one of the thre documents.

COMMENT: Three commenters objected to N.J.A.C. 11:3-36.4(a)4 which permits an insurer to waive an inspection "when the insurec automobile is insured under a commercially rated policy which insures 10 or more automobiles." One commenter questions what automobiles are included in the count of "10 or more automobiles." The commenter asks whether a corporately owned station wagon insured on the same policy with 10 dump trucks and three flat bed trucks must be inspected. Additionally, the commenter requests the Department's position on the applicability of the inspection rule to private passenger and station wagon types regardless of the form or ownership (for example, corporate, partnership, ect.) or use and to the rest of the vehicles types listed in the definition of a private passenger automobile (N.J.A.C. 11:3-36.2) regardless of ownership.

A second commenter suggests that the rule should specify that an inspection can be waived for a commercial policy covering five or more vehicles.

A third commenter requests that the Department amend the rules to apply to those private passenger type vehicles insured on a commercial

utomoible policy covering an individual named insured with at least one rivate passenger type vehicle but not more then four.

RESPONSE: N.J.S.A. 17:33B-33 requires that automobiles be inpected, and references the definition of "automobile" set forth at J.S.A. 39:6A-2 which has been incorporated in this rule at N.J.A.C. 1:3-36.2. N.J.A.C. 11:3-36.4(a) permits an insurer to waive an inspection f a private passenger automobile when the insured automobile is insured nder a commercially rated policy which insures 10 or more automobiles. n the first commenter's case, dump trucks and flat bed trucks do not onstitute an automobile as that term is defined at N.J.S.A. 39:6A-2. This efinition also addresses the form and type of ownership. The Departnent believes that a commercial rated policy which insures 10 or more utomobiles is consistent with industry standards.

COMMENT: Two commenters assert that mandated inspections of amper type vehicles should be deleted from these rules. One commenter tates that the frequency of loss for motor homes losses are much higher nan private passenger automobiles. The commenter further states that ne average motor home is driven only 7,500 annual miles; is never used o drive back and forth to work; is only driven 45 to 55 days a year; nd is used for recreational purposes only. The commenter notes that lew York's insurance inspection regulation does not apply to motor omes.

RESPONSE: The Department disagrees. N.J.S.A. 39:6A-2 sets forth he definition for a private passenger automobile which includes these ehicles.

COMMENT: One commenter recommends that the Department mend N.J.A.C. 11:3-36.4(a) to include a new paragraph 11 which reads:

Where the vehicle has previously been inspected pursuant to this ubchapter by the insurer or an affiliate of the insurer.

RESPONSE: The Department believes this issue is addressed in J.A.C. 11:3-36.4(a)3.

COMMENT: One commenter asks whether an inspection may be vaived pursuant to N.J.A.C. 11:3-36.4(a)4 if a vehicle is garaged out-f-State and the carrier has an inspection site within 10 miles of the city r town where the vehicle is garaged.

RESPONSE: No; N.J.A.C. 11:3-36.4(a)6 permits an insurer to waive mandatory inspection when the automobile is garaged out-of-State and he insurer has no inspection facility or authorized representative within 0 miles of the city or town in which the automobile is garaged.

COMMENT: Two commenters argued that N.J.A.C. 11:3-36.4 should e amended to permit an inspection waiver for insureds who have had ontinuous physical damage coverage for at least three years. One comnenter asserts that these insureds are less likely to commit fraud.

RESPONSE: The Department has determined not to permit a waiver nder these circumstances. The Department does not believe it is necesary at this time to grant such waivers. The Department believes there s a likelihood that fraud may be committed.

COMMENT: One commenter asks whether an MTF servicing carrier s required to provide the documents required by N.J.A.C. 11:3-36.5(a)1iii o the insured if a producer acting on its behalf fails to do so.

RESPONSE: The MTF will conduct their automobile inspections in ccordance with this rule, which provides that insurers are responsible or compliance.

COMMENT: One commenter anticipates that a problem will arise in nspections for an assigned risk plan (AIP). The commenter states that ince the producers will not be the insurer's agent, different rules may e required. The commenter suggests that the Department amend the nspection rules to provide a new section that states:

The AIP in its plan of operation may adopt different procedures than n this regulation to govern vehicle inspections of AIP risks.

RESPONSE: The commenter's suggestion is premature. The Department does not believe the suggested revision is necessary at this time. The Department may modify this provision upon the establishment of he AIP.

COMMENT: One commenter requests that the Department clarify ow to determine whether an insured is within 10 miles of an inspection acility (in accordance with N.J.A.C. 11:3-36.6(a)). The commenter beieves that if an insured works in an area which is within a 10 mile radius f any facility, then they should be required to have their vehicle inspected ven if their home is more than 10 miles from an inspection station. This would permit companies a greater opportunity to inspect more vehicles.

RESPONSE: The 10 mile requirement of N.J.A.C. 11:3-36.6 is calculated from the edge of the municipality in which the insured lives. The Department has determined that an insured's place of work should not be considered in determining the location of an inspection facility or compliance with N.J.A.C. 11:3-36.6. Its intent is to require that sufficient facilities are available throughout the State.

COMMENT: One commenter states that reproposed N.J.A.C. 11:3-36.6(a) requires that an inspection is conducted in "a reasonably convenient place" that "shall not be more than 10 miles from the city or town where the automobile is principally garaged." The commenter contends that the problem is that in rural areas and for certain suburban areas of New Jersey, it may have no company agent or drive-in claims service center within 10 miles. The commenter suggests the following amendment to N.J.A.C. 11:3-36.6(a):

In the alternative, a reasonably convenient place shall be all of the insurer's drive-in claim service centers and the applicant's or policyholder's voluntary market producer.

The commenter alternatively suggests a 10 mile limit for urban areas in the State and 25 mile limits for rural areas in the State.

RESPONSE: The Department believes that the 10 mile limit is a reasonable standard to be used throughout the State. The mileage is calculated from the edge of the municipality or town in which the insured lives.

COMMENT: One commenter requests the Department to clarify what a company should do if they receive a photo of an EPA sticker (taken pursuant to N.J.A.C. 11:3-36.6(c)3) where the VIN number is not discernible. The commenter asks whether coverage should be added or should coverage be suspended until an acceptable photo is received.

RESPONSE: If an insured complies with the inspection requirements coverage should not be suspended. The insurer should promptly investigate the incident or file a report with the New Jersey Insurance Fraud Division.

COMMENT: Several commenters expressed objections to N.J.A.C. 11:3-36.6(c)4 which requires a photograph of the odometer. One commenter states that the position of the steering wheel, the angles of dash coverings, etc. reduce legibility of the photograph. The commenter states that this requirement will increase the overall inspection cost by approximately 50 percent while providing very little fraud deterrent value.

Another commenter suggests that the Department permit the odometer reading to be recorded manually.

RESPONSE: The Department is deleting the requirement of the photograph of the odometer; a manual odometer reading will be recorded on the report.

COMMENT: One commenter asks whether it is necessary to retain the original paper report if an insurer uses technology which stores only photo and scanned images of original inspection reports.

Another commenter questions whether photocopies, microfiche, etc. will suffice as a duplicate or secondary source in accordance with N.J.A.C. 11:3-36.6(d)6.

A third commenter states that the duplicate storage requirement is unnecessary and costly where the paper inspection forms and photos on photopaper are retained and kept in a fire resistant building. The benefits of this requirement are marginal.

A fourth commenter argues that there is no reason to single out physical damage inspection reports as requiring duplication when this is not required for any other type of records in the insurer's file on the insured.

RESPONSE: The Department has revised this provision to require a backup system or other duplicate or secondary source for the report, and for inspections conducted on and after April 1, 1994 for the photographs. This requirement is to ensure against the loss of information.

COMMENT: Three commenters strongly objected to N.J.A.C. 11:3-36.6(d)7 through 9, which require image processing of reports and photographs on and after April 1, 1994. One commenter states that this requirement is unauthorized, unprecedented and an unwarranted intrusion into insurance company operations. It states that, a practical matter, the Department cannot predict that such technology will be available by April 1, 1994. The commenter further argues that even if this technology is available, the acquisition, installation and maintenance of such a system might not be cost beneficial for small insurers. It further states that this rule would prohibit the use of any better technology which could possibly be developed prior to April 1, 1994. The commenter suggests that this provision be deleted.

A second commenter questions whether computer equipment must be in place at each inspection site. The commenter believes if so, then the number of inspection sites must be diminished, due to cost, training of inspectors, etc.

A third commenter states that the cost to purchase several hundred optical imaging cameras for all its agents and several for each of its drive-in claim service center would be very high.

RESPONSE: The Department believes that the requirements set forth in N.J.A.C. 11:3-36.6(d)7 through 9 are reasonable and important to the implementation of these rules. The Department has witnessed demonstrations of current technology and believes that satisfactory systems are available. This rule does not require optical imaging camera to be used by agents nor does it require computer equipment at each site.

COMMENT: One commenter notes that N.J.A.C. 11:3-36.6(f) requires the report and photographs shall be retained in the insurer's file on the insured for five years. The commenter asks whether an inspection file must be retained if the insurer no longer provides coverage and there have been no claims reported after a period of one year.

RESPONSE: Yes, the information shall be retained in the insurer's file on the insured for five years.

COMMENT: Two commenters objected to N.J.A.C. 11:3-36.6(f). One commenter states that the Department should clarify the specific physical records that insurers are required to keep on file. The commenter contends that if an insurer's system electronically stores photo images and scanned images of original inspection reports signed by the inspector, then the insurer should not be required to maintain the original paper inspection report on file.

RESPONSE: If an insurer is utilizing a system that stores photo images and/or scanned images of original inspection reports, then they are not required to maintain the original paper inspection report on file. They must adhere to the other requirements of N.J.A.C. 11:3-36.6.

COMMENT: One commenter addresses N.J.A.C. 11:3-36.6(f) and states that allowing an insurer's "authorized representative" to maintain the records in question would reduce administrative expense.

RESPONSE: The authorized representative may maintain the records provided they are kept in accordance with the provisions of this subchapter.

COMMENT: One commenter states that N.J.A.C. 11:3-36.6(g) requires insurers to maintain a list of all authorized representatives and inspection sites performing inspections for the insurer and send this list semi-annually to the Department. The commenter states that its inspection sites will be its drive-in claim service centers and agent offices. The commenter states that its agents may train some of their office personnel to do inspections. The commenter argues that since their agents are independent contractors, the commenter will not know who the agents will be training to do vehicle inspections. The commenter recommends that the Department amend this provision to permit companies to provide a list of agents and the supervising person in each drive-in claim service center in charge of conducting these vehicle inspection along with the list of inspection sites to the Department.

RESPONSE: The Department disagrees that a change is necessary. Insurers are required to maintain an up-to-date list of all authorized representatives and inspection sites performing inspections for the insurer. In the commenter's case its agents would be its authorized representatives.

COMMENT: One commenter states that under N.J.A.C. 11:3-36.6(h), when a company must use the inspection report to settle claims, it should be clarified that the inspection report should only be used when relevant. For example, if the inspection report notes no damage and a claim is submitted for over $3,000 the insurer should not be required to retrieve and review the inspection report or photos.

RESPONSE: This provision is intended to insure that insurers, in fact USE the inspection programs to reduce expenditures for exaggerated and/or fradulent claims. This provision is not intended to require the physical retrieval of documents in all cases but to require a system that uses the inspection data in settling claims.

COMMENT: One commenter notes that N.J.A.C. 11:3-36.7 requires the suspension of physical damage coverage if an inspection is not completed prior to the expiration of the deferral period or the expiration of the policy, and that N.J.A.C. 11:3-36.2 defines "automobile physical damage insurance" as collision, comprehensive, fire and theft. It states that it writes other coverages which are "tied" directly to collision and comprehensive coverages. The maintenance of collision and comprehensive coverage is a prerequisite to the additional coverages. The commenter suggests that the rules be amended to specifically allow suspension of coverages tied to physical damage coverages. The commenter states that in order to properly notify policyholders, insurers also need the ability to revise the appendices to reflect the suspension of coverages tied to collision and comprehensive insurance.

RESPONSE: The Department does not believe this provision shoul be amended at this time. The commenter did not provide a list of thos coverages its considers "tied" to physical damage coverage.

COMMENT: Two commenters state that N.J.A.C. 11:3-36.7(a) mar dates that a lienholder's interest be suspended without prior notice. On commenter believes that this requirement is unnecessary. The commente argues that the fraud these rules are designed to prevent will rarely involv lienholders.

RESPONSE: The Department disagrees; lienholders can protect thei interest by obtaining collateral protection insurance.

COMMENT: One commenter states that N.J.A.C. 11:3-36.7(b)1 re quires the insurer to mail a Notice of Suspension of physical damag coverage to the insured and producer of record. The commenter note that they have a computer link with its New Jersey agents; therefore, the would send notice to the producer electronically. The commenter suggest amending this provision to permit an insurer to do so.

RESPONSE: Insurers may electronically mail a Notice of Suspensio to the producer of record. The Department does not believe that a amendment is required.

COMMENT: One commenter suggests that N.J.A.C. 11:3-36.7(b)2 b amended to read ". . . and shall retain the certificate and copy of th Notice in [the insured's policy record] **a central location;**".

RESPONSE: The Department has revised this section to provide tha insurers retain the certificate and copy of the notice in the insurer's fil on the insured, which it believes addresses this commenter's concern.

COMMENT: One commenter notes that N.J.A.C. 11:3-36.5(a)3 an 36.6(f) provide that documents related to inspections should be retaine in the insurer's files, rather than specifically in an insured's policy record The commenter suggests that N.J.A.C. 11:3-36.4(b) and N.J.A.C 11:3-36.7(b)2 should be changed for consistency.

RESPONSE: The Department agrees and has amended this sectio accordingly.

COMMENT: One commenter believes that N.J.A.C. 11:3-36.7(e should provide insureds with more than seven days to submit the require documents for a new automobile. The commenter notes that the origina proposal (see 22 N.J.R. 2111(a)) permitted the insured until the nex renewal to provide the documents before removing coverage. The com menter contends that allowing only a short period of time does no provide for delays in mail and delays in processing when the document arise at the insurer's office.

A second commenter believes that this requirement may damage the relationship between the company and the policyholder and is additionally burdensome and expensive.

RESPONSE: The Department believes that seven days is a sufficient amount of time to provide the appropriate documents in order to waive the inspection requirement.

COMMENT: One commenter suggests changing the N.J.A.C. 11:3-36.9(a), which requires insurers to maintain records of the costs associated with, and the savings resulting from, physical damage inspections. While record-keeping of costs should be feasible for insurers, it would be extremely difficult to capture data, identify a dollar figure on the amount not spent and quantify savings since this would involve an insurer's estimates of savings. Each insurer will have a different subjective measure of savings and an accurate total figure cannot be obtained. The commenter requests that this record maintenance requirement be deleted from the proposed rule.

RESPONSE: The Department believes that the information required in N.J.A.C. 11:3-36.9(a) is quantifiable by insurers.

COMMENT: One commenter stated that N.J.A.C. 11:3-36.9(b) is redundant and should be deleted. In order to provide the Department with the information required by N.J.A.C. 11:3-36.9(c), insurers have to maintain this information.

RESPONSE: The Department agrees and has deleted N.J.A.C. 11:3-36.9(b).

COMMENT: Two commenters objected to the reporting and auditing requirements of N.J.A.C. 11:3-36.9 as burdensome, costly and unjustified.

RESPONSE: The Department disagrees. The reporting requirements are necessary in order for the Department to monitor and enforce the requirements of these rules.

COMMENT: One commenter recommends that the Department amend the rules by adding a new section N.J.A.C. 11:3-36.11 which would address the timing of physical damage inspection on renewals. The commenter suggests the following language:

Where an insurer issues policies with a six month policy term, the insurer may choose which six month renewal during the year to require the renewal inspection under N.J.A.C. 11:3-36.3(b) or (c).

RESPONSE: This is moot since N.J.A.C. 11:3-36.3(c) has been deleted.

COMMENT: One commenter stated that the documents set forth in Appendix A and B should include the VIN. The commenter asserts that as they comprise a cancellation notice, and apply to only a vehicle and not to a policy, they should identify the vehicle as precisely as possible. The commenter states that the absence of a VIN on the suspension notices will unnecessarily introduce an ambiguity into a transaction with the policyholder owning more than one vehicle of the same model year and make.

RESPONSE: The Department does not believe that Appendices A and B should include the VIN. The purpose of having the VIN written down at the time of inspection is to verify that the VIN matches the automobile inspected. Nothing prohibits an insurer from including the VIN on Appendix D, which is the suspension notice.

COMMENT: One commenter believes that the headings on Appendix A and B will confuse readers and suggests that the Department add language clarifying that this inspection is insurance related and unrelated to DMV inspections.

RESPONSE: The Department believes that the boldfaced lettering on top of Appendices A and B, states that "This is not a safety inspection." There are also individual headings that state "insurance inspection", which should be sufficient to inform the reader that this is not a DMV inspection.

COMMENT: One commenter notes that both Appendix A and B contain disclosures of the consequences of the insured's failure to have an automobile inspected. The commenter believes that these disclosures would satisfy the requirements of N.J.A.C. 11:3-36.5(a)2 and asks why the requirement needs to be repeated.

RESPONSE: The disclosure is repeated in the appendices so that the insured is adequately notified of the consequence of failure to have his or her automobile inspected.

COMMENT: One commenter states that Appendix B essentially contains a cancellation of coverage notice if inspection requirements are not met. The commenter suggests that the paragraph dealing with suspension of coverage be worded in a stronger fashion and displayed more prominently on the Inspection Notice.

RESPONSE: Appendix B establishes minimum standards; insurers may add more language but the notice must at least contain the information in Appendix B.

COMMENT: One commenter notes that the Department has stated (see 22 N.J.R. 3865) that Appendix C establishes "minimum standards" for the inspection report, and was not a mandatory form. The commenter questions whether the same applies to Appendices A, B and D. It appears that in each section which refers to forms, the rules mandate the use of the form as set forth in the appendix. The commenter suggests that the rule should be revised to state that the appendices are minimum standards; insurers should be allowed to use modified forms so long as all the information specified in the appendices is included.

RESPONSE: The Department agrees that the appendices are minimum standards and has added a provision so stating N.J.A.C. 11:3-36.6(j).

COMMENT: One commenter contends that certain discrepancies appear in the appendices which need to be corrected. Appendices B and D require a list of the vehicles which carry comprehensive or collision coverages, along with a notation as to the coverages carried. Unfortunately, the forms assume that each of the vehicles carry the same coverages. Since many policyholders carry different physical damage coverages on different vehicles the forms need to be revised to allow the notation of coverages for each vehicle.

RESPONSE: Appendices B and D establishes minimum standards. Insurers are permitted to use modified forms as long as all the information specified in the appendices is included.

COMMENT: One commenter states that Appendix C (page 1) does not conform with the provisions of N.J.A.C. 11:3-36.6, which requires that the form photos enumerated must be attached. The commenter also suggests amending the space for the policy number in Appendix A to read "Policy or Binder Number," because in many cases a policy will not have been issued.

RESPONSE: Appendix C(2) (page 2) states "attach at least two (2) color photographs of the automobile taken from the angles shown on the diagrams . . .", which satisfies the requirements of N.J.A.C. 11:3-36.6. The insurer may provide a space for the policy number in Appendix A.

COMMENT: Two commenters state that Appendix C is unnecessarily long in that it requires the vehicle's VIN number, items that are minor cost items, and items which can simply be listed or described on a blank line if needed. The time required to complete this two page form will be a major cost and inconvenience to the policyholder and the insurer. These commenters note that New York uses a shorter one page form.

RESPONSE: The Department disagrees. The form includes information that will be useful to the insurer in settling claims and preventing or deferring fraud.

COMMENT: One commenter state that they have made arrangements with many of the carriers in the State to handle insurance inspections. The commenter contends that the rules have been changed significantly from the prior proposal (see 22 N.J.R. 2111(a)). The commenter states that they have spent tremendous amount of money on equipment. The changes made by the Department have dramatically altered what would have been required if that prior proposal was adopted. The commenter questions whether the Department is mandating that inspection services invest in advanced technology, such as digital imaging, to comply with certain requirements that have minimal value, or return on investment. The commenter argues that the requirements are forcing carriers to expend time and money to have this program computerized. Also, these requirements eliminate the possibility that producers may perform their own inspection even though the rules permit.

RESPONSE: These rules do not prevent producers from performing inspections. The enhancements referred to by the commenter (N.J.A.C. 11:3-36.6(d)7 through 9) do not have to be in place until April 1, 1994. The Department believes that this provides sufficient time for all insurers to comply with these rules.

COMMENT: One commenter suggests that the Department adopt New York's regulation 79. The commenter contends that New York's regulation has been in force for over 13 years and all glitches and implementation problems have been worked out to the extent possible. The commenter further states that most automobile insurers in New Jersey write physical damage coverage in New York and have already implemented these New York regulations. It is easy for an insurer to transfer a program it has in one state to a neighboring state. It is very difficult and costly to create a new program.

RESPONSE: The Department has reviewed New York's and Massachusetts' rules governing automobile physical damage inspection procedures. The Department believes that these rules incorporate the important aspects of both the New York and Massachusetts rules as well as address additional problem areas.

COMMENT: Three commenters suggested that the Department delay the effective date for 60 days following publication of the final rules in order to permit orderly implementation. One commenter states that an earlier requirement will result in many carriers failing to comply through no fault of their own.

The second commenter requests that the effective date be extended 90 days from the date this rule is adopted.

RESPONSE: The Department disagrees. The rule was originally proposed on July 16, 1990 (see N.J.R. 2111(a)). The Department adopted these rules on an emergency basis November 26, 1990 and they were published December 17, 1990. Insurers have had sufficient enough time to begin preparing for the implementation of these rules. The operative date of these rules is March 1, 1991.

COMMENT: One commenter objects to the Department's rules based on what he interprets as being an unresolved conflict of statutory and regulatory provisions with existing policy language. The commenter notes that new policy forms may be filed by the insurer and ultimately receive Departmental approval, but the rules will become effective while conflicting language in existing contracts of insurance remains operative. The commenter states that in-force policies now state:

If the vehicle you acquire replaces one shown in the Declaration, it will have the same coverage as the vehicle it replaced . . . and

If the vehicle you acquire is in addition to any shown in the Declaration, it will have the broadest coverage we now provide for any vehicle shown in the Declaration.

RESPONSE: The Department recognizes that insurers need to file amended policy forms with the Department reflecting the statutory and regulatory changes. It further notes that policy forms referencing N.J.S.A. 17:33B-33 through 40 may have been filed at any time after March 12, 1990.

COMMENT: One commenter, which writes commercial insurance that protects a lender's interest in the automobile as collateral, inquired whether these rules apply to that line of business. It suggested additional language be added as follows:

The rules do not apply to collateral protection insurance i.e., policies and certificates of insurance purchased by a secured creditor when its debtor(s) fail to maintain contractually required physical damage insurance.

RESPONSE: The Department does not believe that this addition is necessary. N.J.A.C. 11:3-36.1(b) sets forth the scope of these rules, which are limited to the lines of private passenger automobile insurance.

Summary of Agency-Initiated Changes:

A minor editorial correction has been made to N.J.A.C. 11:3-36.6(c)1.

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 36. AUTOMOBILE PHYSICAL DAMAGE INSURANCE INSPECTION PROCEDURES

11:3-36.1 Purpose and scope

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

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

11:3-36.2 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

"Private passenger automobile" or "automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body*[;]***,* a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming c ranching. An automobile owned by a farm family copartnership c corporation, which is principally garaged on a farm or ranch an otherwise meets the definitions contained in this section, shall b considered a private passenger automobile owned by two or mor relatives resident in the same household.

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

"Replacement automobile" is a vehicle acquired to replace or shown in the declarations.

11:3-36.3 Mandatory inspection requirements

(a) No insurer shall provide automobile physical damage in surance coverage prior to conducting an insurance inspection i accordance with this subchapter, under the following circumstance

1. When a new policy or endorsement ***adding physical damag coverage*** insuring a private passenger automobile is effected; an

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

(b) An insurer may require, prior to continuing physical damag coverage on an automobile, that the insured present the automobi for inspection, under the following circumstances:

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

2. As a condition of renewal.

[(c) Notwithstanding the provisions in (b) above, upon renew an insurer shall randomly inspect on an annual basis at least or out of every seven automobiles of the insurer's total number c automobiles insured for physical damage coverage, in accordanc with the standards and procedures for inspections as required by th subchapter.]

11:3-36.4 Waivers of mandatory inspection

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

1. When a new automobile is purchased from a franchised aut mobile dealership and the insurer is provided at the time of appl cation ***or within seven days thereafter*** with the following:

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

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

iii. Vehicle buyer's Order (contract) and/or the dealership invoic to the buyer, including all options and accessories;

2. When the automobile is more than seven model years old. Fc example: in 1991 an insurer shall inspect 1984 and newer model yea vehicles and in 1992 an insurer shall inspect 1985 and newer mod year vehicles;

3. When a policy is being renewed or issued by a different indivic ual insurance company within a group of affiliated companies;

4. When the insured automobile is insured under a commerciall rated policy which insures 10 or more automobiles;

5. When an insurance producer or insurer is transferring a boc of business from one insurer to another insurer(s);

6. When the automobile is garaged out-of-state and the insurer ha no inspection facility or authorized representative within 10 miles c the city or town in which the automobile is garaged;

7. When the automobile is a temporary substitute automobile; c

8. When the automobile is leased for less than six months.

(b) Insurers shall maintain a record of the waiver in the *[insured policy record]* ***insurer's file on the insured***.

(c) Insurers shall decide whether to waive an inspection base solely on underwriting criteria uniformly applied and not based o the age, race, sex or marital status of the insured, the principal plac of garaging or the fact that the automobile is insured in the residu market.

11:3-36.5 Deferral of inspection

(a) An insurer, by itself or through its authorized producers, may defer inspections required by N.J.A.C. 11:3-36.3 for not more than seven calendar days if an inspection at the time of the request for coverage would create a serious inconvenience or hardship for the insured.

1. When an inspection is deferred pursuant to (a) above, the insurer or producer shall:

i. At the time insurance application is completed, obtain the Acknowledgement of Requirement for Insurance Inspection form (as set forth in Appendix A and incorporated herein by reference) signed by the insured if the insured has applied for coverage in person; or

ii. At the time insurance application is completed, confirm physical damage coverage and advise the insured of the inspection requirements and mail the insured the Notice of Insurance Inspection form as set forth in Appendix B and incorporated herein by reference) the insured has applied for coverage by mail or by telephone.

2. In addition to the notice requirements set forth in (a)1i and ii above, the insurer or producer shall furnish the insured with information about where an inspection can be conducted and the consequences of the insured's failure to have the automobile inspected.

3. The insurer shall retain documentation of the required notice in the insurer's file on the insured.

(b) An insurer shall decide whether to defer an inspection based solely on underwriting criteria and not based on age, sex, race, or marital status of the insured, the principal place of garaging, or the fact that a policy is insured in the residual market.

11:3-36.6 Standards and procedures for inspection

(a) Inspections shall be made by an authorized representative of the insurer at a time and place reasonably convenient to the insured. A reasonably convenient time shall include, in addition to customary business hours, sufficient early morning, evening and weekend hours. A reasonably convenient place shall not be more than 10 miles from the city or town where automobile is principally garaged.

(b) Whenever an insurer requires an automobile to be inspected pursuant to this subchapter, the insurer by itself or through its authorized producer shall provide the insured with a Notice of Inspection in the form set forth in Appendix B or an Acknowledgement of Requirement for Insurance Inspection as set forth in Appendix A. Any form so provided shall not contain the vehicle identification number (VIN) of the automobile to be inspected.

(c) The inspection shall include the following:

1. Completion of the *[recorded]* Automobile Insurance Inspection Report as set forth in Appendix C incorporated herein by reference;

2. Two color photographs of the automobile, taken as directed on the inspection report (Appendix C), which shall be a part of the report;

3. A third close-up color photograph showing the VIN located on the Environmental Protection Agency/Federal Certification Label (EPA sticker) affixed to the driver's side door jamb. The photograph must be of sufficient clarity that the information contained on the EPA sticker and VIN is legible. If the EPA sticker is damaged, faded, missing or otherwise not legible, a photograph of the EPA sticker, or of the area of the door jamb where the sticker is normally located, is still required;

[4. A fourth close-up color photograph of the odometer;]

*[5.]**4.* The authorized representative may take additional photographs showing any damaged areas, which shall also be a part of the report; and

*[6.]**5.* The authorized representative shall provide a copy of the report, without photographs, to the insured at the time of inspection.

(d) The insurer shall utilize authorized representatives and systems to implement the provisions of this subchapter which meet the following standards:

1. Verifies the accuracy, completeness and identity of the person completing each inspection report;

2. Provides a control system for its inspection reports such as the use of sequentially numbered or coded reports;

3. Completes all required information for each automobile on the Automobile Insurance Inspection Report set forth in Appendix C;

4. Takes photographs as required in (c)2 through *[4]**3* above;

5. Provides for the storage and retrieval of reports and photographs in a manner that facilitates their use as set forth in paragraph (h) below;

6. Provides for a backup system or other duplicate or secondary source for the report*,* and ***for inspections conducted on or after April 1, 1994 for the** photographs*,* to ensure against loss;

7. For inspections conducted on and after April 1, 1994, provides the ability to view inspection reports and photographs on a computer system monitor;

8. For inspections conducted on and after April 1, 1994, provides the ability to print inspection reports and photographs from a computer system with a code that identifies the document by policy number, inspection report number or other common identifying code; and

9. For inspections conducted on and after April 1, 1994, provides the ability for all of the insurer's New Jersey claims offices to view or access the inspection report and photographs.

(e) There shall be no direct charge to the insured by the authorized representative or insurer in connection with an inspection.

(f) After the inspection is completed, the report and photographs shall be retained in the insurer's file on the insured for five years.

(g) The insurer shall maintain an up-to-date list of all authorized representatives and inspection sites performing inspections for the insurer. The list shall include the names, addresses and business telephone numbers of all authorized representatives. The insurer shall send a copy of the list to the Department and update it semi-annually at the following address:

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

(h) The inspection report and photographs shall be used by the insurer to document previous damage, prior condition, options and mileage of the automobile on physical damage claims whenever:

1. The appraisal indicates prior damage and the new damage (claim) exceeds $1,000;

2. The automobile is a total loss or unrecovered theft; or

3. The new damage (claim) exceeds $3,000.

(i) A copy of the inspection report and photographs shall be utilized, and made a part of the insurer's claim file, in the settlement of all total loss claims. The inspection report shall be made a part of the claim file regardless of whether or not the payment is reduced based on the information contained therein.

(j) The documents set forth as Appendices A through D provide minimum standards. Insurers may enhance or alter the form of these documents provided the minimum information requirements are met.

11:3-36.7 Suspension of physical damage coverages

(a) If the inspection is not conducted prior to the expiration of the deferral period or the expiration of the policy in the case of renewals, the insurer shall suspend automobile physical damage coverage on the automobile at 12:01 A.M. of the day following the last day for inspection. Suspension of coverage shall apply to all insureds, owners and lienholders.

(b) Whenever physical damage coverage is suspended, the insurer shall:

1. No later than the 30th calendar day after the effective date of the suspension, mail to the insured, the producer of record and any lienholders a Notice of Suspension of physical damage coverage (as set forth in Appendix D incorporated herein by reference);

2. Obtain a certificate of mailing or other evidence of mailing of the Notice of Suspension to the insured and shall retain the certificate and copy of the Notice in the *[insured's policy record]* ***insurer's file on the insured***; and

3. Make a pro-rata premium adjustment (premium refund or credit) whenever there is a suspension of physical damage coverage for more than 10 days. A refund of premium, if applicable, shall be sent to the insured within 45 days of the effective date of suspension.

(c) A reinstatement of physical damage coverage shall only be effective upon inspection and payment by the insured to the insurer of the adjusted premium for the physical damage coverage in full or in accordance with the insurer's normal payment plan. Any such reinstatement shall be effective at the time of inspection.

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

(e) Physical damage coverage on a new automobile shall be suspended due to the insured's failure to provide the documents required by N.J.A.C. 11:3-36.4(a)1 within seven calendar days. A reinstatement of physical damage coverage shall be effective upon inspection.

11:3-36.8 Enforcement

(a) A violation of any provision of this subchapter by an insurer shall be punishable by a $500.00 fine pursuant to N.J.S.A. 17:33B-39.

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

2. Each issuance, procurement, or negotiation of a policy of in surance, or maintenance of a record in violation of this subchapte shall be deemed a separate offense.

11:3-36.9 Results and audits

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

[(b) Insurers shall maintain and be responsible for the monthl auditing of inspections reports received from their authorized rep resentatives.]

*[(c)]***(b)* Insurers shall report the following information to th New Jersey Department of Insurance Fraud Division on a quarterl basis:

1. The number of automobiles inspected; and

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

11:3-36.10 Severability

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

APPENDIX A

IFD 30 A

(COMPANY LETTERHEAD)

ACKNOWLEDGMENT OF REQUIREMENT FOR INSURANCE INSPECTION
(THIS IS NOT A SAFETY INSPECTION)

NAME OF INSURED
OR APPLICANT: _____
ADDRESS: _____
_____
_____

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

AUTOMOBILE(S) TO BE INSPECTED

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

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

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

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

SIGNATURE OF INSURED OR
APPLICANT: _____ _____
(Date)

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

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

INSURED/APPLICANT MUST RECEIVE A COMPLETED COPY OF THIS FORM ALONG WITH A LIST OF AUTHORIZED AUTOMOBILE PHYSICAL DAMAGE INSPECTION SITES.

cc: INSURANCE COMPANY
PRODUCER OF RECORD

APPENDIX B

IFD 30 B

(COMPANY LETTERHEAD)

NOTICE OF INSURANCE INSPECTION
(THIS IS NOT A SAFETY INSPECTION)

IMMEDIATE ACTION REQUIRED TO AVOID LOSS OF INSURANCE COVERAGE

_____
(Date of mailing)

Name of Insured: _____
Address: _____
_____
_____

EFFECTIVE DATE OF COVERAGE: _____ (Date)

INSPECTION SHALL BE COMPLETED BY: _____ (Date)

POLICY #: _____

Dear Policyholder,

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

1. _____, _____, _____.
2. _____, _____, _____.
3. _____, _____, _____.

YEAR MAKE MODEL

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

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

If you have your car inspected after the above deadline your coverage will only be restored after your car has been inspected and the adjusted premium due for the coverages listed above had been paid. You will have no coverage for any physical damage loss that occurs during the suspension period. Attached is a list of authorized automobile physical damage inspection sites.

FOR FURTHER INFORMATION PLEASE CALL:

_____
Name and phone number of Company Representative

Very truly yours,

_____

cc: INSURANCE COMPANY
PRODUCER OF RECORD

APPENDIX C(1)

IFD 30C

INSURANCE COMPANY LETTERHEAD
OR
INSPECTION SERVICE LETTERHEAD

CONTROL NUMBER _____ SITE ID NO. _____

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

INSURED'S NAME _____ INSURED'S ADDRESS _____ TELEPHONE NO. _____

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

	STYLE		COLOR	INTERIOR	
YEAR:_____	___ 2 DR	___ STG WGN	MAJOR _____	___ CLOTH	___ LEATHER
MAKE:_____	___ 4 DR	___ VAN	MINOR _____	___ VINYL	___ COLOR
MODEL:_____	___ CPE	___ HTCHBK			

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

/ / / / / / / / / / / / / / / / /

V.I.N. LOCATION: _____

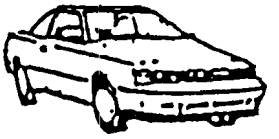
ACCESSORIES AND OPTIONAL EQUIPMENT
(COMPLETE FOR ALL VEHICLES INCLUDING VANS)

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

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

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

APPENDIX C (2)



Front and Passenger Side

Rear and Driver Side

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

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

DAMAGED/RUSTED			DAMAGED	
( )	( )	FRONT BUMPER	( )	WINDSHIELD
( )	( )	LEFT FRONT FENDER	( )	LEFT FRONT SIDE GLASS
( )	( )	LEFT FRONT DOOR	( )	RIGHT FRONT SIDE GLASS
( )	( )	LEFT REAR DOOR	( )	LEFT REAR SIDE GLASS
( )	( )	LEFT REAR QUARTER PANEL	( )	RIGHT REAR SIDE GLASS
( )	( )	REAR BUMPER	( )	REAR WINDOW
( )	( )	REAR DOOR/TRUNK LID	( )	REAR VIEW MIRROR
( )	( )	RIGHT REAR QUARTER PANEL	( )	WHEEL COVERS
( )	( )	RIGHT REAR DOOR	( )	WORN/TORN OR SOILED INTERIOR
( )	( )	RIGHT FRONT DOOR		
( )	( )	RIGHT FRONT FENDER	( )	OTHER DAMAGE OR
( )	( )	HOOD PANEL	( )	RUST (LIST)
( )	( )	ROOF PANEL		
( )	( )	GRILL		
( )	( )	UNDER CARRIAGE		

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

DESCRIBE EXISTING DAMAGES OR RUST:

LIST ANY MISSING PARTS:

DESCRIBE ANY ALTERATIONS FROM FACTORY DESIGN:

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

DATE: _____

INSPECTOR'S SIGNATURE: _____

NAME AND ADDRESS OF PERSON PRESENTING VEHICLE FOR INSPECTION TO INSURED: _____

SIGNATURE: _____ RELATIONSHIP: _____

APPENDIX D

IFD 30 D

(COMPANY LETTERHEAD)

NOTICE OF SUSPENSION OF PHYSICAL DAMAGE COVERAGE

YOU ARE NO LONGER INSURED FOR PHYSICAL DAMAGE TO YOUR CAR

_____
(Date of Mailing)

Name of Insured: _____
Address: _____
_____
_____

POLICY #: _____

Dear Policyholder,

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

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

DATE COVERAGE WAS REQUESTED _____
DATE COVERAGE WAS SUSPENDED _____

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

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

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

_____
INSURER REPRESENTATIVE

_____
TELEPHONE NUMBER

cc: PRODUCER OF RECORD
LIENHOLDER

(a)

DIVISION OF FRAUD

Towing and Storage Fee Schedule For Private Passenger Automobiles Damaged or Stolen

Adopted Concurrent New Rules: N.J.A.C. 11:3-38

Proposed: December 17, 1990 at 22 N.J.R. 3874(a).

Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Filed: January 25, 1991 as R.1991 d.97, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:33B-47 and 48.

Effective Date: January 25, 1991, Readoption of Emergency New Rules. February 19, 1991, Changes upon Adoption.

Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently reproposed on November 26, 1990, pursuant to N.J.S.A. 52:14B-4(c). The present adoption of the concurrent reproposed rule is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), except for those changes made upon adoption, which are effective upon publication of this notice, February 19, 1991.

The Department of Insurance (Department) received 60 written comments from insurers, towers and municipalities.

Summary of Public Comments and Agency Responses:

COMMENT: One commenter objects to the definition of "motor vehicle accident" in N.J.A.C. 11:3-38.2. The commenter believes that the definition is needlessly restrictive. The commenter contends that the term "accident" has been construed by the New Jersey courts to include all situations which are accidental as to the insured even if they are caused by the intentional acts of a perpetrator where the perpetrator was not the insured or not otherwise involved with the insured. *See Furr v. Metropolitan Life Insurance Co.*, 111 N.J. Super. 596, 270 A.2d 69, 72 (Law Div. 1970). Thus, vandalism and fire comprehensive claims are accidental as to the insured if the insured did not cause the vandalism or the fire. The commenter suggests that the term accident be construed broadly.

The commenter also suggests amending the definition of motor vehicle accident to be consistent with the court's construction of the term "accident."

RESPONSE: The Department agrees and has amended this definition accordingly.

COMMENT: Two commenters' objections to N.J.A.C. 11:3-38 were based on the establishment of Region I and Region II of the fee schedule. One commenter believes that the use of two regions will encourage certain abuses. The commenter further argues that additional investigation and verification will be required to detect these abuses which would cost more than the small difference in fees. The commenter recommends the use of one schedule statewide.

The second commenter states that no rationale has been established to justify different regional rates in New Jersey.

RESPONSE: N.J.S.A. 17:33B-47 requires the Commissioner to promulgate a towing and storage fee schedule on a regional basis. The proposed rules are consistent with this requirement. The proper fee for towing services is based on the region in which the tow vehicle's base of service is located. The storage fee is determined by the region in which the facility is located. The Department does not believe it will be difficult to determine the appropriate county and the corresponding fee in accordance with the fee schedule.

COMMENT: One commenter notes that N.J.A.C. 11:3-38.4(d) contains an incorrect citation to N.J.A.C. 11:3-36. The commenter believes the correct citation should be N.J.A.C. 11:3-38.6.

RESPONSE: The Department agrees and has amended this section accordingly.

COMMENT: One commenter suggests that the day rate established in N.J.A.C. 11:3-38.4(d)3 should be revised to apply between the hours 7:00 A.M. and 7:00 P.M. The commenter believes that this revision appropriately applies the "day rate" to commuter traffic patterns and higher accident frequency times.

RESPONSE: The Department believes that the day rate, the hou between 8:00 A.M. and 4:30 P.M., established by these rules is reasonab and appropriate. The current schedule reflects commonly held notio of "daytime hours".

COMMENT: One commenter notes that N.J.A.C. 11:3-38.4(e) refe to the maximum storage charges, but the commenter believes stora companies may attempt to avoid the impact of the rule by adding charg for handling, moving and access. The commenter suggests that the ru should be clarified to indicate that the maximum listed in the fee schedu includes all related charges including, but not limited to, handling, mo ing and access.

RESPONSE: The towing and storage fee schedules established by tl Department are the maximum charges that shall apply to a priva passenger automobile that is towed or stored as a result of being damag in an accident or recovered after being stolen. No storage charges a to exceed the maximum charges listed in the fee schedule.

COMMENT: One commenter's remarks address N.J.A.C. 11:3-38.4(which prevents an insurer or rating organization from including ar expense for storage of a private passenger automobile for more than days into the base for determining private passenger automobile insuran rates used or to be used in this State. The commenter questions, wh does a vehicle cease being stored as a result of an accident or theft ar then begins being stored as a convenience, to the owner or interested thi party at any point after 30 days.

A second commenter suggests adding a provision that would requi the facility to provide the insurer with notice of the storage and app the 30 day rate from date of storage. The commenter argues that in mar instances, a recovered theft is in storage for months before the insur is notified. The commenter further suggests that the Department shou consider limiting the number of days for which storage can be charge

RESPONSE: The Department is not sure whether the first cor menter's question is regarding a storage facility or an auto body sho The determination as to whether a motor vehicle ceases to be stored a result of an accident or theft should be subject to the current busine practice. The Department believes it is reasonable for the insured to noti his or her insurance company promptly of the location of the automobil The Department has prevented insurers from including storage charg past 30 days into their base for determining rates used or to be used this State.

COMMENT: One commenter believes that the Department's reg lation of rates for towing and storage relative to accidents and stol vehicles recovered is unnecessarily duplicative since such rates are alreac regulated by other governmental bodies or regulatory agencies. The cor menter believes that Assembly Bill A-3011 which requires local gover ments to regulate towing rates through either competitive bidding pr cesses or regulations adopted pursuant to N.J.S.A. 40:48-2.49 augmen his position that the towing regulations are redundant and superfluou

The commenter suggests that the Department should publish the rat that have been otherwise established by municipalities or turnpike ar bridge authorities and, in doing so, would be in compliance with tl legislative mandate of the FAIR Act, which requires the Commission to "promulgate" rates for towing and storage fees.

RESPONSE: The Department disagrees. N.J.S.A. 17:33B-47 requir the Department to promulgate a towing and storage fee schedule on regional basis. This provision does not require the Department to monit or approve any municipality schedule. Moreover, the Department's rul only apply to private passenger automobiles damaged in accidents recovered after being stolen.

COMMENT: Several commenters argue that the rules do not r cognize existing towing contracts that are already in effect between to operators and municipal entities. One commenter questions whether m nicipal ordinances or contracts are superseded by the Department's to ing and storage fee schedule. A second commenter believes that if publ contract laws were applied properly and all municipalities and agenci in the State were required to submit their competitive tow contrac annually for State review, there would be no need for the Commission to set rates.

RESPONSE: The Department's rules only affect existing municip contracts to the extent that they apply to towing and storage charges f private passenger automobiles damaged in an accident or recovered aft being stolen.

COMMENT: One commenter questions whether municipalities ca continue to limit what its official towers may charge through its ord nances which call for lower fees than are allowable under the Sta regulation.

RESPONSE: The towing schedule promulgated by the Department reflects the maximum fees to be charged for the towing or storage of a private passenger automobile which is damaged in an accident or recovered after being stolen. Municipalities are permitted to set fees lower than the fees established in this schedule.

COMMENT: One commenter questions who interprets and enforces these rules with regard to day to day questions and disputes involving the tow operator and the consumer.

RESPONSE: The New Jersey Insurance Fraud Division may subject a person to certain civil and criminal penalties relative to violations of N.J.S.A. 17:33A-1 et seq. The Department is not authorized to act as an arbiter for disputes between the tow operator and the consumer. Such matters should be decided in a civil proceeding.

COMMENT: Several commenters stated that the rules have no allowance for additional costs (for example, a situation where a flatbed carrier and/or winching services, additional men, etc. are required). One commenter notes that certain situations require the recovery of a vehicle from a ditch, from being suspended on a median, or when the automobile rolls over on its roof. The commenter argues that all of these factors have a bearing on the value, repair and recovery cost. Another commenter objects to the omission of labor charges from the fee schedule.

RESPONSE: The Department does not intend for these rules to apply to recovery cost. The Department has amended these rules by clarifying what constitutes basic towing services.

COMMENT: Several commenters object that the schedule only applies to persons with collision or comprehensive coverage. One commenter argues that claims under third party property damage liability coverage and uninsured motorist property damage coverage involve vehicles that are damaged in accidents and can include towing and storage fees. The commenter argues that nothing in the FAIR Act restricts the application of the fee schedules to comprehensive and collision coverage. The commenter further believes that such a restriction would be arbitrary, capricious, and beyond the Department's statutory authority. The commenter suggests that this provision be amended to include first and third party coverages.

A second commenter objects to this provision because he believes that there needs to be a means by which a tow operator can verify if the automobile is insured and thereby subject to the provisions of the fee schedule. A third commenter questions which rate applies when drivers refuse to provide information regarding the nature of their insurance coverage. Another commenter suggests that notification of ownership along with the insurance company should be given directly to the tower by the Police department, within 48 hours.

RESPONSE: The Department has determined that these rules should apply to all automobiles registered in New Jersey that are towed or stored as a result of being damaged in an accident or recovered after being stolen regardless of the auto insurance coverage of the driver. N.J.S.A. 17:33B-47 provides that no person shall be liable to any person who tows or stores a private passenger automobile which was damaged in an accident or recovered after being stolen for any amount of money which results from the charging of fees in excess of those permitted by the towing and storage fee schedule and does not require physical damage coverage for this provision to be operative.

COMMENT: Several towers questioned whether they can require an owner to sign an affidavit regarding the nature of his insurance coverage, in order to protect the towers from potential fines.

RESPONSE: The Department does not believe this will be necessary because the rules apply to all automobiles damaged in an accident or recovered after being stolen.

COMMENT: One tower questions whether he is permitted to charge his normal regulated rates when a car is involved in an accident, and the owner has insurance, but decides not to report the accident to his insurance company.

RESPONSE: N.J.S.A. 17:33B-47 states that no person shall be liable to any person who tows or stores a private passenger automobile which was damaged in an accident or recovered after being reported stolen for any amount of money which results from the charging of fees in excess of those permitted by the towing and storage fee schedule.

COMMENT: One commenter questions whether a tower can require payment for vehicles covered under the insurance rules to come directly from the insurance company providing collision and comprehensive coverage. The commenter believes that this procedure would permit tow facilities to be assured that the claim is covered under these rules.

RESPONSE: The Department has determined that these rules should apply to all automobiles registered in New Jersey that are towed or stored as a result of being damaged in an accident or recovered after being stolen regardless of the auto insurance coverage of the driver. Therefore, the Department does not believe it is necessary for a tower to require payment to come directly from an insurance company.

COMMENT: One commenter questions why the Department's rules do not apply to accidents involving drunken drivers. The commenter does not believe that he should be penalized and forced to live under rules for accidents caused by drunken drivers.

RESPONSE: N.J.S.A. 17:33B-47 does not exclude accidents caused by drunken drivers.

COMMENT: One commenter states that often police officers will permit a vehicle involved in an accident or recovered after being stolen, to remain at the scene until the owner can remove it or have it removed regardless of whether the car has been damaged or is driveable. The commenter states that the officer's concern for public safety appears to be the factor used in determining when a vehicle is to be removed. The commenter questions whether the towing and storage fee schedule applies when an officer requests that a vehicle be towed and/or stored for reasons other than being damaged or recovered after being stolen.

RESPONSE: The towing and storage fee schedule only applies to private passenger automobiles damaged in an accident or recovered after being stolen.

COMMENT: Two commenters question whether the towing fee schedule applies when a second tow is necessary to transport a vehicle from a storage yard to a repair shop or salvage yard or when the subsequent tow is performed by another company. One commenter questions who determines if the circumstances and status meet the criteria of the rule.

RESPONSE: The towing fee schedule applies when a second tow is necessary to transport a vehicle from a storage yard to a repair shop or salvage yard even if the subsequent tow is performed by another company as along as the private passenger automobile was damaged in an accident or recovered after being stolen.

COMMENT: One commenter argues that out-of-State motorists should not be penalized for traveling through this State. The commenter believes that the fees should be applied to all vehicles.

A second commenter believes that if the schedule does not apply to all vehicles, it is likely that savings from these rules will be eroded through price gouging on out-of-State vehicles.

RESPONSE: The Department's concern is with the impact of towing and storage fees on premium costs borne by insureds throughout this State. Therefore, these rules apply to private passenger automobiles registered in New Jersey damaged in accidents or recovered after being stolen.

COMMENT: One commenter requests the information used by the Department of Insurance to establish the rate schedule.

RESPONSE: The surveys conducted by the Department are not public records.

COMMENT: One commenter believes that the $1.75 per mile towing fee for additional miles may be excessive. The commenter states that for accidents occurring in rural areas, the mileage will in many cases exceed 20 miles for the round trip. The commenter contends that the total amount would be higher than the amount insurers currently pay.

RESPONSE: The Department recognizes that there may be some towers who will not make as much per tow as they did prior to these rules. The Department also recognizes that there are towers who will make more money per tow than they did prior to these rules. The Department believes that the fees realistically provide a reasonable rate of return for towing and storage facilities as is demonstrated by the fact that they are based on a survey of insurance carriers in New Jersey and the amount of charges the carriers actually incurred as a result of having an insured's automobile towed or stored.

COMMENT: One commenter believes that a mechanism should be included in the rules to help deter charging holiday rates when the day rate should apply. The commenter believes this is necessary to prevent "estimated" times and would permit independent verification of times from other sources (for example, the police report).

RESPONSE: The Department believes that insurers will be able to determine the date the services were performed and verify whether that date was a holiday.

COMMENT: Why are automobiles with mechanical breakdowns and impound vehicles excluded from the rules?

RESPONSE: N.J.S.A. 17:33B-47 requires the Commissioner of Insurance to promulgate a towing and storage fee schedule. The statute limits the application of this schedule to towing and storage charges resulting from a private passenger automobile damaged in an accident or recovered after being stolen.

COMMENT: One commenter suggests that towing and storage facilities should post their fee schedule and provide a copy for the public following an accident so that the citizens of New Jersey are aware of the fees charged by that operator.

RESPONSE: The Department does not presume it to be necessary to require towing or storage facilities to post their fee schedule and provide a copy to the public following an accident at this time.

COMMENT: One commenter suggests the use of more specific guidelines which should be given to insurers to determine how a company calculates the mileage from the scene of an accident. The commenter believes that specific requirements would be easy to use, as well as inexpensive.

RESPONSE: The Department believes that N.J.A.C. 11:3-38.4(d)1 adequately decribes how mileage is to be determined.

COMMENT: One commenter suggests that on stolen and recovered thefts, the storage facility should be required to notify the owner by certified mail within 48 hours of its possession of the vehicle. The commenter believes that this requirement will place the insured on notice of the exact location of the vehicle and this information could be forwarded to the insurer. The commenter believes that this process will assist both the insured and insurer in a more expenditious pickup of the vehicle and will result in a reduction of accrued storage charges.

RESPONSE: The Department does not presume it to be necessary to require storage facilities to notify the owner by certified mail within 48 hours of possession of the vehicle at this time.

COMMENT: One commenter suggests that the Department provide arbitration to resolve disputes concerning towing and storage charges.

RESPONSE: The Department does not presume it is necessary to act as an arbiter for disputes involving towing and storage charges at this time.

COMMENT: One commenter recommends that the storage rates be increased to $20.00 a day. The commenter states this increase is needed in order for him to maintain security in his storage yard as well as cover his fuel, insurance, equipment and labor costs.

Several other commenters offered suggested rate increases to the storage fees established by the Department.

RESPONSE: The Department believes that storage fees established are reasonable and provide a reasonable rate of return. The Department will review the suggested fees and other cost factors to determine if future amendments to these rules is warranted.

COMMENT: One commenter suggests that restrictions should be placed on the insurance companies specifying a set number of days that a vehicle may be left in storage before an appraiser is sent to inspect the vehicle. Another commenter recommends that vehicle inspections be conducted by the insurance carriers within 10 days and removed within 14 days.

RESPONSE: N.J.S.A. 17:33B-48 and N.J.A.C. 11:3-38.4(f) provide that no insurer or rating organization shall include any expense for storage of a private passenger automobile for more than 30 days into the base for determining private passenger automobile insurance rates used or to be used in this State. The statute does not authorize the Department to require an insurer to remove a vehicle within 14 days. Insurers are required to conduct vehicle inspections pursuant to N.J.A.C. 11:3-10.3.

COMMENT: One commenter notes that the fee a tower charges for a vehicle taken to an auto body shop is usually adjusted if that auto body shop is given the opportunity to repair the automobile. The commenter states that occasionally when a vehicle is on the premises and is being repaired the auto body shop facility does not charge for the storage in the interim. The commenter believes that although these fees are chargeable, most auto body facilities do not charge for storage under these conditions; however, the Department's rules may force facilities to begin to charge for storage services.

Another commenter suggests that the Department ban automobile repair facilities from charging storage fees after it has been awarded and accepted a contract to repair the damaged automobile. The commenter argues that it is unconscionable to allow an automobile repair facility to collect money by simply delaying the start of repairs, unless the repair facility advises the vehicle owner or insurer prior to being awarded the contract to repair, that it cannot begin repairs for a certain number of days, storage charges will be incurred, and this matter is expressly agreed to by all parties.

RESPONSE: The Department believes that these situations should be negotiated between the insurer and the auto body shop. The Department does not presume it is necessary to place restrictions on these types of negotiations at this time.

COMMENT: Several commenters question the definition of space. Is storage space determined by the total number of spaces available or the total number of collision spaces? A second commenter specifically asks whether they should take into account: (1) parking for employees; (2) parking for business vehicles; or (3) parking for mechanical breakdowns.

RESPONSE: The Department defines storage space as the total number of spaces available for storage based on the classification of the facility. For example, if the facility is an inside building, then the total number of storage spaces inside the building determines the rate to be charged for an automobile stored inside that facility.

COMMENT: One commenter questions whether the inside storage areas should be added to the total storage area for the location, or are the outside and inside storage areas considered two separate areas. A second commenter questions whether he could have a separate yard for impounds and another for collision, both with their own entrances.

RESPONSE: If a facility has both outside and inside storage areas then the charge for storage is based on the total number of spaces available for inside storage if the car is stored inside, or the total number of available spaces of the outside storage if the car is stored outside.

A person is permitted to have a separate yard for impounds and another for damaged vehicles.

COMMENT: One commenter states that his location is open 24 hours a day, with a dispatcher on duty at all times and that he has a six-foot fence around the total area, except for the entrance way. The commenter states that all vehicles are in sight of the dispatcher on duty. The commenter questions whether this location is considered secured or unsecured.

RESPONSE: The Department would view this as an outside secured facility based on the definition provided in N.J.A.C. 11:3-38.2.

COMMENT: One commenter believes that it would be beneficial if the State would officially certify or designate the various storage yards and the applicable chargeable fees for that facility. The commenter contends that it will be very difficult for insurers to determine the number of storage spaces available to each shop/storage facility.

RESPONSE: The Department does not believe it is necessary to officially certify or designate the exact fee that each individual storage facility can charge. If a storage facility is operating in a fraudulent manner pursuant to these rules, it should be reported to the New Jersey Insurance Fraud Division.

COMMENT: One commenter suggests that all bills submitted by towing and storage facilities should be fully itemized to include the region, the base rate, miles to the scene, total miles traveled, and type and capacity of facility. The commenter believes that the requirement would hold facilities accountable for the figures submitted, and it would enable insurers to verify and make timely payment of the bills.

RESPONSE: The towing and storage facilities location determine whether they can apply to Region 1 or Region 2 rates to the service performed. Insurers should be able to use these rules to determine whether bills submitted by towing and storage facilities contain the correct charges for the services performed.

COMMENT: One commenter questions whether they can forbid adjusters and vehicle owners from walking around their storage yards because they are unable to provide a security guard to make sure that the area is safe as a result of the Department's rules.

RESPONSE: The Department does not presume it to be necessary to require storage facilities to provide access to insurers or adjusters at this time. The Department does not believe that storage facilities should attempt to hinder efforts of insurance companies to get an automobile removed from a storage facility.

COMMENT: Two commenters argue that the rules should prohibit unreasonable restrictions on the ability of persons to retrieve vehicles from storage. The commenters believe that some storage companies are attempting to circumvent these rules by imposing unreasonable requirements for retrieving vehicles, thus delaying retrieval and adding to the storage charges. For example, they have seen notices issued by storage companies which include the following requirements before releasing a vehicle:

(a) A call must be made one working day prior to retrieval to schedule an appointment.

(b) A notarized release from owner of vehicle and the original insurance policy must be presented.

(c) The driver must bring a container for anti-freeze, oil and "Speedy Dry," and a manifest indicating where hazardous waste will be disposed

(d) The driver must present proof of workers' compensation and liability insurance in the amount of one million dollars.

The commenters believe the rules should include a prohibition on these types of requirements. Additionally, one commenter suggests that the rules include a provision which states that the refusal to release a vehicle or imposing unreasonable requirements on the release of a vehicle is strictly prohibited.

Another commenter suggests that the Department require storage facilities to make the automobile immediately available for pickup upon request by the owner or the insurer.

RESPONSE: The Department does not presume it to be necessary to require facilities to make automobiles immediately available for pickup upon request by the owner or the insurer at this time. The Department does not believe that storage facilities should operate in a manner that hinders an insurance company from promptly removing a vehicle from a storage facility.

COMMENT: One commenter suggests that the rules should be revised to include a provision which requires storage companies to store vehicles in the least expensive setting if the company has more than one type of storage capability (for example, both inside and outside). A storage company should be able to employ the more expensive storage only if specifically requested by the vehicle owner or if the least expensive storage is full.

RESPONSE: The Department will not mandate that a storage operator use the least expensive storage area when the company has more than one type of storage capability, because the least expensive area is the least secured area.

COMMENT: One commenter requests the Department to clarify whether the schedule applies to commercial automobiles. The commenter believes that commercially rated automobiles should be included under the scope of these rules.

RESPONSE: The rules do not apply to commercial automobiles, only to private passenger automobiles purusant to N.J.A.C. 11:3-38.2.

COMMENT: The commenter suggests that the reproposed regulations contain a penalty provision to insure compliance by all persons involving those who tow or store vehicles. The Division of Motor Vehicles licenses auto body repair facilities pursuant to N.J.S.A. 39:13-1 et seq. The Department of Insurance should, in addition to the fines it may impose, report violations to the Division of Motor Vehicles so that they can take action against the licenses of the violators in appropriate cases (N.J.S.A. 39:13-4). The commenter believes that the Division of Motor Vehicles as a licensing authority for auto body repair facilities would be very interested in these violations. The commenter suggests that the reproposed rules should also reference reporting to the Fraud Bureau under N.J.S.A. 17:23-8 et seq.

RESPONSE: The Department agrees and has amended N.J.A.C. 11:3-38.5 accordingly.

COMMENT: The Garden State Towman's Association, Inc. (GSTA) argues that the rates proposed for towing services are non-compensatory and will deny towing operators a fair rate of return. The GSTA commissioned an accounting firm to conduct a survey of the GSTA membership to obtain the average cost of operation. According to GSTA, the average cost for a tow in New Jersey is $65.47 ("as adjusted for the astronomical increase in fuel costs occurring in December 1990"). The GSTA contends that its survey took into consideration costs for all types of towing, not just the emergency portion of a towing operation. The GSTA states that "the relevance of that point is that many of the costs incurred by a towing firm are incurred in order to provide emergency/police towing such as accidents and stolen recoveries contemplated by this regulation." The GSTA notes that if a tower does not perform emergency towing, then certain expenses are not incurred, and the GSTA states that the survey does not take that factor into consideration. GSTA did a comparison between the average cost of operations per tow and the base towing rate proposed by the Department:

Average cost of operation per tow	$65.47
Department rates	$63.75

GSTA states that the proposed rates are below the average cost of providing a basic tow. GSTA contends that its survey is of costs, not rates charged; therefore, it does not include any amount for profit or return on investment. GSTA asserts that factoring a reasonable 15 percent into the cost of operation for return on investment demonstrates even more the insufficiency of the proposed Department rates. GSTA further provides rates established by two municipalities and the New Jersey Turnpike:

New Jersey Turnpike	$70.00
City of Pennsauken	$75.00
Egg Harbor	$75.00

GSTA notes that the New Jersey Turnpike rate is based on a $40.00 base charge plus $2.00 per mile, based upon a 15 mile tow. Pennsauken's rate is based upon a competitively bid contract. Egg Harbor is based upon a local municipal ordinance. GSTA states that the foregoing are representative of rates that demonstrate the inadequacy of the Department's proposed base tow rate.

GSTA asserts that the Department's towing rates are below the average cost of operation and amount to an illegal deprivation of property in contradiction of both Federal and State constitutions.

RESPONSE: The Department disagrees. The fee schedule proposed by the Department is constitutional. The fee schedule, together with other reforms found in the FAIR Act, are rationally related to the legitimate governmental objective of reducing the car insurance premiums of New Jersey residents. The fees realistically provide a reasonable rate of return for towing and storage facilities as is demonstrated by the fact that they are based on a survey of carriers in New Jersey and the amount of charges the carriers actually incurred as a result of having an insured's automobile towed or stored. The Department recognizes that these rules affect a portion of a tower's business. The Department also recognizes that the insurance reimbursement portion of the towing business should not be used to subsidize the other portions of towing operations.

The Department reviewed the information submitted by GSTA. The Department notes that according to GSTA the average cost of a tow in New Jersey is $65.47, and that same tow would provide the tower with $63.75 under the proposed schedule. The Department believes that this supports the fact that the Department's rates are reasonable, given the closeness of its rate to the average cost of a tow as stated by GSTA.

The Department notes that GSTA also provides a rate of $70.00 established by the New Jersey Turnpike Authority which it mentioned to support its contention that the Department's rate is insufficient.

The Department reviewed N.J.A.C. 19:9-1.14 from the New Jersey Turnpike Authority on repairs and towing as well as N.J.A.C. 19:9-3.1 towing rates. GSTA states that N.J.A.C. 19:9-1.1 provides for a $40.00 base charge plus $2.00 per mile (based upon a fifteen (15) mile tow). The Department's review of this provision seems to provide some discrepancies in information. N.J.A.C. 19:9-3.1 as published provide towing rates for Class 1 vehicles as well as Class 2-6 vehicles. According to N.J.A.C. 19:9-3.1 the towing rates are as follows:

Class 1

$1.50 per mile to a maximum of $40.00
Service Charge $25

Class 2-6

$2.50 per mile on turnpike (maximum of 10 miles) to a maximum of $70.00
Service Charge $45

The Department notes that N.J.A.C. 19:9-1.4(c) (Repairs and towing) provides that "if towed, such disabled vehicle must be removed at the nearest exit way in the original direction of travel." The Department notes that Class 1 does not provide for a $2.00 per mile rate nor a base rate of $40.00. The Department further notes that under Class 2-6, 10 miles are the maximum number of miles that can be charged (at a rate of $2.50). If GSTA applied the Department's rates to this tow, the Department believes that its rates are comparable. For example, under the Department's rules there is no 10 mile limitation on mileage, because it is calculated from the towers base of service to the accident site and return. A 15 mile tow under the Turnpike's regulation does not include the additional mileage for which a tower can charge for service under the Department's rules. The Department's estimated rates for a similar tow would be:

Lowest $70.00 (based on Region 1 daytime rate and round trip of 20 miles)

Highest $85 (based on Region 2 holiday rate and round trip of 20 miles)

The Department appreciates the information received from the GSTA and individual towers throughout the State and will consider this information in future modifications of this rule.

COMMENT: One commenter states that the penalties for violation of the rules are excessive, unconscionable and unreasonably punitive. The commenter states that the proposed penalty provision requires neither intent nor bad faith. The commenter agrues that such "strict liability upon

towing operators with clearly excessive penalties is unconscionable and unreasonably punitive, particularly given the ambiguous nature of the regulation."

RESPONSE: The Department believes that the penalties are a reasonable means to deter fraudulent activity. The penalties are the maximum allowable penalties pursuant to N.J.S.A. 17:33A which have been utilized by the courts since 1983.

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 38. TOWING AND STORAGE FEE SCHEDULE

11:3-38.1 Purpose and scope

(a) The purpose of this subchapter is to establish towing and storage fee schedules on a regional basis pursuant to N.J.S.A. 17:33B-47 for the reimbursement of towing charges and storage charges for private passenger automobiles that are damaged in accidents or are recovered after being stolen.

(b) The provisions of this subchapter apply to all insurers which write private passenger automobile insurance in this State and to all persons who provide towing and storage services in this State for private passenger automobiles that are damaged in accidents or are recovered after being stolen.

11:3-38.2 Definitions

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

"Automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, or delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

"Basic towing service" means the removal and transportation of an automobile from a highway, street or other public or private road, or a parking area, or from a storage facility, and other services normally incident thereto, but does not include recovery of an automobile from a position beyond the right-of-way or berm, or from being impaled upon any other object within the right-of-way or berm.

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

"Department" means the New Jersey Department of Insurance.

"Inside buildings" means a vehicle storage facility that is completely indoors, having one or more openings in the walls for storage and removal of vehicles and that is secured by a locking device on each opening.

"Motor vehicle accident" means an occurrence in which a private passenger automobile comes in contact with any other object for which the private passenger automobile must be towed or removed for placement in a storage facility. ***This includes all situations which are accidental as to the insured even if they were caused by the intentional acts of a perpetrator where the perpetrator was not the insured or not otherwise involved with the insured.***

"Tow vehicle's base of service" means the towing operator's principal place of business where the tow vehicle is stationed when not in use.

"Outside secured" means an automobile storage facility that is not indoors and is secured by a fence, wall or other man-made barrier that is at lest six feet high and is installed with a passive alarm system or a similar on-site security measure. The facility is to be lighted at night.

"Outside unsecured" means an automobile storage facility that is not indoors and is not secured by a fence, wall or other man-made barrier, and all other storage facilities not defined above as inside building or outside secured.

"Storage charges for 24 hour period" means the maximum allowable amount to be charged by a storage facility for a 24 hour period or fraction thereof. A new 24 hour period begins at 12:01 A.M.

"Tow vehicle" means only those vehicles equipped with a boom or booms, winches, slings, tilt beds, wheel lifts or under-reach equipment specifically designed by its manufacturer for the removal or transport of private passenger automobiles.

11:3-38.3 Regions

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

(b) Region II, as used in this subchapter, consists of the following counties in New Jersey: Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren.

11:3-38.4 Application of storage and towing fee schedule

(a) No person shall be liable to any person who tows or stores a private passenger automobile which was damaged in an accident or recovered after being reported stolen for any fees in excess of those permitted by the towing and storage fee schedules established in this subchapter.

(b) The region used to determine the proper fee set forth on the schedules shall be determined as follows:

1. For towing services, the fee shall be based on the region in which the tow vehicle's base of service is located.

2. For storage services, the fee shall be based on the region in which the facility is located.

(c) The fee schedules shall be reviewed by the Commissioner on an annual basis and may be revised if necessary.

(d) The fees set forth on the schedule for towing rates are the maximum charges that shall apply to a private passenger automobile *[towed by a tow vehicle]* ***for basic towing services rendered*** as a result of an accident or theft recovery. There shall be no additional charges other than those provided in N.J.A.C. 11:3-*[36]****38.6***, including, but not limited to, flatbedding, waiting time, winching, *[uprighting,]* cleanup cost, and additional labor***, when only basic towing services as defined are provided***.

1. The towing rates shall be calculated based on the total distance travelled from the tow vehicle's base of service to the job site and return, by way of the shortest available route. Fractions shall be rounded up to the nearest whole mile.

2. Tow vehicles transporting multiple passenger cars at one time shall receive the applicable fees for each vehicle transported.

3. When towing services are required at the scene of an automobile accident, the Day rate shall apply when the time of the accident is between 8:00 A.M. and 4:30 P.M., Monday through Friday, except New Jersey State Holidays. The Night, Weekend and Holiday rate shall otherwise apply.

4. When towing services are otherwise required, the Day rate shall apply when the vehicle is transported (pickup to delivery) entirely between the hours of 8:00 A.M. and 6:00 P.M., Monday through Friday, except New Jersey State Holidays. The Night, Weekend and Holiday rate shall otherwise apply.

(e) The fees set forth on the schedule for storage fees are the maximum storage charges per 24 hour period that shall apply to a private passenger automobile that is stored by a person as a result of an accident or theft recovery.

(f) No insurer or rating organization shall include any expense for storage of a private passenger automobile for more than 30 days into the base for determining private passenger automobile rates used or to be used in this State.

11:3-38.5 Penalties

(a) Failure of a person to abide by the requirements of this subchapter may be punishable by a fine not to exceed $5,000 for the first violation, $10,000 for the second violation and $15,000 for each subsequent violation pursuant to N.J.S.A. 17:33A-5.

***(b) Violators who are licensed as an automobile repair facility will be reported to the Division of Motor Vehicles. Insurers may also report violators under the provisions of N.J.S.A. 17:23-8 to 15*.**

11:3-38.6 Towing and storage fee schedules

(a) The following is the fee schedule for towing services:

	Region	
Days	**1**	**2**
First mile or less	$35.00	$40.00
Each additional mile	$ 1.75	$ 1.75
Nights, Weekends and New Jersey State Holidays		
First mile or less	$45.00	$50.00
Each additional mile	$ 1.75	$ 1.75

(b) The following is the fee schedule for storage services:

Inside Building:	Region	
Storage Facility Capacity	**1**	**2**
21 or more spaces	$13.00	$15.00
10-20 spaces	$18.00	$20.00
Less than 10 spaces	$22.00	$25.00
Outside Secured:	**Region**	
Storage Facility Capacity	**1**	**2**
21 or more spaces	$ 9.00	$10.00
10-20 spaces	$11.00	$12.00
Less than 10 spaces	$13.00	$15.00
Outside Unsecured:	**Region**	
Storage Facility Capacity	**1**	**2**
21 or more spaces	$ 7.00	$ 8.00
10-20 spaces	$ 9.00	$10.00
Less than 10 spaces	$10.00	$12.00

(a)

DIVISION OF ACTUARIAL SERVICES

Order of Benefit Determination Between Automobile Personal Injury Protection and Health Insurance

Adopted Concurrent Amendments: N.J.A.C. 11:4-16.4, 16.5, 28.2 and 28.5

Adopted Concurrent New Rules: N.J.A.C. 11:3-14.8 and 11:3-37

Proposed: December 17, 1990 at 22 N.J.R. 3777(a).

Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissioner, Department of Insurance

Filed: January 25, 1991 as R.1991 d.90, **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, 17:1C-6(e) and 39:6A-4.3.

Effective Date: January 25, 1991, Readoption of Emergency Amendments and New Rules; February 19, 1991, Changes upon Adoption.

Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently reproposed pursuant to N.J.S.A. 52:14B-4(c). The emergency adoption of these rules were effective on November 26, 1990, at which time the concurrent reproposal was also filed. The present adoption of the concurrent reproposed rules is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), except for the changes upon adoption, which are effective on the date of publication of this notice, Feburary 19, 1991.

Summary of Public Comments and Agency Responses:

The Department received comments from nine insurers, an insurance support organization, two trade associations and a member of the medical profession. The Department has attempted to address all of the comments clearly and concisely. To the extent that a comment received either is substantially similar to a comment previously received and responded to, or is a comment to a response from the Department on a previously received comment, which appeared in the Emergency Adoption and Concurrent Reproposal of these new rules and rule amendments at 22 N.J.R. 3777(a) on December 17, 1990, and no new issues are raised, no additional response is provided in this Summary. Any comments received which, in substantive issue, address the medical fee schedules at N.J.A.C. 11:3-29 may appear in the Summary of Comments and Reponses of the adoption of the reproposal of N.J.A.C. 11:3-29, rather than in this Summary.

COMMENT: Two comments received are critical of the processing of claims required of auto insurers when secondary, stating that the process is grossly inefficient, complex, time consuming and causes a crushing administrative burden.

RESPONSE: The Department disagrees with the commenter that the process is grossly inefficient and creates a crushing administrative burden. The Department agrees that the process may appear complex and time consuming at first. While this cannot be avoided altogether, the Department believes that by reinterpreting N.J.A.C. 11:3-37.7, the calculation of actual benefits payable may be simplified. No modification of the rules is required.

First, the auto insurer, as a secondary coverage provider, will still need to determine the total amount of benefits it would have paid had it been primary. This means it will need to determine an amount for each service rendered which is eligible (deriving the total amount of allowble expense) and remove amounts for the specified deductible and copayment, if applicable (determining the total amount the auto insurer would have paid had it been primary). Second, the auto insurer will look at the health benefits provider's EOB, see what benefits the health benefits provider actually paid, and subtract the benefits paid from the total amount of allowable expense (which, if billing is in accordance with the medical fee schedules, should equal the charges billed), to derive the total uncovered remaining allowable expense. Finally, the auto insurer would pay the total uncovered remaining allowable expense, or the amount it would have paid had it been primary, whichever amount is less.

The result is two-fold. On an administrative level, it eliminates one step in calculating benefits owed because this method reduces the need for the auto insurer to extract the health benefits provider's deductible and copayment amounts, if any, for reimbursement. It also assures that the auto insurer does not pay in excess of the medical fee schedules, which may result if the health benefits provider's deductible and copayment requirements are specifically reimbursed. Appropriate amounts of the health benefits provider's deductible and copayment amounts and any other uncovered amounts which are within the medical fee schedule will continue to be reimbursed.

COMMENT: Two commenters request that the Department provide an educaitonal program for using these rules of coordination, stating that examples thus far have been vague, ambiguous or simply confusing. A third commenter suggests a joint meeting for both health and property/casualty insurers with the Commissioner, and possibly the formation of a committee to address coordination problems which may develop.

RESPONSE: The Department has received similar unwritten requests from other entities, and is in the process of developing some type of seminar training program. Details have yet to be approved, but as soon as information becomes available, the Department will notify insurers and other parties which have expressed an interest in such training. The Department believes training, and possible joint meetings will prove very helpful.

COMMENT: One commenter states that nothing in the FAIR Act provides any indication that deductibles and copayments should not apply in all cases to medical expense benefits under PIP coverage. The commenter states that the statute's intent is that the deductible and copayments should apply regardless of whether PIP is primary or secondary, and that the rules should be revised to correctly reflect the intent of the statute.

RESPONSE: The Department disagrees with the commenter's analysis of the intent of the statute. The statute states that the principles of coordination of benefits shall apply to personal injury protection medical expense benefits coverage. Currently, the principles of coordination include the concept that the deductibles and copayments of the secondary coverage provider "disappear". (When the total remaining uncovered amount of allowable expenses exceed the total amount of benefits which the secondary coverage provider would have paid had it been primary, and hence, the secondary coverage provider pays the total benefits it would have paid had it been primary, the deductible and copayment amount "reappear," because, of course, the secondary coverage provider has accounted for the deductible and copayment in calculating its upper

limit of total benefits payable). The Department deviated from the standard principles with respect to health benefits providers in this instance to partially offset the effect upon health benefits providers that coordination will have when auto insurers cap their benefits using the medical fee schedules, and for those claims which exceed the $250,000 cap.

The Department acknowledges that treatment of deductibles and copayments of secondary payors are not written in stone. While the Department is continuing to follow the current principles in this matter, insurers are advised that this is an area which the Department is continuing to study.

COMMENT: One commenter requests that a definition of "deductible" in reference to auto insurance PIP be provided to clarify what "deductible" means when used at N.J.A.C. 11:3-37.7. The commenter also states that it interprets the term "deductible," used at N.J.A.C. 11:3-37.7, to be referring to the statutory PIP deductible ($250.00).

RESPONSE: The Department does not believe that a definition of "deductible" is necessary. As used in N.J.A.C. 11:3-37.7 and throughout the rules, the term deductible is meant to refer to whatever deductible applies on the auto insurance policy for PIP, unless otherwise specified. That is, "deductible" means the statutory deductible, or the deductible selected by the insured, if different. There is no indication in the statute that the deductible should be limited to the statutory amount of $250.00 for purposes of calculating benefits as a secondary coverage provider.

COMMENT: One commenter requested a clarification as to how deductibles are to be applied: per accident, per family, etc.

RESPONSE: The manner in which deductibles apply is not the same for auto insurers and most health benefits providers. All PIP-related deductibles apply on a per accident basis; this is true also of copayment requirements. Health coverage providers generally apply deductibles per person (or per family, if the policy or contract covers dependants), per claims determination period. Copayments also typically apply on a claims determination period. That is, with each new claim determination period, an insured must again satisfy whatever deductible and copayment requirements apply on the policy or contract. A claim determination period is typically 12 months. Although not common, some health benefits contracts and policies contain additional deductible and separate copayment requirements for certain specified benefits, which may or may not be based on a claims determination period. These new rules do not alter the normal application of benefits for either auto insurers or health benefits providers as primary coverage providers, or in calculating benefits payable.

COMMENT: One commenter requests clarification as to the time frame auto insurers have to pay PIP benefits, or to otherwise respond to claims made.

RESPONSE: In accordance with N.J.S.A. 39:6A-5, auto insurers have 60 days within which to pay or deny a claim, or provide the insured with a statement that further investigation of the claim is required, after being furnished written notice of a coverage loss and the amount of that loss. The additional investigative period may not exceed 45 days. Payments made within the 60 day, or additional 45 day, period are not considered to be overdue, and are not subject to interest penalties.

COMMENT: One commenter states that the Department did not address the instance of an insured submitting a claim to an automobile insurer first where the automobile insurer is providing secondary coverage, and that the commenter interprets the 60 day period to toll on the date the automobile insurer receives notice that the health benefits provider has paid the claim. An additional commenter states that the auto insurer is entitled to exceptions or extensions on the 60 day period when it has no control over the health benefits provider's activity.

RESPONSE: The Department did address the instance in which a claim is erroneously submitted to the auto insurer. The 60 day period begins to toll when the claim is submitted ot the auto insurer. If the auto insurer is the secondary coverage provider, and has no notice of disposition of the claim by a primary coverage provider, the auto insurer should deny the claim, pending such disposition, to halt the 60 day period. A new 60 day period would then begin upon resubmission of the claim. As a secondary coverage provider, the amount of loss is difficult to calculate without dispositon of the claim by the primary coverage provider and may result in overpayments or underpayments. Inasmuch as auto insurers, as secondary coverage providers, have 60 days following submission of a claim which has been disposed of by the health benefits provider, the Department does not believe any extensions or exceptions in the 60 day period were warranted.

COMMENT: One commenter questions whether the insured (or the health care provider) may add the statutory interest to the billed charges when the insured and auto insurer have gone into arbitration or litigation.

RESPONSE: This comment is beyond the scope of these rules. The commenter is advised that the matter of interest in awards is governed by the New Jersey Court Rules, and typically will be considered by the arbitrator or judge.

COMMENT: Two commenters question the intent of N.J.A.C. 11:3-37.5(b)1, which allows insurers to cancel the coverage for nonpayment of a requested premium reduction amount following determination that the PIP-as-secondary coverage option selection is not valid. One commenter states that a literal reading of the rule appears to indicate that an insurer may cancel a policy 10 days before the last day for which premium received would provide coverage on a pro rata basis. The second commenter states that the rule does not really require the insurer to notify the insured of the invalidation and that premium is owed prior to the notice of cancellation. This commenter suggests that the rules clearly require two separate notices: a notice of premium due, mailed at least 30 days prior to the pro rata cancellation date; and a notice of cancellation mailed at least 10 days prior to the cancellation date. Additionally, the commenter suggests that copies of both such notices be sent to the insured's producer of record.

RESPONSE: The Department acknowledges that the language of N.J.A.C. 11:3-37.5 lacks clarity in general. The Department has attempted to rectify this situation upon adoption.

N.J.A.C. 11:3-37.5(b)1 and 2 track the language of N.J.A.C. 11:3-7.6(b), a rule with which auto insurers should already be familiar. The principles of the equitable cancellation rule are well-settled at this time, so the Department will not make any changes at this point.

The Department does intend to make it clear that a notice of payment due on the premium reduction amount must be sent to the named insured if the insurer intends to avail itself of the equitable cancellation rule. The notice should be sent promptly after determination of the invalidity of the PIP-as-secondary coverage option selection. However, the notice of premium due, and the notice of cancellation, if sent exactly 30 days prior to the effective date of cancellation, may be one and the same.

If the Department subsequently determines that the system of notification is not working efficiently, or that certain parties are taking advantage of the system, the Department may amend the notice requirements. For now, the Department believes the system, as stated above, should be sufficient. The Department does not believe it is necessary to add a provision requiring insurers to send copies of notices to producers, noting that many insurers already do so.

COMMENT: Two commenters question N.J.A.C. 11:3-37.5(b) with respect to coverage of insureds by health benefit plans. Both commenters interpret the rule to prohibit invalidation of the PIP-as-secondary coverage option selection so long as at least one insured under the auto policy is covered by a health benefits plan. Both commenters state that this is inappropriate, and that the language of the provision should be changed to require all insureds under the auto policy to be covered by the health benefits plans indicated on the coverage selection form.

RESPONSE: The Department acknowledges that the language may be open to more than one interpretation. The commenters' interpretation does not accurately reflect the Department's intent. The Department has revised the rule to clarify that all insureds do not have to be covered under one health benefits plan for the PIP-as-secondary coverage option to remain valid, or that all insureds must be covered under all of the listed health benefits plans. As long as each known insured is covered under at least one health benefits plan, the PIP-as-secondary coverage option selection should not be invalidated under N.J.A.C. 11:3-37.5(b) unless section (a) applies.

COMMENT: One commenter states that the rules are ambiguous with respect to effective dates. The commenter contends that it is unclear whether the rules apply to treatment occurring after January 1, 1991 or to accidents occurring after January 1, 1991, noting the difference between the manner in which health benefits providers and auto insurers view claims. The commenter questions what happens if an insured has an accident on January 1, 1991, and subsequently elects PIP to be secondary on February 1, 1991—does the health benefits provider become the primary coverage provider for these on-going treatments.

RESPONSE: The status of a primary or secondary coverage provider position applies only to accidents occurring after the election has been made. The auto insurer was primary when the accident occurred on January 1, 1991 and will continue to pay on treatments for injuries arising from that contract as the primary coverage provider, even after the February 1, 1991 coverage option selection. With respect to an accident occurring after February 1, 1991, the health benefits provider(s) will be primary for on-going treatment of injuries arising from that accident, even

in February of 1992, the named insured selects the auto insurer to be ıe primary coverage provider.

COMMENT: One commenter questions the necessity for the distinc- on between N.J.A.C. 11:3-37.6 and N.J.A.C. 11:4-28.2. The commenter ates that since, in New Jersey, under N.J.A.C. 11:4-28 (without amend- ent), there may be coordination between the PIP plan and a health enefits plan, regardless of which plan is primary or secondary, it would ppear that reference to automobile no-fault contracts must be retained the definition of "Plan". The commenter queries how coordination ith such a plan is to take place if it is removed from the definition of J.A.C. 11:4-28.2.

RESPONSE: Coordination of benefits between the PIP plan and ealth benefits plans shall now occur in accordance with N.J.A.C. 1:3-37.

While N.J.A.C. 11:4-28 appears to allow coordination between PIP lans and health benefits plans on a plan by plan basis, a close reading f N.J.A.C. 11:4-28 indicates that this is not the case. N.J.A.C. 11:4-28 llows coordination between plans that contain coordination provisions omplying with the rules of N.J.A.C. 11:4-28. However, the rules of that ubchapter do not anticipate a plan becoming primary or secondary based n the insured's selection, but rather, based upon other contract-depen- ent criteria. PIP plans have never been allowed to contain the contract nguage of N.J.A.C. 11:4-28, and the FAIR Act has not altered that ffective restriction. Therefore, N.J.A.C. 11:4-28, in practical application, pecifies that the PIP plan, as a plan with non-conforming language, ould always be primary.

There are other impediments to using N.J.A.C. 11:4-28. First, the rules f that subchapter do not apply to individual health insurance. Second, ven if the rules were substantially amended to accommodate individual ealth insurance and PIP plans in some manner, it would be impractical o allow insureds the choice as to which health plan would be primary r secondary on a plan by plan basis. The determination of liability would e very complex, and it is possible that insureds could manipulate the ystem by selecting one health carrier as primary to get the PIP discount, hile keeping another health carrier secondary to maximize his or her enefits, to the detriment of both the other health carrier and the auto arrier.

COMMENT: Several commenters suggest that "Medicare" and Medicaid" be deleted from the definition of "health benefits provider" ince Medicare and Medicaid have been indicated as programs which will ot provide primary coverage benefits.

RESPONSE: The Department disagrees. The definition of "health enefits provider" only defines what a "health benefits provider" is, not hether a health benefits provider's plan is one that will provide primary overage benfits when auto insurance PIP benefits are, or would be vailable to an insured but for an election to make the PIP plan secondary overage.

COMMENT: One commenter states that in revising the definition of hospital expenses," so that it only applies to automobile insurers just ssures confusion, as health benefits providers and auto insurers will be sing completely different definitions of "hospital expenses."

RESPONSE: The Department disagrees, and there shall be no change n the definition. The commenter would like for the definition of hospital xpenses to be the same for both auto insurers and health insurers. This annot be done. The definition of "hospital expense" for auto insurers s set forth by statute; the Department will not deviate from the definition. dditionally, by statute, health benefits providers are not required to over treatment not normally covered under their contracts. The Depart- ent will not provide a definition of "hospital expenses" which may brogate that statutory assurance.

COMMENT: One commenter requests that the Department make xceptions in the realm of eligible health benefits plans to exclude prescription only plans, limited hospital plans, limited medical plans or ny combination which would not provide actual significant coverage. his commenter is joined by another commenter in stating that minimum enefits are needed for health benefit plans to be "eligible."

RESPONSE: The Department disagrees that minimum benefits should e required at this time for the reasons discussed in the Department's esponse to substantially similar comments at 22 N.J.R. 3779. However, he Department will exclude prescription only plans, although it is not ware of any plan of that nature delivered or issued for delivery in New ersey to individuals or groups other than in combination with other health benefits coverage.

COMMENT: One commenter requests confirmation that N.J.A.C. 11:3-37.12 allows continuation of the PIP concurrency system.

RESPONSE: Yes, as appropriate.

COMMENT: One commenter questions whether a health benefits provider would have the right to refuse to process a claim, and asks how one is to know whether a health benefits provider is correct or incorrect in stating that they are not the primary coverage provider for that claim.

RESPONSE: The Department has answered this comment previously at 22 N.J.R. 3779. Any health benefits provider not subject to New Jersey regulation is not compelled to comply with these rules. A health benefits provider should provide information as to whether it is subject to regulation by this State. Complaints about any health benefits providers or other insurers may always be presented to the Department.

COMMENT: One commenter states that many health plans have limitations upon coverage for certain types of treatments and therapies. The commenter questions whether, when that benefit is exhausted, the secondary coverage provider must continue coverage for that treatment or therapy, or whether responsibility will be terminated for all coverage providers.

RESPONSE: The secondary coverage provider must continue to provide coverage for that treatment or therapy, to the extent that the treatment is an eligible expense, or the costs of the treatment are within the limits of the contract of medical fee schedule allowances.

COMMENT: One commenter asks whether the $250,000 cap on benefits is for medical benefits only, exclusive of lost wages and essential services, or applies to all of these PIP benefits.

RESPONSE: The $250,000 cap applies to medical expense benefits only. N.J.S.A. 39:6A-4 sets forth separate limitations for income continuation and essential services benefits.

COMMENT: Two commenters note that the Unsatisfied Claim and Judgment Fund ("UCJF") requires auto insurers to audit hospital and medical bills in excess of $10,000. The commenters ask whether, in light of the fee schedule, this would still be a requirement of the UCJF.

RESPONSE: Inasmuch as the medical fee schedule does not apply to hospital charges as such, but hospital bills may include charges which contain services of health care providers who may be subject to the medical fee schedules, audits of such bills is still appropriate. Technically, however, this matter is beyond the scope of these rules. A definitive answer should be sought from the UCJF Board of Directors. All indications are that the UCJF Board of Directors plans no changes to its current rules.

COMMENT: One commenter questions whether health benefits providers will be required to audit hospital and medical bills, and if not, whether their failure to audit will impose a duty on the auto insurer, as the secondary coverage provider, to audit the bill prior to submitting the request for reimbursement from the UCJF.

RESPONSE: Health benefits providers do not receive reimbursements from the UCJF, and thus are under no obligation to audit hospital and medical bills. The Department believes that if a bill submitted is one which an auto insurer would have been required to audit as a primary coverage provider, the auto insurer is still obligated to audit that bill, even though it may be a secondary coverage provider. The commenter may wish to check with the UCJF Board of Directors for a definitive answer on this issue.

COMMENT: One commenter questions whether a health benefits provider is subject to penalties similar to auto carriers if they are late in processing payments, and if so, whether penalty payments affect the $250,000 cap.

RESPONSE: Because of the definition of "personal injury protection coverage" set forth at N.J.S.A. 39:6A-4, the Department is of the opinion that health benefit providers are not subject to the penalty provisions of N.J.S.A. 39:6A-5 for late payment of personal injury protection coverage. Health benefits providers are not subject to any other similar provision. Of course, any payment subjected to arbitration or litigation may incur penalties, generally for a finding of unfair claims settlement practices. Payment of penalties should never affect any benfit limit; otherwise, there would be no point in the penalty being assessed.

The Department advises the commenter that health benefits providers are not subject to the $250,000 cap on benfits. Auto insurers may not consider anything paid by the health benefits provider as counting towards the $250,000 cap. Only auto insurers, and payments made by auto insurers, are subject to the $250,000 cap on benefits set forth in N.J.S.A. 39:6A-4.

COMMENT: Two commenters ask what fee schedule applies when an out-of-State resident elects New Jersey PIP benefits pursuant to N.J.S.A. 17:28-1.4, and questions how a health benefits provider would pay.

RESPONSE: This comment does not squarely address these rules. Regarding the fee schedules to be used, readers should consult the Summary of Public Comments and Agency Responses for N.J.A.C. 11:3-29, appearing within this New Jersey Register.

Out-of-State residents should be assumed to have accepted payment of their personal injury protection coverage from the auto insurer, unless they specify otherwise, and the auto insurer is able to confirm that the insureds have coverage from a health benefits provider that makes no exclusions for auto injuries or PIP benefits. These rules of coordination do not apply to policies delivered out-of-State; therefore, it is possible that many out-of-State residents will have health coverage which will not be primary to PIP benefits. If health benefits plans of the out-of-State residents will be primary, auto insurers should coordinate benefits with the health benefits plans using these rules. If the health benefits plans of out-of-State residents will not be primary, auto insurers should pay benefits without further consideration of the existence of any health benefits plans. In most instances, the PIP plan will be primary.

COMMENT: Two commenters ask whether, when the auto insurer is the secondary coverage provider, it may request an independent medical exam when it believes the insureds' treatment is excessive, and the health benefits provider does not or will not conduct an exam to determine if further treatment is warranted.

RESPONSE: This comment has been responded to previously at 22 N.J.R. 3783, at least in part. The right of the auto insurer to request an independent physical exam is not abrogated by virtue of becoming a secondary coverage provider. Obviously, of course, the request for an independent physical exam should be weighed against the costs being borne by the auto insurer as the secondary coverage provider.

COMMENT: Two commenters state that it may be useful for the Department to develop a standard form to be utilized by health benefits providers and auto insurers for coordination of benefit claims.

RESPONSE: The Department has set criteria for an Explanation of Benefits (EOB) form at N.J.A.C. 11:3-37.10. Health benefits providers currently use EOBs which are more-or-less standardized. The Department has no standard EOB forms for health benefits providers, but such have developed as a matter of necessity. The Department has assumed that auto insurers would follow the examples of the health benefits providers, essentially. If this may not be achieved amongst the insurers without Department intervention, then the Department may develop a standard form EOB. Readers are advised that the Department has made a revision to the EOB form requirements, so that insureds may more easily understand what charges, if any, they might still owe.

COMMENT: One commenter notes that PIP benefits are paid regardless of fault to the statutory benefit limit, per person. The commenter asks whether, if health benefits providers pay, there are subrogation rights.

RESPONSE: The Department is not certain that it fully comprehends the commenter's question. Auto insurers have specific rights of subrogation and to seek recovery from collateral resources. These rights are set forth at N.J.S.A. 39:6A-9.1 and 39:6A-6, respectively. These statutory rights are not abrogated by virtue of the auto insurer being cast into the secondary coverage provider position. With respect to the issues of the rights of health benefit providers in such subrogation actions, and the mix of health benefits providers and auto insurers in subrogation actions, readers should refer to the Department's response previously provided at 22 N.J.R. 3781.

COMMENT: One commenter asks whether an employer who, in compliance with these rules, provides a health benefits plan which may be elected as primary coverage for auto accident-related injuries, will be subject to the "experience" related to the auto accident injuries. The commenter also asks whether this would also be true for coverage extended to spouses and other dependants.

RESPONSE: The health benefit plans of employers (and others) will be rated in the same manner as always. If a health benefits provider pays out more benefits, whether due to auto accident injuries or otherwise, it is assumed that the experience rating of the specific health benefit plans will be affected in varying degrees, depending on the size of the group and the magnitude of any aberrant experience. It should be kept in mind that most employer-sponsored plans are group plans, and are subject to group plan experience rating criteria. This would apply also for employer-sponsored single member contracts written to cover dependants and spouses.

COMMENT: One commenter states that the rules should avoid a no payments at all situation when disputes arise, with a procedure set so that someone pays while the dispute is in progress, with reimbursemer occuring after the dispute is settled.

RESPONSE: The Department has provided for such a procedure N.J.A.C. 11:3-37.11.

COMMENT: Two commenters request a clarification be made N.J.A.C. 11:3-37.8(a). One commenter requests that the rule be revis to require that an insured have primary health coverage which appli at the time of an injury. The second commenter requests that a speci reference to dental-only plans be included at N.J.A.C. 11:3-37.8(a).

RESPONSE: The Department will revise N.J.A.C. 11:3-37.8(a) to i clude the provisions set out in N.J.A.C. 11:3-37.5(a).

COMMENT: Two commenters question the treatment of expenses l auto insurers, as secondary coverage providers, incurred by an insur who has health coverage through an HMO, but who seeks treatment otherwise receives treatment outside of the HMO contract. One cor menter requests that the rules be revised to specify that such services a not allowable expenses. The other commenter states that the auto insur should be allowed to apply its deductible and copayments.

RESPONSE: When an insured elects to go outside the HMO contrac and the HMO determines that the services or expenses incurred a ineligible expenses, the auto insurer shall continue to cover these expens as allowable expenses in accordance with the requirements of N.J.A.C 11:3-37.7, to the extent that the expenses are within the medical fe schedule or are reasonable and medically necessary, and the auto insur does not pay any benefit amount in excess of what it would have pai had it been primary. The situation is no different from that which ma occur under a traditional health contract in which the insured elects surgery which the health benefits provider does not cover.

COMMENT: One commenter questions whether auto insurers ar required in their contracts to provide language regarding the premiu reduction rule at N.J.A.C. 11:3-37.5(b).

RESPONSE: Auto insurers should include contract language statin that the PIP-as-secondary coverage selection may be invalidated for th reasons set forth at N.J.A.C. 11:3-37.5(a), and that the insured may b requested to pay additional premiums for PIP coverage to reflect tha option selection invalidation. The contract language should either stat explicitly or otherwise reference current contract provisions regardin equitable cancellations for nonpayment of premiums.

COMMENT: One commenter questions whether the minimum stan dard rules of N.J.A.C. 11:4-16, when referenced by the rules at N.J.A.C 11:3-37, apply to both individual and group health benefits plans.

RESPONSE: No. N.J.A.C. 11:4-16 only applies to nongroup healt benefit plans. The Department notes that N.J.A.C. 11:3-37 never referen ces N.J.A.C. 11:4-16.

COMMENT: One commenter states that there is confusion as to hov and if the definitions of N.J.A.C. 11:4-16 would apply under PIP. Th commenter specifically questions: (a) whether the definitons of "insured" will vary between health benefits plans and PIP plans; (b) whether aut insurers are entitled to apply a health benefits provider's "pre-existin condition" application, or will become "primary payors" if the healt benefits provider denies coverage based on pre-existing auto-related con ditions, noting that PIP plans don't cover expenses of unrelated pre existing conditions; (c) whether there is a conflict between the healt benefits providers definition of "disability" and those used under PIP fo income continuation; and (d) if terms defined under PIP conflict wit health definitions, which definition applies.

RESPONSE: Definitions set forth under N.J.A.C. 11:4-16 apply only to nongroup health benefits plans, and have no application whatsoeve to PIP plans.

"Insured" typically is defined differently under health benefits plans and auto insurance. Hence the possibility that a health benefits plan covering the named insured, unlike his or her auto insurance policy, may not apply to a resident relative of the named insured's household.

Auto insurers may not use a health benefits provider's determination of a pre-existing condition to avoid benefit payments. If the health benefits provider and the auto insurer happen to draw the same conclusion about a particular condition and expenses arising from its treatment, then the expenses therefrom may be excluded by both carriers from coverage. (If both carriers draw the same conclusion, then the condition must not have been auto accident-related.) However, the auto insurer is obligated to make its own assessment in this matter. It is probable that in some circumstances, both carriers will rightfully deny coverage based upon a pre-existing condition, but there is a greater probability that the denials will not coincide. The auto insurer does not become a "primary payor" in instances when a health benefits provider denies coverage for treatment

penses associated with a pre-existing condition, but remains a second-y coverage provider, paying benefits in accordance with N.J.A.C. :3-37.7.

The definitions of "disability" between health benefits plans and auto surers may vary; however, this is of no importance. Coordination of nefits applies to payment of medical expenses (as defined by statute N.J.S.A. 39:6A-2), in whole or in part, not income continuation ben-its. An insured who has income continuation benefits under PIP plan id disability benefits under a health benefits plan may have to meet parate criteria to qualify for the respective benefits.

With respect to the issue of which definition applies, the answer rests ith the plan involved. Definitions expressly provided for PIP plans, hether by statute, rule or case law, apply to PIP plans, not health nefits plans. Definitions expressly provided for group and/or nongroup alth benefits plans through statute, rule, or case law, apply only to alth benefits plans.

COMMENT: One commenter questions whether N.J.A.C. 11:4-16.5, ncerning prohibited policy provisions, applies both to nongroup and oup policies. The commenter also asks how auto insurers are to treat alth benefits plan exclusions.

RESPONSE: N.J.A.C. 11:4-16.5 applies only to nongroup health ben-its plans. Health benefits plan exclusions should be treated the same pre-existing conditions, or other ineligible expenses of the health ben-its plan. Unless the exclusion is an ineligible expense under both the alth benefits plan(s) and the PIP plan, it is an allowable expense which ie PIP plan must consider, and payment shall be made in accordance ith N.J.A.C. 11:3-37.7.

COMMENT: One commenter requests an explanation of "territorial mitations" and the applicability of the term.

RESPONSE: The Department assumes that the commenter is ques-oning the use of "territorial limitations" in health benefits plans. Typi-ally, health benefit plans will state within the contract whether any overage will be provided for treatment received while traveling outside ie United States. Many health benefits plans exclude coverage for treat-ent received under such circumstances, sometimes making exceptions r travel in Canada and Mexico. This exclusion may or may not apply emergency treatments received while traveling outside the United tates.

COMMENT: One commenter requests confirmation that usage in the efinition of "eligible expense" and "medical fee schedule" of the phrase percent and percentage of a fee" refers only to the rental calculations nd unbundling of services.

RESPONSE: Yes, at this time. The phrase may mean more or less as ie medical fee schedules are revised over time.

COMMENT: One commenter requests confirmation that nongroup ealth benefits plans do not coordinate with any other group or nongroup ealth benefits plans, but will now coordinate with PIP plans.

RESPONSE: The commenter basically is correct. In reality, coordi-ation, as such, is permissible for health benefits providers. (Any health enefits plan which does not provide language for coordination is resumed automatically to be primary.) What has changed is that no ealth benefits plan may exclude benefits for auto accident injuries or mit benefits because an auto no-fault plan is available to the covered ember.

COMMENT: One commenter states that N.J.A.C. 11:3-37.6 does not ddress what occurs when coverage lapses because of a change in jobs and COBRA is not elected) and the next health benefits plan does not ay for pre-existing conditions. The commenter states that it assumes that f health coverage terminates or is exhausted and the PIP plan has remain-ng copayments and deductibles, that the auto insurer could apply the emaining copayment and deductible requirements as if it were primary. The commenter states that there does not appear to be an incentive for he insured to maintain health coverage once a serious injury occurs. The ommenter suggests that the $750.00 deductible should apply in such ases to provide an incentive for insureds to maintain health coverage.

RESPONSE: The Department disagrees with the commenter sum-narily.

The rules do address the scenario which the commenter presents. N.J.A.C. 11:3-37.6(d) states that the PIP plan shall continue to be liable even if the health benefits plan's coverage is terminated. This applies whether it is the health benefits provider, the group policyholder or the ndividual who terminates coverage, and it applies whether the termin-ation is voluntary or involuntary. Auto insurers should be aware that the majority of health benefits plan terminations occur involuntarily, and at a level that is beyond the insured's control. However, even in the instance in which the insured may voluntarily terminate employment and health benefits subsequently terminate (a situation which may not occur automatically), N.J.A.C. 11:3-37.6(d) still applies. Auto insurers shall not apply their deductibles or copayments as if they were primary under those circumstances.

Contrary to the commenter's belief, there is an incentive for insureds to maintain health coverage. It must be remembered that auto insurance applies only to treatment for auto accident-related injuries. Health coverage will apply for other injuries, sicknesses and preventive treatments. Health benefits plans, while very restrictive in many ways, do generally provide benefits up to $1,000,000; PIP plans are capped at $250,000. These incentives are substantial. The Department does not believe any other incentives are necessary. Furthermore, the statute specifies when the $750.00 deductible applies, and the situation discussed by the commenter does not qualify under the statute.

COMMENT: One commenter asks whether health benefits plans are also required to utilize an EOB identifying the same information set forth at N.J.A.C. 11:3-37.10 and notes that it believes certain plans do not include specific procedure codes, etc., which is information that the auto insurer may need.

RESPONSE: Health benefits providers have not been specifically required to utilize an EOB as set forth at N.J.A.C. 11:3-37.10, because they generally use such an informational EOB already. An exception may be HMOs or PPOs, and possibly self-insured plans. In the case of HMOs and PPOs, however, if any expense remains to be covered following coverage by the HMO and PPO (an unlikely situation), the information which the auto insurer received should be sufficient. This is also true for the self-insureds. Obviously, if an auto insurer cannot understand benefits and benefit payments, it should contact the claims department of the specific health benefits provider.

COMMENT: One commenter questions from whom the auto insurer, as a secondary coverage provider, should expect to receive bills and EOBs.

RESPONSE: As a secondary coverage provider, the auto insurer should expect most often to receive bills and an EOB through its insured, although other arrangements are possible, and are encouraged.

COMMENT: One commenter states that N.J.A.C. 11:3-37.11(a) and (b) appear to conflict, noting that under (b), if the health benefits provider asserts that it is not subject to the rules, and will not be a primary coverage provider, then the auto insurer shall assume primary payor status. The commenter states that the problem seems to be with the word "asserts" versus "provides proof" and requests additional clarification.

RESPONSE: No conflict exists between subsections (a) and (b) of the rule. The term "asserts" is appropriate. If the health benefits provider "provides proof" that it is not subject to regulation by this State, and will not become a primary coverage provider, there would be no basis for dispute, and thus N.J.A.C. 11:3-37.8 would apply automatically. Here, an assertion, without further proof, leaves room for dispute. However, if the dispute exists in areas other than whether the health benefits provider must comply with this subchapter or whether the health benefits plan does or should cover the injured individual under the circumstances, then subsection (a) of N.J.A.C. 11:3-37.11 applies. N.J.A.C. 11:3-37.11(a) might apply, for example, when the health benefits provider claims that the governing PIP Plan section is incorrect, or that the "birthday rule" at N.J.A.C. 11:3-37.12 has been applied inappropriately, etc.

COMMENT: One commenter states that N.J.A.C. 11:3-37.12(a)4 does not appear to be supported by the FAIR Act, and may have a direct impact on underwriting rules. N.J.A.C. 11:3-37.12(a)4 states that if an automobile policy identifies more than one person as a named insured on the automobile policy, the birthday of the named insured whose birthday occurs earliest in the calendar year shall be considered the determinant birthday on that automobile policy.

RESPONSE: The Department disagrees that the provision may be outside the scope of the FAIR Act, or that it will have a direct impact upon underwriting rules. One of the named insureds' birthdays must be determinant on that policy; it might as well be the earlier birthday as the latter. Any impact upon underwriting should be indirect and statistically insignificant, inasmuch as all auto insurers should comply with the rules, and that day of birth provides no relevant indication of a propensity for accidents, propensity to choose health benefits or PIP benefits as primary or secondary, or propensity to have an indeterminate number of resident relatives to whom the selection may apply (who are not themselves named insureds with their own auto policies). Additionally, the commenter has suggested no alternative method; therefore, the Department will make no revision.

COMMENT: One commenter requests clarification that when a health benefits provider is providing secondary coverage, that the health benefits plan may apply its deductible and copayment requirements to the remaining uncovered allowable expenses, and may pay the amount derived from that calculation, if that amount is less than the health benefits plan's liability would have been had it been the primary coverage provider. The commenter provided an example, which the Department has elected not to reproduce here.

RESPONSE: The commenter correctly states the concept involved. The commenter is cautioned, however, that its example is incorrect in one respect. Health benefits providers are reminded that they are not privileged to ignore amounts of expenses which exceed the medical fee schedules, but that, in accordance with N.J.A.C. 11:3-37.9(c)2iii, these amounts shall be considered.

COMMENT: One commenter requests confirmation that its interpretation of N.J.A.C. 11:3-37.9(e) is correct, providing the following example: An insured has a hospital benefits only contract, and a medical benefits only contract, with separate health benefits providers. The insured has elected the PIP plan to be primary. The insured is left with $1,000 worth of services not covered by the PIP plan, amounting to $600.00 worth of hospital expenses and $400.00 worth of medical expenses. Both health benefits providers determine that their separate potential liabilities exceed the $1,000 in outstanding charges if they had been primary coverage providers. The commenter asks whether each health benefits provider would pay $500.00 of the remaining $1,000 charge, or whether the hospital plan would pay $600.00 and the medical plan would pay $400.00.

RESPONSE: The two plans should apportion the expenses between themselves based on what their respective obligations would have been had they been primary. If the hospital plan would have paid more then the medical plan, the proportion of the payments should be applied to the remaining uncovered expenses, without regard as to whether expenses are hospital-related or medical-related expenses. The Department cannot conclude that the commenter's example is correct under either payment method, without further information regarding what each plan would have owed overall. The commenter is reminded that remaining uncovered expenses essentially should lose their identity for purposes of payment by secondary coverage providers.

COMMENT: One commenter questions whether the Department's position concerning possible ERISA-exempt plans has changed in light of the recent decision of the United States Supreme Court in *F.M.C. Corp. v. Holliday,* Docket No. 89-1048.

RESPONSE: No. *F.M.C. Corp. v. Holliday* addresses a situation in which the self-funded plan has already been determined to be ERISA-exempt, and whether an anti-subrogation law may be imposed upon the self-funded plan. This has no bearing on the Department's position that a "self-insured" plan is subject to New Jersey regulation unless and until it provides the Department with a document from the U.S. Department of Labor stating that the plan qualifies as an ERISA-exempt self-funded plan which is subject to no state regulation, or that the plan is partially insured and therefore subject to regulation of its solvency and financial condition only by this State.

COMMENT: One commenter requests that the Department revise N.J.A.C. 11:3-37.5(a) by adding a new section to allow auto insurers to invalidate a PIP-as-secondary coverage option selection when the indicated health benefits provider allows itself to become primary but contains a clause in the plan contract that it can subrogate payments made involving injuiries arising out of an automobile accident where the plan provides primary coverage. The commenter states that this would eliminate those ERISA-exempt self-funded plans which allow primacy to PIP, but will subrogate against bodily injury claim recoveries (in light of the ruling in *F.M.C. Corp. v. Holliday,* Docket No. 89-1048). The commenter states that this would prevent such plans from shifting the mandatory PIP coverage to mandatory bodily injury liability.

RESPONSE: The Department appreciates the commenter's concern, but does not believe that the revision will have the affect intended. Any self-funded plan which is truly ERISA-exempt may choose to act as a primary coverage provider whether or not the insured selects that option on the Coverage Selection Form and then subrogate against any bodily injury recovery the insured may collect. In fact, it is questionable whether the self-funded plan would be foreclosed from seeking recovery from collateral resources (that is, PIP benefits) under the *F.M.C.* ruling. The Department does not believe that the revision the commenter requests will eliminate the problem the commenter foresees, but will result in numerous coverage option selection invalidations which are not warranted.

COMMENT: Two commenters question the application of the P option selection to commercial automobile policies. Both commente state that they understand how the PIP primacy option selection wor if the named insured is other than a corporation or parternship, but th when the named insured is not an individual, the notions of other medic coverage and resident relatives have no real meaning. The commente request an explanation of the Department's position in regard to practic application of the option.

RESPONSE: The Department is not in a position to provide t commenters with a definitive response at this time. This is an issue whic in conjunction with certain other option selections, the Department h been reviewing for a while, via the Commissioner's Producer Adviso Committee. The Committee is composed of several different trade a sociations. The Committee is scheduled to render a report to the Depa ment within the next several weeks addressing the various aspects of t practical application of personal options to commercial auto policies. T Department will study the Committee's report and recommendatio before drawing any conclusions on the matter. Insurers are advised continue to conduct their business with respect to commercial auto po cies regarding this PIP option in the same manner as they do curren regarding other personal coverage options, until the Department advis otherwise.

COMMENT: One commenter states that the definition of "nam insured" should not have been revised to remove the reference to "natu persons." The commenter notes that the Department removed the phra "natural person" so as to avoid any conflict with the position that t primary option may apply on commercial auto policies. The comment states that the Department is incorrect to make the application to co mercial auto policies, and should reintroduce the term "natural person to the definition of "named insured."

RESPONSE: The Department disagrees. The statutory definition "named insured" does not reference "natural persons." The deletion the term "natural persons" was appropriate.

Summary of Agency-Initiated Changes:

The Department has revised the definition of named insured N.J.A.C. 11:3-37.2, to more closely track the language of the statuto definition set forth at N.J.S.A. 39:6A-2f.

In addition to the changes made in response to comments, the Depa ment has revised the language of N.J.A.C. 11:3-37.5 to make it clear th a notice of invalidation of coverage option selection and demand f payment of the premium reduction amount is a prerequisite to effecti an equitable cancellation of the automobile policy. In the process setting forth this clarification and the changes made in response to co ments, certain sections have been renumbered.

The Department has revised the rules concerning the EOB, at N.J.A. 11:3-37.10. The Department is requiring auto insurers to include a stat ment on the EOB substantially paraphrasing the FAIR Act with rega to charges in excess of the medical fee schedules. This statement intended to alert insureds to the function of the medical fee schedul and balance billing by health care providers. As more parties becon aware of the medical fee schedules, the fee schedules may have an increa ing cost containment effect.

Full text of the adoption follows (additions indicated in boldfa with asterisks ***thus***; deletions indicated in brackets with asteris *[thus]*):

11:3-14.8 Application of the option to choose health care insuranc coverage as the primary insurer

When an insured or prospective insured elects to have a heal insurer provide primary personal injury protection medical expens benefits, the medical expense benefits available to the insured und his or her automobile policy's personal injury protection provisio shall become a secondary benefits provider. The order of benef determination shall be in accordance with N.J.A.C. 11:3-37.

SUBCHAPTER 37. ORDER OF BENEFIT DETERMINATIO BETWEEN AUTOMOBILE PERSONAL INJURY PROTECTION AND HEALTH INSURANCE

11:3-37.1 Purpose and scope

The purpose of this subchapter is to establish guidelines for t order of benefit determination between a plan of health insuran and personal injury protection provided through an automobile pc

:y, when a named insured elects to have his or her personal injury rotection become secondary coverage for the provision of benefits or medical expenses incurred due to injuries sustained in an auto- nobile accident. The provisions of this subchapter shall apply to all utomobile policies, as that term is defined at N.J.S.A. 39:6A-2a, ssued to New Jersey residents, or renewed on or after January 1, 991, and to all health benefits plans which have been or will be lelivered or issued for delivery in this State.

11:3-37.2 Definitions

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

"Actual benefits" means those benefits determined to be payable or allowable expenses.

"Allowable expense" means a medically necessary, reasonable and ustomary item of expense covered by an insured's health benefits plan(s) or PIP plan as an eligible expense, at least in part. When a plan provides benefits in the form of services, the reasonable monet- ıry value of each such service shall be considered as both an allow- ible expense and a paid benefit.

"Benefits" means the provision of the following in consideration of payment of premiums or fees on a prepaid or postpaid basis:

1. Services, including supplies;
2. Payment of expenses incurred;
3. A combination of 1 and 2 above; or
4. An indemnification.

"Eligible expense" means:

1. In the case of health benefits plans, that portion of the medical expenses incurred for treatment of an injury which is covered under the terms and conditions of the plan, without application of the deductible(s) and copayment(s), if any.

2. In the case of PIP plans, that portion of the medical expenses ncurred for treatment of an injury which, without considering any deductible and copayment, shall not exceed:

i. The percent or dollar amounts specified on the medical fee schedules, or the actual billed expense, whichever is less; or

ii. The reasonable amount, as determined by the automobile in- surer, considering the medical fee schedules for similar services or equipment in the region where the service or equipment was provided, when an incurred medical expense is not included on the medical fee schedules.

"Health benefits provider" means any person, whether subject to the regulation of the New Jersey Department of Insurance, Depart- ment of Health, or both, or not otherwise subject to such regulation, who contracts to provide health services, provide reimbursement for the cost of health services in whole or in part, or to provide for indemnity in the event health services are used, in return for a prepaid or postpaid premium or fee or other consideration, including, but not limited to:

1. Insurers, as defined at N.J.S.A. 17B:17-2;
2. Hospital service corporations, as defined at N.J.S.A. 17:48-1;
3. Medical service corporations, as defined at N.J.S.A. 17:48A-1;
4. Health service corporations, as defined at N.J.S.A. 17:48E-1;
5. Health maintenance organizations, as defined at N.J.S.A. 26:2J-2;
6. Dental service corporations, as defined at N.J.S.A. 17:48C-2;
7. Dental plan organizations, as defined at N.J.S.A. 17:48D-2;
8. Medicare;
9. Medicaid;
10. State Employees Health Benefits Plan;
11. CHAMPUS;
12. Self-insured programs; and
13. An entity organized under the laws of any other state or jurisdiction which delivers certificates to residents of New Jersey evidencing coverage under a contract issued and delivered in a state or jurisdiction other than New Jersey.

"Hospital expenses," when used by the automobile insurance PIP plan, means those expenses defined at N.J.S.A. 39:6A-2f.

"Injury" means bodily injury sustained by an insured as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile or by an object propelled by or from an automobile.

"Insured" means a person eligible for coverage, at least in part, for medical expenses incurred for treatment of injuries, under an automobile policy PIP medical expense provision, and who meets the definition of a named insured or family member.

1. Named insured means the person ***or persons*** identified as the insured in the automobile policy and***, if an individual,*** that person's spouse, if the spouse is a resident of the same household, except that if the spouse ceases to be a resident of the household of the named insured, coverage for that spouse shall continue until the ***expiration of*** full term of any policy period in effect at the time of the cessation of residency *[has expired]*.

2. Family member means any relative of the named insured or the named insured's spouse who:

i. Is related to the named insured or named insured's spouse by blood, marriage, adoption or guardianship;

ii. Resides in the household of the named insured or spouse of the named insured; and

iii. Is not a named insured under another automobile policy.

"Medical expenses" means expenses for medical, surgical and dental treatment, professional nursing services, hospital expenses, rehabilitation services, diagnostic services, ambulance services, prosthetic devices, medications and other reasonable and necessary expenses resulting from the treatment prescribed by persons licensed to practice medicine and surgery, dentistry, psychology or chiropractic in accordance with this State's laws, or by persons similarly licensed in other states or nations, or any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

"Medical fee schedule" means that list of services, procedures and supplies to which have been assigned a maximum fee or percentage of a fee payable by an automobile insurer for expenses incurred as a result of the rendering to an insured any of those specific services, procedures or supplies for injuries, which list is set forth at N.J.A.C. 11:3-29.

"Out-of-State automobile insurance coverage" or "OSAIC" means any coverage for medical expenses under an automobile insurance policy other than PIP, as PIP is defined herein, including automobile insurance policies issued in another state or jurisdiction.

"PIP" means personal injury protection coverage provided as part of an automobile insurance policy issued in New Jersey, specifically those provisions for medical expenses coverage.

"Plan" means any policy, contract, certificate, booklet, evidence of enrollment, program, or other such term which evidences the existence of a relationship between a health benefits provider or PIP carrier and an insured with respect to the provisions of hospital, medical, surgical, dental and/or other health care related benefits, at least in part.

"Primary coverage" means coverage by any plan which determines its actual benefits payable on allowable expenses incurred by an insured for treatment of injuries without taking into consideration the existence of any coverage for which the insured may be eligible provided secondary in accordance with this subchapter. There may be more than one plan providing the insured primary coverage.

"Secondary coverage" means coverage by any plan which determines its actual benefits payable on all allowable expenses incurred by an insured for treatment of injuries after all plans providing primary coverage have considered expenses incurred and paid actual benefits.

11:3-37.3 Health benefits providers

(a) Nothing in this subchapter shall be construed as requiring any health benefits provider to offer, provide, or continue coverage to or for any individual or group, except as may be set forth by other laws of this State, or of the Federal government.

(b) Nothing in this subchapter shall be construed as requiring any health benefits provider to provide coverage for any treatment or service not otherwise covered under the terms of the applicable health benefits plan.

(c) No health benefits contract or policy delivered or issued for delivery in this State, or renewed, continued or converted on or after

January 1, 1991, shall contain any provision, rider, waiver of endorsement or other instrument which restricts, limits or excludes coverage, directly or indirectly, of services or expenses otherwise eligible under the policy or contract on the grounds that such expenses or services would be covered under an automobile policy PIP provision for which the insured would be eligible had the named insured on the automobile policy not selected the PIP-as-secondary coverage option.

(d) No health benefits contract or policy delivered or issued for delivery in this State, or renewed, continued or converted on or after January 1, 1991, shall contain any provision, rider, waiver or endorsement, or other instrument which restricts, limits or excludes coverage, directly or indirectly, of services or expenses otherwise eligible under the policy or contract on the grounds that:

1. Such expenses arise from an automobile-related injury;
2. Such expenses are covered or paid by PIP; or
3. Such expenses are covered or paid by OSAIC except for reductions in benefits when the health benefits contract provides secondary coverage as defined in and permitted by this rule.

(e) A health benefits contract or policy may provide that it is always primary to OSAIC, or may provide that it will determine its benefits as if it were secondary to any OSAIC. If the health benefits contract or policy provides that it will determine its benefits as if it were secondary to OSAIC and the OSAIC either contains a provision that it is always excess or secondary, or refuses to cooperate in determining the amount of benefits payable by the health benefits plan as secondary coverage provider, the health benefits plan shall provide primary coverage.

11:3-37.4 Application of the PIP-as-secondary coverage option

(a) When a named insured elects the PIP option, whereby the named insured intends that medical expenses incurred for treatment of an injury are to be covered by a health benefits provider or providers, as evidenced on the Coverage Selection Form, then the medical expense provisions of the PIP coverage shall be considered to be secondary coverage for the purposes of the order of benefit determination, and all health benefits plans of an insured subject to the PIP option elected shall be considered to be primary coverage.

(b) The election by the named insured to make PIP medical expense provisions secondary coverage shall apply to only the named insured and family members of the named insured who reside in the named insured's household and are not named insureds under other automobile policies.

(c) The election by the named insured to make PIP medical expense provisions secondary coverage shall continue in force as to subsequent renewal or replacement policies until the automobile policy insurer or its authorized representative receives a properly executed written request revoking the selection of this option.

(d) In the event that an insured is ineligible for health plan coverage of medical expenses, or is eligible for coverage under a dental expense or dental service plan only when an injury occurs, despite the selection of the PIP-as-secondary coverage option by the named insured, benefits shall be provided to the insured through PIP coverage in accordance with N.J.A.C. 11:3-37.8.

11:3-37.5 Health benefit plan standards and the PIP premium reduction

(a) An automobile insurer may eliminate the premium reduction on the base rate applicable to the amount of medical expense benefit chosen in conjunction with the PIP-as-secondary coverage option election if the automobile insurer ***complies with (b) below, and*** verifies that the coverage specified by the named insured:

1. Excludes the provision of benefits for treatment of injuries of an eligible insured when expenses incurred in relation to treatment of those injuries are eligible expenses under an automobile policy's PIP provisions; or
2. Provides that it is always secondary, or otherwise will not be a primary provider of benefits; *[or]*
3. Provides benefits only for dental expenses or dental services*[.]**, **or***

4. Provides benefits only for prescription drugs.

(b) An automobile carrier shall notify a named insured if the automobile insurer determines that the health benefits plan(s) specified by the named insured contain exclusionary or restrictive coverag provisions as set forth in (a) above, or if the automobile insur determines that ***one or more of the insureds covered under the aut mobile insurance policy is not provided coverage by at least one o** the health benefits plan(s) specified by the named insured *[do(e not provide coverage to at least one insured covered under the aut mobile insurance policy]*, and, therefore, the named insured premium reduction for PIP medical expense benefits will b eliminated.

1. The notice shall be in writing and shall specify the reasor why the automobile insurer believes the named insured's health pla coverage is not in compliance with this subchapter.

***2. The automobile insurer may include in the notice a demand f payment of the premium reduction difference with an explanation th failure to pay the indicated premium reduction difference may resu in early cancellation of the automobile policy in accordance with (below.**

3. The notice shall be sent no later than 30 days prior to the dat of cancellation as calculated in accordance with (c) below. A notic which is sent 30 days prior to the date of cancellation shall eith contain a statement that it is a notice of cancellation, or be attache to a notice of cancellation, setting forth the effective date of can cellation.*

[1. The automobile insurer may demand payment of the premiur reduction difference.] ***(c)*** The effective date of the cancellation c a policy for nonpayment of premium shall not be earlier than 10 day prior to the last full day of which premium received by the company prior to the date of preparation of the cancellation notice, would pa for coverage on a pro rata basis. In calculating the effective date c the cancellation, the premium applicable to the coverage provide by the policy and the premium received by the company at or prio to the time the cancellation notice was prepared shall be the premiur used for the calculation and determination of such effective date

1. No cancellation in accordance with (c) above shall be effectiv unless prior thereto, the automobile insurer shall have notified th named insured that the premium reduction difference had to be pai to avoid cancellation, as specified in (b)2 above.

2. No cancellation notice shall be mailed prior to 30 days i advance of its effective date.

*[3.]****(d)*** If the insured provides payment of the full premiur amount and subsequently provides proof that coverage is not restric ted in the manner set forth in accordance with (a) above, ***or tha all insureds under the automobile policy were provided coverage by health benefits plan at the time notification of noncoverage was sent and that such coverage continues and is not restricted in the manne set forth in accordance with (a) above,*** the automobile insurer shal refund the monies paid in excess of the full reduction, or shall credi any excess paid on the reduced premium to the extent any premiun payment is still unpaid on the policy.

11:3-37.6 Order of benefits determination when PIP is secondary coverage

(a) When the named insured of an automobile policy has selected the PIP-as-secondary coverage option, all health benefits plans fo which the insured is eligible shall provide coverage for the allowabl expenses incurred by the insured due to an automobile-related injur prior to any benefits for medical expenses being paid by a PIP plan

(b) If the insured is eligible for coverage under more than on group health benefits plan, the group health benefits plans shal coordinate benefits with one another in accordance with the rule set forth for such plans at N.J.A.C. 11:4-28.

(c) The PIP plan shall provide benefits for allowable expense remaining uncovered after all health benefits plans for which th insured is eligible have paid benefits towards those allowable ex penses.

(d) The PIP plan shall continue to be liable for expenses relatec to the same occurrence as the expenses are incurred, whether or no the health benefits plan(s) in force at the time of the accident termin ate(s) coverage, or benefits provided under the health benefits plan(s are exhausted subsequent to the occurrence of the accident, up tc the maximum PIP benefits available to the insured under the terms of the automobile policy.

(e) Total benefits paid by an insured's health benefits and PIP plans shall not exceed the amount of total allowable expenses.

11:3-37.7 Determination of PIP medical benefits payable when PIP is secondary coverage

(a) In calculating the actual benefits to be paid by the automobile insurer when the PIP-as-secondary coverage option has been selected, the automobile insurer shall first determine the amount of eligible expenses which would have been paid after application of the deductible and copayment limitations had the PIP-as-secondary coverage option not been selected.

1. In the event the remaining allowable expenses are less than the benefits calculated pursuant to (a) above, the automobile insurer shall pay actual benefits equal to the remaining allowable expenses, without reducing the remaining allowable expenses by its deductible or copayments.

2. In the event the remaining allowable expenses are greater than the benefits calculated pursuant to (a) above, the actual benefits paid by the automobile insurer shall be the benefits calculated pursuant to (a) above, without reducing the remaining allowable expenses by its deductible or copayments.

(b) In paying actual benefits, the automobile insurer shall not:

1. Reduce its actual benefits payable on account of any deductibles or copayments of the health benefits plans which have provided benefits ahead of the PIP plan due to the selection of the PIP-as-secondary coverage option; or

2. Reduce its actual benefits payable for any allowable expense remaining uncovered which item of expense otherwise would not be an eligible expense under the PIP plan, except as set forth by (c) below.

(c) In determining remaining uncovered allowable expenses, the automobile insurer shall not consider any amount for items of expense which exceed the dollar or percent amounts recognized by the medical fee schedules promulgated pursuant to N.J.S.A. 39:6A-4.6.

(d) The total amount of benefits to be provided through the PIP medical expense provisions for each insured per accident or occurrence shall not exceed the maximum PIP benefits as provided for by the terms of the policy.

11:3-37.8 Health benefits plan coverage ineligibility

(a) When, subsequent to the selection of the PIP-as-secondary coverage option by a named insured, it is determined that an insured did not have health coverage in effect at the time of an injury, ***or had health coverage in effect at the time of any injury which is such that the PIP-as-secondary coverage option selection could have been invalidated by the automobile insurer and elimination of the premium reduction amount effected in accordance with N.J.A.C. 11:3-37.5(a), but was not,*** then the insured shall be provided benefits for incurred medical expenses through the PIP medical expense provision.

1. Benefits payable shall be subject to a per accident deductible equalling the total of $750.00 plus the PIP deductible selected by the named insured of the policy.

2. Benefits payable shall be subject to a 20 percent copayment for amounts less than $5,000 after the deductible has been satisfied.

3. Determination of the amount of benefits payable shall be made in accordance with medical fee schedules promulgated pursuant to N.J.S.A. 39:6A-4.6 and set forth at N.J.A.C. 11:3-29, or on a reasonable basis, as determined by the automobile insurer, considering the medical fee schedules for similar services or equipment in the region where the service or equipment was provided, when an item of expense is not included on the medical fee schedules.

4. Total benefits paid for each insured eligible for benefits in any one accident shall not exceed the maximum PIP benefits provided for by the terms of the policy.

(b) All items of medical expense incurred by the insured for treatment of an injury shall be eligible expense to the extent the treatment or procedure from which the expenses arose is recognized on the medical fee schedules, or are reasonable medical expenses in accordance with N.J.S.A. 39:6A-4.

(c) The automobile insurer shall be entitled to recover, for the contract period in which the automobile-related injury occurred, the difference between the reduced premiums paid on the policy and the amount of premium which would have been due on the policy had the named insured not selected the PIP-as-secondary coverage option, and no premium reduction shall be provided on that policy for the PIP-as-secondary coverage option during the remainder of that current contract period.

11:3-37.9 Determination of benefits when PIP is primary coverage

(a) When no election has been made by a named insured to make his or her health benefits plan(s) primary coverage provider(s), so that the PIP plan will provide primary coverage for medical expenses incurred for treatment of injuries, the PIP plan shall provide benefits to the insured without consideration of any benefits for which the insured may be eligible under any health benefits plan.

(b) Actual benefits paid by the PIP plan shall be for all medical expenses which are eligible expenses incurred for treatment of injuries, subject to application of the deductible provided for by the terms of the automobile policy, and a 20 percent copayment requirement for amounts incurred after the deductible and up to $5,000.

(c) Actual benefits payable by a health benefits plan, when the PIP plan is providing primary coverage for medical expenses incurred for treatment of injuries, shall be the lesser of the remaining uncovered allowable expenses or the actual benefits that would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

1. Actual benefits payable may be reduced by the deductible(s) and copayment requirements applicable by the terms of the health benefits plan, and shall not exceed the amount of actual benefits that would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

2. Allowable expenses remaining uncovered, which the health benefits plan(s) shall consider when the PIP plan is providing primary coverage, include:

i. Any PIP deductible(s);

ii. Any PIP copayment amounts;

iii. Any expenses which exceed the medical expense coverage limits of the PIP plan per person per accident, as set forth by the terms of the automobile policy; and

iv. Any expenses not covered by the PIP plan when such expense was determined to be in excess of the reasonable charge for an item of expense not listed on the medical fee schedules, but for which the automobile insurer determined a reasonable charge based on the medical fee schedule for a similar item of expense in the region where the service or equipment was provided.

(d) When a health benefits plan provides hospital expense or service benefits only, or medical expense or service benefits only, and is not otherwise a part of a basic health benefits package, all allowable expenses remaining uncovered shall be considered by that health benefits plan for the provision of benefits, without regard as to whether the expenses are hospital-related or medical-related expenses. Actual benefits paid by that health benefits plan for the allowable expenses remaining uncovered shall not exceed the total actual benefits which would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

(e) When there is one health benefits plan providing insureds hospital expense or service benefits and another health benefits plan providing insureds medical expense or service benefits as two separate parts of one basic health benefits plan package, the hospital benefits plan and the medical benefits plan shall both consider all allowable expenses remaining uncovered and shall apportion such allowable expenses between the two plans on a pro-rata basis without regard as to whether the expenses are hospital-related or medical-related expenses. Actual benefits paid by each plan of the health benefits plan package shall not exceed the total actual benefits which would have been payable by each plan had the health benefits plan package been providing primary coverage.

(f) No insured shall be liable to a health care provider for any fees for services or supplies which exceed the dollar or percentage amounts recognized for those services or supplies on the medical fee schedules.

(g) No health benefits plan shall seek repayment from or withhold payment to an insured for amounts paid to the insured in consider-

ation of charges which were in excess of the amounts set forth in the medical fee schedules.

(h) If there is more than one group health benefits plan providing secondary coverage to an insured, these plans may coordinate their benefits with one another in accordance with N.J.A.C. 11:4-28.

11:3-37.10 Explanation of benefits

(a) Automobile insurers shall develop and utilize an explanation of benefits form to be provided with the payment of benefits for expenses incurred for treatment of injuries which clearly identifies and explains the following:

1. Each procedure for which a claim has been made;

2. Eligible expense related to each procedure with an indication of whether the eligible expense is based on the medical fee schedules or is the reasonable charge as determined by the automobile insurer;

3. Actual benefits paid;

4. The deductible applied; *[and]*

5. A concise explanation why any item of expense is considered an ineligible expense, when this occurs*[.]**; **and**

6. A statement to insureds that no health care provider may demand or request any payment from any person in excess of those permitted by the medical fee schedules, and that no person is liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by the medical fee schedules pursuant to N.J.S.A. 39:6A-4.6. The statement should note the medical fee schedules do not apply to hospitals or rehabilitation facilities regulated by the New Jersey Department of Health.*

11:3-37.11 Dispute as to primacy of coverage

(a) If, subsequent to the selection of the PIP-as-secondary coverage option by the named insured, injuries are sustained by an insured eligible for health benefits plan coverage, but a dispute exists between the health benefits provider and the automobile insurer, then the health benefits provider shall provide benefit as if it were the primary coverage provider and no PIP benefits were available to the insured. In no event shall the provision of benefits be unreasonably delayed by either a health benefits provider or an automobile insurer.

(b) If the health benefits provider asserts that it is not subject to N.J.A.C. 11:3-37.3, and thus, will not act as the primary coverage provider then the automobile insurer shall assume the role of primary coverage provider, and provide its benefits in accordance with N.J.A.C. 11:3-37.8. The automobile insurer shall be entitled to recover premium reductions in accordance with N.J.A.C. 11:3-37.8(c).

11:3-37.12 Eligibility under two or more automobile policies

(a) If an insured is eligible for coverage of medical expenses under more than one automobile policy, the determination as to which automobile policy will assume coverage responsibility for that insured shall be as follows:

1. A named insured shall receive benefits for medical expenses under the terms of the automobile policy on which he or she, or his or her spouse, is identified as the named insured.

2. A family member who is a child of a named insured or the named insured's spouse shall receive benefits for medical expenses under the automobile policy of the named insured, subject to the following:

i. If the child is a child of more than one named insured or of more than one spouse of a named insured, the child shall receive benefits under the terms of the automobile policy of the named insured who has legal custody of that child or whose spouse has legal custody of that child.

ii. If the child is a child of more than one named insured or of more than one named insured's spouse, and legal custody of that child has either never been awarded, or has been awarded jointly, then the child shall receive benefits under the terms of the automobile policy of the named insured whose birthday occurs earliest in the calendar year.

iii. If the child is a named insured or the spouse of a named insured, (a)1 above shall apply.

3. If neither (a)1 nor (a)2 above apply to an adult or child family member, then that family member shall receive benefits for medical expenses under the terms of the automobile policy of the named insured whose birthday occurs earliest in the calendar year.

4. If an automobile policy identifies more than one person as named insured on the automobile policy, the birthday of the name insured whose birthday occurs earliest in the calendar year shall b considered the determinant birthday on that automobile policy.

(b) An insured shall not receive benefits for medical expense under more than one automobile policy.

(c) If an automobile policy PIP plan provides benefits for medic expenses for an insured who is eligible for medical expense benefi under more than one automobile policy PIP plan, the automobil insurer of the paying PIP plan may seek equitable pro rata contribu tions from the other automobile policy PIP plan(s) for the benefi actually paid by the paying PIP plan.

11:3-37.13 Penalties

Each automobile policy or health benefits plan subject to the term of this subchapter which fails to comply with the terms herein sha be in violation of this subchapter. Failure to comply with the term of this subchapter may result in the assessment of any and all penal ties in accordance with the laws of this State.

11:3-37.14 Severability

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

11:4-16.4 Policy definitions

(a) Except as provided hereafter, no health insurance policy de livered or issued for delivery in this State shall contain definition respecting the matters set forth below unless such definitions compl with the requirements of this section.

1. "Accident", "accidental injury", "accidental means", shall b defined to employ "result" language and shall not include word which establish an accidental means test or use words such as "ex ternal, violent, visibile wounds" or similar words of description o characteristics.

i. "Injury" shall not be defined more restrictively than accidenta bodily injury sustained by the insured person which is the direct caus of the loss, independent of disease, bodily infirmity or other cause and which occurs while the insurance is in force.

(l) Such definition may provide that injuries shall not includ injuries for which benefits are provided under workers' compensa tion, employer's liability or similar law, out-of-State automobile in surance coverage as defined at N.J.A.C. 11:3-37.2 and provided fo at N.J.A.C. 11:3-37.3, or injuries occurring while the insured perso is engaged in any activity pertaining to any trade, business, employ ment, or occupation for wage or profit.

2.-17. (No change.)

11:4-16.5 Prohibited policy provisions

(a)-(k) (No change.)

(l) No policy shall limit or exclude coverage by type of illness accident, treatment or medical condition, except as follows:

1.-7. (No change.)

8. Treatment provided in a government hospital; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability o occupational disease law, out-of-State automobile insurance coverage as defined at N.J.A.C. 11:3-37.2 and provided for at N.J.A.C. 11:3-37.3; services rendered by employees of hospitals, laboratories or other institutions; services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;

9.-12. (No change.)

(m)-(q) (No change.)

11:4-28.2 Definitions

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

. . .

"Plan" means coverage with which coordination is allowed. The definition of "plan" in the group contract must state the coverages

hich will be considered in applying the COB provision of that ɔntract. The right to include a coverage shall be limited by 1 through below.

1.-2. (No change.)

3. A "plan" may include:

i.-iii. (No change.)

iv. Group hospital indemnity benefit amounts exceeding $150.00 er day; and

v. Medicare or other governmental benefits, except those benefits s provided in 4vii below. This part of the definition of "plan" may e limited to the hospital, medical and surgical benefits of the gov-rnmental program.

4. (No change.)

. .

1:4-28.5 Prohibited coordination; benefit design

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

(c) No contract delivered or issued for delivery in this State, or enewed, continued or converted on or after January 1, 1991, shall ontain any provision, rider, waiver or endorsement or other instru-nent which restricts, limits or excludes coverage, directly or indirect-y, of services or expenses otherwise eligible under the contract on he grounds that such expenses or services would be covered under ın automobile no-fault medical benefits plan for which the covered nember would be eligible, except as provided for by N.J.A.C. .1:3-37.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CRIMINAL JUSTICE POLICE TRAINING COMMISSION

School Administration Operating Entity Responsibilities

Adopted Amendment: N.J.A.C. 13:1-7.2

Proposed: August 6, 1990, at 22 N.J.R. 2256(b).

Adopted: October 3, 1990, by the Police Training Commission, Robert T. Winter, Chairman, and Director, Division of Criminal Justice.

Filed: January 17, 1991, as R.1991 d.63, **with substantive and technical changes** not requiring additional public notice and comment.

Authority: N.J.S.A. 52:17B-71(h).

Effective Date: February 19, 1991.

Expiration Date: July 5, 1993.

Summary of Public Comments and Agency Responses:

The amendment of the Police Training Commission rules regarding Operating Entity Responsibilities was proposed on August 6, 1990. The comment period closed on Septembr 5, 1990.

N.J.A.C. 13:1-7.2(a)20xii

COMMENT: The Police Academy Directors Association of New Jersey recommended that the requirement for urine specimens to be delivered to the laboratory within one laboratory working day of acquisition should be changed to two laboratory days of acquisition.

RESPONSE: The Commission determined that the requirement of delivery to the laboratory within one laboratory working day of acquisition should be retained. However, it explained that this requirement means that samples must be delivered to the laboratory at any time during the next laboratory working day following completion of acquisition of all samples. If, due to some unusual circumstance, delivery within the required time would create undue hardship for the academy, the school director may, through direct application to commission staff, obtain a reasonable relaxation of the one laboratory working day delivery requirement. This explanation of the delivery requirement is explained in detail in the Police Training Commission Drug Screening Standards.

N.J.A.C. 13:1-7.2(a)20iii

COMMENT: The Special Assistant to the Commissioner of Adult Institutions of the Department of Corrections recommended that the Police Training Commission have the authority to approve a drug testing facility rather than be the sole determiner of the facility to be used for the analysis of urine specimens.

RESPONSE: The Commission determined that in order to insure that acceptable standards are met, it is appropriate that the Commission be the sole determiner of the facilities to be utilized for specimen analysis rather than simply approve a proposed facility.

N.J.A.C. 13:1-7.2(a)20vi

COMMENT: The Special Assistant to the Commissioner of Adult Institutions of the Department of Corrections recommended that specific individuals other than school staff members be permitted to serve as official monitors for conducting drug testing.

RESPONSE: The Commission determined that, in general, only school staff members should be permitted to serve as official monitors. However, where appropriate, as with the Department of Corrections' practice of using internal affairs officers as official monitors, the rule could be relaxed.

N.J.A.C. 13:1-7.2(a)20vii

COMMENT: The Special Assistant to the Commissioner of Adult Institutions of the Department of Corrections recommended that the official monitor rather than the school director be responsible for determining whether a trainee be permitted to void in private.

RESPONSE: The Commission determined that the responsibility for the drug screening process, and therefore the decision to permit a trainee to void in private, properly rests with the school director. Although the school director need not be physically present during the acquisition process, he or she must be available to decide whether a particular trainee should be permitted to provide a sample outside the presence of the official monitor. The language of the rule as currently written is sufficiently broad to permit the official monitor to determine on a case-by-case basis how much clothing a trainee who is to void in private must remove.

N.J.A.C. 13:1-7.2(a)20viii

COMMENT: The Special Assistant to the Commissioner of Adult Institutions of the Department of Corrections recommended that the school director rather than the appointing authority be responsible for requesting that a member of another agency serve as official monitor when a school staff member of the same sex as the trainee is not available.

RESPONSE: The Commission agreed that it was inappropriate in many circumstances for the appointing authority to request someone from another agency to serve as the official monitor. However, it is the Commission's opinion that this function is the responsibility of the operating entity of the academy. The Commission therefore changed "appointing authority" in N.J.A.C. 13:1-7.2(a)20viii to "operating entity."

COMMENT: The Special Assistant to the Commissioner of Adult Institutions of the Corretions recommended that any gender specific references be eliminated.

RESPONSE: The Commission agreed and has rewritten the rule to be gender neutral.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated by brackets with asterisks *[thus]*):

13:1-7.2 Operating entity responsibilities

(a) The law enforcement agency, combination of law enforcement agencies, institution of higher learning, or recognized governmental entity certified to operate a school is vested with the power, responsibility and duty.

1.-19. (No change.)

20. To conduct drug screening of all trainees so as to provide for the safety and welfare of all trainees, instructors and other school personnel in accordance with the following procedures:

i.-v. (No change.)

vi. A staff member of the school will serve as the official monitor and, as such, will be responsible for ensuring that all required forms, such as waivers, laboratory forms and medical questionnaires, have been thoroughly and accurately completed by the trainee. Prior to the submission of the sample, both the staff member and the trainee will inspect the specimen bottle for indications of pre-void tampering;

vii. (No change.)

viii. The official monitor shall be of the same sex as the trainee being tested. If there *[are]* ***is*** no *[female staff members]* ***member of the same sex*** available *[who can]* ***from within the school to*** serve as the official monitor *[for female trainees]*, the *[appointing authority]* ***operating entity*** may request that a *[female]* member of the prosecutor's office or another law enforcement agency serve as the official monitor;

ix. (No change.)

x. The trainee will complete the information requested on the specimen bottle label and any related agency or laboratory forms;

xi. After the official monitor has inspected the information for accuracy, the trainee will void approximately 50 milliliters of urine into the specimen bottle. The specimen will be handled and processed in accordance with procedures approved by the Commission;

xii. After ascertaining that all forms have been completed accurately and after serving as a witness to the void, the official monitor shall take possession of the sample and place it in a controlled access refrigerated storage area until it is delivered to the designated laboratory. This delivery shall occur within one laboratory working day of acquisition;

xiii. The school director shall request that the designated laboratory provide notification of any urinalysis resulting in a positive test result. A sample shall be considered positive for the presence of drugs only when resulting from a confirmatory test procedure. A written laboratory report shall be obtained for all positive samples. All trainees who are found positive for drugs and an appropriate official in the trainee's law enforcement agency will be orally notified by the school director of the positive confirmation result as soon after notification from the laboratory as possible. A copy of the laboratory report shall be provided to the trainee by the school director if requested;

21.-23. (No change.)

(a)

DIVISION ON CIVIL RIGHTS

Rules of Practice and Procedure

Readoption with Amendments: N.J.A.C. 13:4

Proposed: December 17, 1990 at 22 N.J.R. 3689(a).

Adopted: January 6, 1991 by C. Gregory Stewart, Director, Division on Civil Rights.

Filed: January 17, 1991 as R.1991 d.67, **without change.**

Authority: N.J.S.A. 10:5-6; 10:5-8(g), (h); 10:5-12(g), (h), (k).

Effective Date: January 17, 1991, Readoption; February 19, 1991, Amendments.

Expiration Date: January 17, 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. 13:4.

Full text of the adopted amendments follows.

13:4-1.4 Definitions

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

. . .

"Investigator" means any employee of the Division designated under the Department of Personnel as "Investigator, Division on Civil Rights."

"Office of Administrative Law" or "OAL" refers to the agency created by N.J.S.A. 52:14F-1 et seq.

"Office of the Division" means the office located at 31 Clinton Street, Newark, New Jersey, and the offices located at 369 Broadway, Paterson, New Jersey; 383 West State Street, Trenton, New Jersey; 130 Broadway, Camden, New Jersey; 1548 Atlantic Avenue, Atlantic City, New Jersey; 24 Washington Street, Morristown, New Jersey; 501 Landis Avenue, Vineland, New Jersey; 601 Bangs Avenue, Asbury Park, New Jersey; and any additional offices which may fr time to time be established.

"Respondent" means any party charged with unlawful discrimi tion under the Law Against Discrimination. (N.J.S.A. 10: *et seq.*)

13:4-2.1 Director's investigations

(a) The Director, pursuant to N.J.S.A. 10:5-6; 10:5-8c, g, h, i. 10:5-9.1, may, on his or her own motion or on the motion of a person entitled to be a complainant under N.J.A.C. 13:4-3.3, condu investigations to determine the extent to which industries, groups industries, business persons, or groups of business persons, or oth persons or groups of persons are complying with the Law Agai Discrimination.

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

13:4-2.3 Fact-finding conference

(a) Fact-finding, as part of an investigation in a discriminati complaint, is subject to the following:

1. As part of its investigation, the Division may convene a fa finding conference for the purpose of obtaining evidence, identifyi the issues in dispute, ascertaining the positions of the parties a exploring the possibility of settlement. The fact-finding conferen is not an adjudication of the merits of the complaint.

2. (No change.)

13:4-9.1 Issuance of investigatory subpoenas by Director

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

(d) A subpoena may be issued by the Director upon the app cation of any party if that party can demonstrate to the Director th the subpoena is reasonable, and that the matters sought therein a relevant and material to the investigation.

(e)-(f) (No change.)

(b)

DIVISION OF CONSUMER AFFAIRS CHARITIES REGISTRATION AND INVESTIGATION SECTION

Charitable Fund Raising

Readoption with Amendments: N.J.A.C. 13:48

Proposed: October 1, 1990 at 22 N.J.R. 3108(b).

Adopted: January 10, 1991, by Robert J. Del Tufo, Attorney General of the State of New Jersey.

Filed: January 17, 1991 as R.1991 d.64, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:17A-15.

Effective Date: January 17, 1991, Readoption; February 19, 199 Amendments.

Expiration Date: January 17, 1996.

The Charities Registration and Investigation Section, an agency of t Division of Consumer Affairs, afforded all interested parties an o portunity to comment on the proposed readoption of N.J.A.C. 13: relating to charitable fund raising. The official comment period end on October 31, 1990. Announcement of the opportunity to respond the Division appeared in the New Jersey Register on October 1, 19 at 22 N.J.R. 3108(b). Announcements were also forwarded to Americ Association of Fund Raising Counsel, National Charities Informati Bureau, National Society of Fund Raising Executives, Central New Jers Fund Raising Forum, Center for Non-Profit Organizatio Philanthropic Advisory Service Council of Better Business Bureaus, St Ledger, Trenton Times, and the New Jersey Law Journal.

A full record of this opportunity to be heard can be inspected contacting the Division of Consumer Affairs, 1207 Raymond Boulevar Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

One letter was received during the 30-day comment period from t Center for Non-Profit Corporations. A summary of the Center's co ments and the Division's responses follows.

N.J.A.C. 13:48-3.3

COMMENT: This section, which states that the Charities Registration and Investigation Section (C.R.S.) will send an appropriate form to any organization or individual to which the Charitable Fund Raising Act may be applicable, should be expanded to include a more complete procedure to ensure that charities are provided with the proper information. The Center is aware of many member organizations which would come under the requirements of the Act but which have never received from the C.R.S. a description of their rights and responsibilities.

RESPONSE: The suggestion that the appropriate registration forms be sent to all eligible organizations or individuals is certainly a good one, and in fact the C.R.S. already has a procedure in place which attempts to accomplish that goal. At present, the C.R.S. receives notification of all new corporations from the Secretary of State's Office. The documents are reviewed, and those corporations that appear to be charitable entities are sent a questionnaire. Based on the response to the questionnaire, the entity is either sent a registration form or notified that it is exempt or otherwise not under the jurisdiction of the agency. In addition, publication of the fund-raising rules in the New Jersey Register and the New Jersey Administrative Code provides additional notice to organizations that might fall within the agency's jurisdiction. While it may be that some of the Center's organizations have never received anything from the C.R.S. describing their rights and responsibilities, the only expansion of the current procedure which might ensure more comprehensive education of non-profit organizatins would be the sending of questionnaires to all non-profit organizations without the initial review. However, this procedure would require increases in staff and budget which are not avaialble at this time.

COMMENT: This section should be clarified to allow entities to return forms within 15 **business** days, consistent with the proposed revision to N.J.A.C. 13:48-3.6, which allows the C.R.S. to issue letters indicating the entity's status within 10 business days of receipt of completed forms.

RESPONSE: The Division agrees that clarification of this section as well as of the entire chapter is necessary with regard to the calculation of days. Therefore, a full review of the entire chapter in this regard will be undertaken. Because such review cannot practically be accomplished prior to the expiration of these rules, however, any changes necessary to make the rules consistent will appear as a separate proposal in a future issue of the New Jersey Register.

N.J.A.C. 13:48-3.8 and 7.4

COMMENT: The requirement set forth in N.J.A.C. 13:48-3.8 that professional fund raisers must issue reports to the C.R.S. following fund raising campaigns does not appear in the enabling legislation. Therefore, this requirement represents an overextension of the Division's authority to implement, rather than enact, New Jersey's charitable fund raising laws. Similarly, N.J.A.C. 13:48-7.4 represents an overextension of the Division's authority in requiring that an affidavit containing specific representations be filed if a fund raiser or solicitor states in a solicitation that tickets for an event or show will be used to send beneficiaries from participating institutions or organizations to the event or show. The Center would support the inclusion of these requirements in the statute.

RESPONSE: The requirement that professional fund raisers issue reports following fund raising campaigns is set forth in N.J.S.A. 45:17A-8(c), which states that "a professional fund raiser shall file with the Attorney General on forms prescribed by him, within 20 days after the completion of a fund raising event, . . . a statement of income and expense . . . covering each event . . . ." Thus, the authority to require filings by professional fund raisers has precedent in the statute. Other provisions such as the pre-campaign filing of contracts, are also included in the statute (N.J.S.A. 45:17A-10). In addition to requiring these general filings, the statute provides that it is illegal to obtain money by false pretext and to make any material false statements in a filing (N.J.S.A. 45:17A-14(a)3 and (a)4). Clearly, pursuant to N.J.S.A. 45:17A-15, the Attorney General has the authority to promulgate rules which will enable the State to carry out its mandate to protect the public health and welfare.

N.J.A.C. 13:48-5.2 and 7.3

COMMENT: N.J.A.C. 13:48-5.2, which concerns contracts entered into between professional fund raisers and/or solicitors and charitable organizations, requires all such contracts to be filed with the C.R.S. within 10 days after the contract is signed. To clarify that performance under the contract is not to be made until the contract is approved by the C.R.S., subsection (c) should be amended to read as follows: "Every contact or written agreement . . . shall be filed . . . no later than 10 days after such contract or agreement is signed **and before any performance of the contract is made.**" A similar change should be made in N.J.A.C. 13:48-7.3, which concerns contracts to produce, conduct, manage, plan or run a show or event for a charitable organization.

RESPONSE: The Division agrees with these comments and has made the appropriate change in N.J.A.C. 13:48-5.2. A similar change has been made in N.J.A.C. 13:48-7.1, rather than in 7.3 as suggested by the Center, since N.J.A.C. 13:48-7.1 concerns the filing of contracts with the C.R.S.

N.J.A.C. 13:48-9.6

COMMENT: Subsection (a)1, which requires disclosure in telephone or verbal solicitation texts of the name and address of each organization or fund on behalf of which all or any part of monies collected will be utilized for charitable purposes, is subject to misinterpretation. The Center requests that this subsection be clarified to indicate that only initial recipients, and not indirect recipients such as member agencies of United Ways or other federated campaigns, be disclosed.

RESPONSE: The C.R.S. did not intend subsection (a)1 to require disclosure of the names and addresses of all members in a federated campaign. If, however, it is known and intended that the donation will go to one specific recipient, the name and address of that organization should be given along with that of the parent organization. The Division believes this subection is sufficiently clear and that an amendment is not required at this time. If it is subsequently determined that this subsection is not clear, a clarification will be considered.

COMMENT: The required disclosure of status set forth in subsection (a)2, which the commenter assumed was to ensure that potential donors be informed when they are being solicited by an independent fund raising entity, should be restricted to independent paid fund raisers and independent paid solicitors; disclosure of volunteer status should be optional for the employee of the charitable organization and the volunteer.

RESPONSE: The Division disagrees with this comment and points out first that the commenter's assumption is not correct. In fact, the intent of this provision was to require disclosure of status by **all** fund raisers, including employees of the charitable organization. It is the Division's position that in order for a potential donor to make an informed decision about whether to make a charitable contribution, it is in the best interests of the potential donor to have as much information as possible about the charity, including the status of its fund raisers. Accordingly, the Division has amended this subsection to clarify its intent that disclosure of status is required by volunteers, bona fide employees of the charity and independent paid professionals.

COMMENT: A waiver of the requirement set forth in subsection (a)3 should be permitted. This subsection requires that telephone or verbal solicitation texts include a disclosure that additional information concerning the charity may be obtained at the Newark Offices of the C.R.S. The Center is of the opinion that if this disclosure were made to potential contributors by mail within a specified period of time (that is, 30 days) prior to telephone solicitation, exemption from subsequent telephone disclosure would be appropriate.

RESPONSE: The Division disagrees with this comment. Such an exemption might place an undue financial and administrative burden on the small or new charity which does not or cannot engage in advance mail solicitation but which is trying to compete with older, more established charities. In addition, the Division believes a hiatus between receipt of the information and the telephone solicitation is not in the best interests of the consumer; if the consumer has not kept or read the mailing, he or she will be unaware that additional information about the charity may be obtained at the C.R.S.

Summary of Changes Upon Adoption:

1. Based upon a comment received from the Center for Non-Profit Corporations, changes have been made in N.J.A.C. 13:48-5.2 and 7.1: the words "and before any performance of the contract is made" have been inserted to clarify that performance under a contract between a professional fund raiser and/or solicitor and a charitable organization is not to be made until the contract is approved by the C.R.S.

2. N.J.A.C. 13:48-9.6(a)1 has been revised for clarification purposes based upon a comment from the Center for Non-Profit Corporations, which stated that it assumed the required disclosure of status was intended to ensure that potential donors are informed when they are being solicited by independent professional fund raisers. This assumption is not correct. Accordingly, the Division wishes to clarify its intent that, in the interests of potential donors, all fund raisers, whether volunteer, charitable organization employee or independent paid professional, are required to disclose their status.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:48.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

13:48-3.6 Letter indicating status

The C.R.S. shall, within 10 business days of receipt of the completed form or forms, issue a letter informing the entity or individual either that it is properly registered, or that further information is required. No solicitation may take place by any registrable entity or individual prior to the issuance by the C.R.S. of a letter stating registration to be complete.

13:48-5.2 Contracts between charitable organizations, professional fund raisers and professional solicitors

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

(c) Every contract or written arrangement between a professional fund raiser and/or professional solicitor and a charitable organization shall be filed with the C.R.S. within 10 days of the execution or completion of this agreement ***and before any performance of the contract is made***, except that where all parties to the agreement are located out of the State of New Jersey, and where none of the parties contemplates solicitation in this State when the agreement is executed or completed, and the decision to solicit in this State is subsequently made, said agreement shall be filed within 10 days of such decision. In the event that the written contract does not fully and accurately disclose the total compensation agreement between a professional fund raiser and/or professional solicitor and a charitable organization, including, but not limited to, the manner in which expenses incurred are to be paid, a written statement supplementing or amending the written contract shall also be submitted.

(d)-(g) (No change.)

SUBCHAPTER 6. RELATIONS BETWEEN CHARITABLE ORGANIZATIONS AND PROFESSIONAL FUND RAISERS

13:48-6.1 Contracts with paid personnel; filing

Any charitable organization required to register under the Act which retains or utilizes paid personnel to carry on all or part of its fund raising function shall file with the C.R.S. a contract or, where no written contract exists, a written statement in lieu thereof, clearly setting forth the relationship of such persons to the organization. For the purpose of this section, "paid personnel" shall include without limitation those persons whose compensation is contingent on the amount of money, pledges or other property collected as a result of their efforts, regardless of whether or not they ultimately in fact receive any remuneration.

13:48-6.2 Determination of nature of relationship

Where a claim is made that none of the parties involved is a professional fund raiser or professional solicitor, the chief shall, within 10 business days of the receipt of such contract or statement, make a preliminary determination as to whether the relationship is one of bona fide employment, and shall so notify the organization and person or persons involved by issuing a letter within that period. No fund raising or soliciting shall be engaged in by the persons in question until such written notification has been received. If it is subsequently determined that any registrations are improper, upon notice fund raising and solicitation shall cease until the improprieties are corrected.

13:48-6.3 Contracts found to involve professional fund raisers

Should the chief determine either preliminarily or subsequently that any of the persons in question is in fact a professional fund raiser, the person or persons involved shall be notified that he must comply with statutory registration and bonding requirements. If the requirements are not complied with within five days of receipt of notice, the chief may direct that solicitation cease pending a hearing which shall be requested within 10 days. Should the chief determine that the contract or arrangement does not comply with the Act or these rules, he shall disapprove the contract pursuant to the Act and these rules.

13:48-6.8 Hearing

Any party shall have leave to apply for a hearing on the chief's decision, whether preliminary or subsequent, within 10 days of notification. Such hearing shall be held before the Attorney General or such other person as may be authorized by law. The hearing shall be conducted pursuant to the Administrative Procedure Act N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1.

13:48-7.1 Contracts or agreements involving events or shows for charitable organization

Any contract, or if no written contract exists, a written description of the nature of the agreement, between a charitable organization and other person or persons to produce, conduct, manage, plan or run a show or other event to which admission is charged and/or requested for the purposes of raising funds for the charitable organization, shall be filed with the C.R.S. within 10 days of the conclusion or execution of said contract or agreement ***and before any performance of the contract is made***. A rebuttable presumption shall exist that any person or entity contracting to produce, conduct manage, plan or run such an event is a professional fund raiser wherever it appears that a substantial portion of the sales or solicitation appeal relies on the charitable nature of the organization.

SUBCHAPTER 9. SOLICITATION CONDUCT

13:48-9.1 Solicitations involving advertising or acknowledgment in publications

(a) Where contributions are solicited by or on behalf of a charitable organization by means of offering advertising or other acknowledgment of contribution in a magazine, tabloid, newspaper or other publication published, owned, operated or controlled by the charitable organization or other party in contractual relationship with the charitable organization or its parent or affiliate:

1. The date of expected publication and expected circulation shall be clearly expressed to the contributor during the initial solicitation.

2. Such publication shall be identified with a publication date.

3. Every registered charitable organization which publishes or causes to be published such a publication shall as part of the reporting requirement furnish to the Charitable Registration Section within 10 days of the initial distribution a statement of circulation from any recognized circulation audit bureau or an affidavit from an officer of the charitable organization attesting to the circulation of such publication.

4. In the event such publication shall be cancelled or unreasonably delayed, all monies received in anticipation of advertising or acknowledgment of contribution in such publication shall be promptly refunded.

13:48-9.3 Misrepresentations prohibited

No charitable organization or any of its agents shall knowingly misrepresent an original denial of a request to purchase or contribute by an agent or authorized official of an organization as an agreement, approval or request for further information.

13:48-9.6 Telephone or verbal solicitation

(a) Every charitable solicitation text used in the State of New Jersey shall clearly state:

1. The name and address of each organization or fund on behalf of which all or any part of the money collected will be utilized for charitable purposes;

2. Whether the solicitor is a volunteer or a ***bona fide employee of the charity or an independent*** paid professional; and

3. That additional information concerning the charity may be obtained at the Office of the Charities Registration and Investigation Section in Newark.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules
Urine Test
Adopted Amendment: N.J.A.C. 13:70-14A.11

Proposed: November 19, 1990 at 22 N.J.R. 3451(a).
Adopted: January 18, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: January 24, 1991 as R.1991, d.75, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: February 19, 1991.
Operative Date: April 1, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:70-14A.11 Urine test
(a)-(c) (No change.)
(d) A "positive" Controlled Dangerous Substance or prescription drug result shall be reported, in writing, to the Executive Director or his or her designee. On receiving written notice from the official chemist that a specimen has been found "positive" for controlled dangerous substances or prescription legend drugs, the Executive Director or his or her designees shall proceed as follows:

1. For a licensee's first violation, he or she shall not be allowed to participate in racing until such time as his or her condition has been professionally evaluated.

i. After such professional evaluation, if said licensee's condition proves non-addictive and not detrimental to the best interests of racing, said licensee shall not be allowed to participate in racing, until he or she can produce a negative test result performed at the Commission testing laboratory, which may be at the licensee's expense, and agrees to further testing at the direction of the Executive Director or his or her designee.

ii. After such professional evaluation in which said licensee's condition proves addictive or detrimental to the best interests of racing, said licensee shall not be allowed to participate in racing until he or she can produce a negative test result performed at the Commission testing laboratory, which may be at the licensee's expense, and show documented proof that he or she has successfully completed a certified rehabilitation program approved by the Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approval requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee shall agree to further mandatory testing at the direction of the Executive Director or his or her designee.

iii. In addition to other requirements specified in this subsection, the Racing Commission may require a licensee to submit additional proof of rehabilitation as may be required in view of the licensee's patient assessment; his or her medical, drug and/or alcoholism history including current physiological dependency on drugs and/or alcohol and the duration of the addiction or abuse; and the facts and circumstances surrounding the violation.

2. For a licensee's second violation, he or she shall be required to enroll in a certified drug rehabilitation program approved by the Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approval requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee shall agree to further mandatory testing at the direction of the Executive Director or his or her designee. Said licensee's license shall be suspended for six months or until the requirements are fulfilled, whichever is greater.

3. For a licensee's third violation, he or she shall be liable to the penalties provided in N.J.A.C. 13:70-31, including revocation of the individual's license. A licensee may apply for reinstatement after five years but such reinstatement shall be at the discretion of the Commission based upon a review of the licensee's entire record.

4. After a licensee's first violation, such additional drug tests, as are required by the Commission, may be at the licensee's expense. It shall be the licensee's responsibility to provide the Commission with such status reports as the Commission may require, including, but not limited to, written notice of enrollment, weekly status reports, and written notice of discharge and successful completion of the program.

(e)-(f) (No change.)

(b)

NEW JERSEY RACING COMMISSION

Harness Rules
Urine Test
Adopted Amendment: N.J.A.C. 13:71-18.2

Proposed: November 19, 1990 at 22 N.J.R. 3452(a).
Adopted: January 18, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: January 24, 1991 as R.1991, d.74, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: February 19, 1991.
Operative Date: April 1, 1991.
Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:71-18.2 Urine test
(a)-(c) (No change.)
(d) A "positive" controlled dangerous substance or prescription drug result shall be reported, in writing, to the Executive Director or his or her designee. On receiving written notice from the official chemist that a specimen has been found "positive" for controlled dangerous substances or prescription legend drugs, the Executive Director or his or her designees shall proceed as follows:

1. For a licensee's first violation, he or she shall not be allowed to participate in racing until such time as his or her condition has been professionally evaluated.

i. After such professional evaluation, if said licensee's condition proves non-addictive and not detrimental to the best interests of racing, said licensee shall not be allowed to participate in racing, until he or she can produce a negative test result performed at the Commission testing laboratory, which may be at the licensee's expense, and agrees to further testing at the direction of the Executive Director or his or her designee.

ii. After such professional evaluation in which said licensee's condition proves addictive or detrimental to the best interests of racing, said licensee shall not be allowed to participate in racing until he or she can produce a negative test result performed at the Commission testing laboratory, which may be at the licensee's expense, and show documented proof that he or she has successfully completed a certified rehabilitation program approved by the Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approval requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee shall agree to further mandatory testing at the direction of the Executive Director or his or her designee.

iii. In addition to other requirements specified in this subsection, the Racing Commission may require a licensee to submit additional proof of rehabilitation as may be required in view of the licensee's patient assessment; his or her medical, drug and/or alcoholism history including current physiological dependency on drugs and/or alcohol and the duration of the addiction or abuse; and the facts and circumstances surrounding the violation.

2. For a licensee's second violation, he or she shall be required to enroll in a certified drug rehabilitation program approved by the

Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approval requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee shall agree to further mandatory testing at the direction of the Executive Director or his or her designee. Said licensee's license shall be suspended for six months or until the requirements are fulfilled, whichever is greater.

3. For a licensee's third violation, he or she shall be liable to the penalties provided in N.J.A.C. 13:71-2.3, including revocation of the individual's license. A licensee may apply for reinstatement after five years but such reinstatement shall be at the discretion of the Commission based upon a review of the licensee's entire record.

4. After a licensee's first violation, such additional drug tests, as are required by the Commission, may be at the licensee's expense. It shall be the licensee's responsibility to provide the Commission with such status reports as the Commission may require, including, but not limited to, written notice of enrollment, weekly status reports, and written notice of discharge and successful completion of the program.

(e)-(f) (No change.)

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Regulations of Cable Television

Requests for Service; Seven Day Installation

Adopted Amendment: N.J.A.C. 14:18-3.2

Proposed: September 17, 1990 at 22 N.J.R. 2890(a).

Adopted: January 24, 1991 by Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).

Filed: January 24, 1991 as R.1991 d.78, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 48:5A-10.

Effective Date: February 19, 1991.

Expiration Date: July 26, 1995.

The purpose of this rulemaking (BPU Docket No. CX90070729) is to respond to comments in prior proceedings and more closely conform Board installation time standards to the cable industry standards. The reduction of the originally proposed 20-day standard to seven days constituted a substantive change requiring re-publication and further comment provided by this proceeding.

The present rulemaking originated with a notice of preproposal on the readoption with amendments to N.J.A.C. 14:18, which was published at 22 N.J.R. 327(c) on February 5, 1990. A notice of hearing was also published in the state's major daily newspapers at least 15 days prior to a public hearing on February 20, 1990. Individual notices were sent to all cable television operators, legislators and municipalities.

The notice of proposed readoption, repeal, and new rules was published in the New Jersey Register on May 7, 1990 at 22 N.J.R. 1330. A public hearing was held on May 15, 1990. Notice of the hearing was published in ten daily newspapers throughout the State. Letters to all municipalities gave notice of the hearing and summarized the proposed changes in the rules. Notice of the full text of the agency proposal was sent to all cable television systems, their attorneys, legislative committees concerned with cable television, parties who provided oral or written comment on the preproposal, persons attending the preproposal hearing and any other interested parties who requested copies or otherwise had been identified by the Office of Cable Television as having an interest in the proceeding. Following the hearing, written comments were accepted until June 6, 1990.

On July 18, 1990, the Board decided to adopt the original proposal setting forth the 20 day requirement, and to present, for further comments, a substantively new proposal calling for installation within seven days. This proposal was published at 22 N.J.R. 2577 on August 20, 1990.

The Notice of the proposal, preceding this adoption, was publishe in the New Jersey Register on Sepember 17, 1990 at 22 N.J.R. 2890(a with a hearing held on Friday, October 5, 1990. At least 15 days' notic of the hearing was published in ten daily newspapers of general circulatio throughout the State. Notices were also sent to all municipalities, cabl television systems, their attorneys, legislative committees concerned wit cable television, commenters from the earlier proceedings, and othe persons identified as having an interest in the rulemaking. On Octobe 17, 1990 the Board extended the comment period to October 31, 1990 The proposal was discussed and approved for adoption with technica and substantive changes not requiring additional notice and comment at the Board's November 21, 1990 open public meeting.

Summary of the Public Comments and Agency Responses:

COMMENT: The New Jersey Cable Television Association com mented that "regulatory strictures" applied to the cable industry by th proposed seven day installation requirement are more rigid than thos applied by the Board of Public Utilities to other utility companies unde the jurisdiction of the Board. The NJCTA states the rule as proposec would result in a violation for a single failure to comply with the require ment.

Individually, Garden State Cable TV, Bridge Cable, Comcast Cable Storer Cable, Suburban Cable, Adelphia Cable, Warner Cable, Sammon Communications, Monmouth Cable, TKR Cable, Riverview and Harror Cable stated that most installations are completed within seven days bu that a seven day installation standard is impossible during heavy promo tional periods, major storm disruptions and special promotions fo charities.

Harron Cable suggests a performance standard of 85 percent if the rul is adopted. Comcast, Suburban, and Sammons state the seven day rul will cause cancellation of special offers tied to charities. Garden State Cable requests an amendment to the rule to meet a 75 percent standard. Comcast states increased labor needs to meet a seven day installation would be costly and would be passed on to the subscriber. Bridge Cable states the seven day rule is similar to the guidelines accepted by the NJCTA and proposed by the National Cable Television Association but an absolute rule is inappropriate and the rule should allow more flexibility.

RESPONSE: The Board finds the arguments of the industry persuasive and therefore believes it appropriate to recognize that the rule as proposed required absolute adherence to a precise standard. The industry suggests legitimate concerns, such as personnel shortages and meeting the seven day limit during charitable promotions, where a single instance of failing to meet the deadline could bring about enforcement penalties.

The Board believes that including the 85 percent performance standard upon adoption provides a fair criterion for standard installations. It is not the intent of the Board to place undue constraints on the cable industry. The Board feels it is appropriate to allow some latitude in adopting this rule. An absolute adherence standard would be difficult for the cable television industry to conform to without having a negative impact on the cable consumer.

The Board agrees that consumers and charities might be negatively affected by an absolute rule. The loss of special promotionals would impact negatively on cable subscribers and charities. The Board also believes that the loss of promotional incentives would effect the cable television industry, most notably in the loss of revenue. The Board believes that some flexibility should be permitted concerning the installation rule. The Board feels with the inclusion of the 85 percent performance standard, cable systems should not have to reduce or eliminate promotional offers.

However, the Board, in its decision to adopt the requirement that 85 percent of the standard installations be completed within seven business days of a service application, also believes the overall applicable limit of 20 days as indicated in N.J.A.C. 14:18-3.2(b) of the existing rule, should be retained.

COMMENT: Storer Communications commented that cable companies should not be compared to utilties in that cable companies offer a variety of services.

RESPONSE: The Board agrees that in many ways cable television and telephone services are substantially different. Therefore, the Board believes it is appropriate to allow some flexibility concerning the proposed installation rule, but not necessarily the same standard as, for example, telephone installations.

COMMENT: Adelphia Cable, Monmouth and Warner Cable stated that they are located in seasonal areas which could negate their ability to comply with a seven day rule in the spring and summer months.

Adelphia also stated that additional installers might have to be hired ıd additional costs would have to be shifted to the subscriber.

Warner asked for reconsideration of, and flexibility in, the proposed ıle and/or waivers therefrom.

RESPONSE: The Board notes the changes upon adoption to the roposed amendment will give operators greater latitude and is less urdensome than previously proposed.

Additionally, the Board notes that waivers can be requested with good ause.

COMMENT: TKR Cable, Riverview, and Monmouth Cable stated ıat the seven day policy for installation is consistent with industry tandards and guidelines. However, the National Cable Television Asociation standards incorporate a qualified level of 95 percent perormance as measured on an annual basis. They state that in the industry uideline the seven day standard is for standard installations; those which re up to 125 feet from distribution systems. They would like the Board o consider two variations such as new builds and access problems or aving target standard guidelines like the utilities.

RESPONSE: While the proposed amendment did not allow for some ariables, the adopted amendment does, especially for non-standard intallations, line extensions and installations of multi-dwelling units where ither special equipment may be needed or where a specific custom install nay need to be designed and completed. The Board, after careful conideration, believes that more flexibility should be permitted and, as uggested, has therefore changed the proposed rule upon adoption, by etaining the 20 day limit for action on line extensions and non-standard nstallations.

Line extension is the construction of cable distribution along the public ;treets and highway for the purpose of serving new or existing homes ıot originally covered by the systems initially proposed service area. Each :ertificate of approval includes a line extension policy which details the :riteria under which extensions of cable plant will be constructed.

Non-standard installations are defined by the franchise documents (application, ordinance, certificate of approval) adopted by the municipality and the Board, or in tariffs filed with the Board. Generally, they :over extra long service drops where the dwelling is set far back from the road, and require extra time, special hardware, equipment and additional labor.

COMMENT: Riverview Cable writes that a further definition is needed as to the description of the installation. Riverview asks that allowances be made in circumstances involving landlord permission and the actions of prospective subscribers. Harron states line extension and multiple-dwelling units installs should not be considered in the rule.

RESPONSE: The Board after careful consideration believes modifications should be allowed concerning the install rule. The performance standard of 85 percent is adopted for all standard service installations.

COMMENT: Although the Township of Lakewood writes that reasonable standards dictate installation within seven days, the cost incurred by compliance makes the rule objectionable.

RESPONSE: In proposing the amendment to the rule, the OCTV has considered the impact of the technical and operational requirements the amendment would have on the cable industry. The OCTV considered the costs the cable companies would be faced with and determined from past history that the cable industry can be expected to pass some of these costs along to its subscribers. The Board is keenly aware of the heightened tension between the subscribers and municipalities on one hand and the cable operators on the other. The Board believes this amendment is necessary in order to adequately protect the safety and the interest of the general public and cable television subscribers. The Board agrees with the OCTV that the benefits from the amendment exceed the burden of the costs.

COMMENT: The Borough of Metuchen endorses the seven day installation proposal. The League of Municipalities writes the adoption would show the OCTV's dedication to making the cable operator responsive to the needs of the subscriber and to the municipalities wishes. The League further states that a cable operator must be made to respond to subscribers in a timely manner.

RESPONSE: The Board, after careful consideration, believes that greater flexibility concerning the rule needs to be permitted but that this modification will still require response to an installation request in a timely fashion.

COMMENT: Ms. Hart of the Housing Authority, City of Elizabeth, stated that the City has been trying to get cable for residents of four senior citizen complexes for 19 years. The Housing Authority asked the Board to assist.

RESPONSE: The OCTV has contacted TKR of Elizabeth for further information and requested a timetable for installation. TKR has provided the OCTV with a copy of the letter sent to the Housing Authority outlining a preliminary schedule for construction of the four buildings in question. All buildings should have service by July 1991, with the commencement of construction in January or February. The Office is currently assessing whether the time frames are adequate.

Full text of the adoption follows (additions to the proposals shown in boldface with asterisks ***thus***; deletions in brackets with asterisks *[thus]*).

14:18-3.2 Request for service

(a) (No change.)

(b) Within *[seven business]* ***20*** days of ordering service, a subscriber is entitled to one of the following:

1.-3. (No change.)

(c) (No change.)

(d) Cable televison operators shall complete 85 percent of standard service installations, as specified in the operator's filed tariff, within seven business days, unless a later date is requested by the customer.

(a)

BOARD OF PUBLIC UTILITIES

Regulations of Cable Television
Notice of Rate Change
Adopted Amendment: N.J.A.C. 14:18-3.16

Proposed: September 17, 1990 at 22 N.J.R. 2892(a).

Adopted: January 24, 1991, by Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).

Filed: January 24, 1991 as R.1991 d.79, **without change.**

Authority: N.J.S.A. 48:5-10.

Effective Date: February 19, 1991.

Expiration Date: July 26, 1995.

The purpose of this rulemaking (BPU Docket No. CX90060593) is to allow advance notice waivers for rate decrease notices, but not to permit waivers for late notification of rate increases.

The present adoption originated with a Notice of Preproposal on the readoption of N.J.A.C. 14:18 which was published at 22 N.J.R. 327(c) on February 5, 1990. A notice of hearing was also published in the state's major daily newspapers at least 15 days prior to a public hearing on February 20, 1990. Individual notices were sent to all cable television operators, legislators and municipalities.

The notice of Proposed Readoption, Repeal and New Rules was published in the New Jersey Register on May 7, 1990 (22 N.J.R. 1330(b)), with a hearing on May 15, 1990. Notice of the hearing was published in 10 daily newspapers throughout the State. Letters to all municipalities gave notice of the hearing and summarized the proposed changes in the rules. Notice of the full text of the agency proposal was sent to all cable television systems, their attorneys, legislative committees concerned with cable television, parties who provided oral or written comment on the preproposal, persons attending the preproposal hearing and any other interested parties who requested copies or otherwise had been identified by the Office of Cable Television as having an interest in the proceeding. Following the hearing, comments were accepted until June 6, 1990.

On July 18, 1990, the Board readopted the rate change notice requirement, but noted it was considering a proposal to amend the rule to limit exceptions to the rate notice period.

The notice of the proposal presently being adopted was published in the New Jersey Register on September 17, 1990 (22 N.J.R. 2892(a)), with a hearing on Friday, October 5, 1990. At least 15 days' notice of the hearing was published in 10 daily newspapers of general circulation throughout the state. Notices were also sent to all municipalities, cable television systems, their attorneys, legislative committees concerned with cable television, commenters for the earlier proceedings and other persons identified as having an interest in the proceeding. On October 17, 1990, the Board extended the comment period to October 31, 1990. The

proposal was discussed and approved for adoption without change at the Board's November 21, 1990 meeting.

Summary of Public Comments and Agency Responses:

COMMENT: A number of cable television operators (Monmouth Cablevision Associates, Riverview Cablevision Associates, TKR Cable Company, Suburban Cable TV Co., Inc., d/b/a Bridge Cable TV, Suburban Cablevision, Cable TV of Jersey City, Sammons Communications of New Jersey, Inc., Comcast Corporation, Storer Cable Communications and Harron Cable TV) separately opposed adoption of the proposed amendment to N.J.A.C. 14:18-3.16 because: (1) it is unnecessay; and (2) it limits agency flexibility in unforeseen situations. Additionally, Sammons stated, cable operators may increase their rates prematurely and sooner than they might ordinarily in anticipation of potential increases in programming costs.

RESPONSE: From its original adoption, the Board has intended that N.J.A.C. 14:18-3.16 give subscribers a meaningful opportunity and time to make a decision as to what future service the subscriber might want after a rate increase. Without a minimum notice period, the purpose of the Board's notice requirement is vitiated. Permitting waivers would not accomplish this goal. The Board has promulgated the present amendment in response to the Board's recent experience in which it was burdened with numerous waiver requests to a tax proposal in the State legislature which ultimately was not even adopted. In adopting this amendment, the Board is putting operators on notice that it does not intend to use its prerogative to grant waivers.

The Board disagrees that this proposed amendment rule would encourage rate increases sooner than they might ordinarily occur. The rule would set a minimum advance notice period. The operator would be free to give more advanced notice than 30 days. The operator would also be free to set a later effective date.

COMMENT: The New Jersey Cable Television Association (NJCTA) commented that this regulation is in violation of the Federal Cable Communications Policy Act of 1984, because the rule constitutes a regulation of rates. The NJCTA also stated that the language permitting a waiver is of no legal effect because the Board cannot divest itself of the power to waive any of its rules under appropriate circumstances.

RESPONSE: It is the Board's position that the rule does not constitute regulation of rates; that the advance notice requirement of the rule is informational and therefore is not a violation of the Cable Communications Policy Act of 1984. It is part of the Board's inherent power to promulgate its policies of general applicability as formal rules, as it does in adopting this proposed amendment which formalizes its policy of not permitting waivers for specified circumstances, for example, increases, under the rule.

Full text of the adoption follows.

14:18-3.16 Notice of rate change

(a) (No change.)

(b) Cable television operators may be issued a waiver for any notification provision pursuant to this requirement in the instance of rate decrease. In no instance will a waiver of timely compliance be issued for a rate increase.

(a)

BOARD OF PUBLIC UTILITIES

Regulations of Cable Television Reimbursement for Lost, Stolen or Damaged Equipment

Adopted New Rule: N.J.A.C. 14:18-3.23

Proposed: September 17, 1990 at 22 N.J.R. 2892(b).

Adopted: January 24, 1991 by Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).

Filed: January 24, 1991 as R.1991, d.80, **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. 48:5-10.

Effective Date: February 19, 1991.

Expiration Date: July 26, 1995.

The purpose of this rulemaking (BPU Docket No. CX90050378) is define the appropriate elements to be considered when operators establi charges for lost, stolen or damaged converters or other auxiliary equi ment.

The present rulemaking originated with a notice of preproposal on t readoption of N.J.A.C. 14:18 which was published in the New Jers Register at 22 N.J.R. 327(c) on February 5, 1990. A notice of hearir was also published in the State's major daily newspapers at least 15 da prior to a public hearing on February 20, 1990. Individual notices we sent to all cable television operators, State legislators and municipalitie

The notice of proposed readoption, repeal and new rule was publishe in the New Jersey Register on May 7, 1990 at 22 N.J.R. 1330(b), an a hearing was held on May 15, 1990. Notice of the hearing was publishe in 10 daily newspapers throughout the State. Letters to all municipaliti gave notice of the hearing and summarized the proposed changes in t rules. Notice of the full text of the agency proposal was sent to all cab television systems, their attorneys, State legislative committees concerne with cable television, parties who provided oral or written comment o the preproposal hearing and any other interested parties who requeste copies or otherwise had been identified by the Office of Cable Televisio as having an interest in the proceeding. Following the hearing, commen were accepted until June 6, 1990.

On July 18, 1990, the Board completed readoption of its substantiv regulations along with new subscriber rights and amendments. The Boar subsequently determined additional subscriber protection on lost, stole or damaged converter replacement was needed.

The notice of proposal preceding this adoption was published in th New Jersey Register on September 17, 1990 at 22 N.J.R. 2892(a), an a public hearing was held on Friday, October 5, 1990. At least 15 days notice of the hearing was published in 10 daily newspapers of genera circulation throughout the State. Notices were also sent to all munici palities, cable television systems, their attorneys, legislative committee concerned with cable television commenters for the earlier proceeding and other persons identified as having an interest in the proceeding. O October 17, 1990, the Board extended the comment period to Octobe 31, 1990. The proposal was discussed and approved for adoption wit technical and substantive changes at the Board's November 21, 1990 ope public meeting.

Summary of the Public Comments and Agency Responses:

COMMENT: Several commenters from the cable television industr (New Jersey Cable Television Association, Adelphia Cable Communica tions, Comcast Corporation, Monmouth Cablevision Associates, TKF Cable Company, Bridge Cable TV, Garden State Cable TV, Storer Cabl Communications) made separate comments that operators must be abl to cover the black market value of converters in order to discourage theft The industry practice, a number of them noted, is to charge two time their converter costs for lost or stolen converters to discourage theft anc street sale of the converters.

RESPONSE: The Board acknowledged the cable industry remark concerning the potential for the theft of cable services. However, nc factual data was submitted that showed the cable industry lost revenue because of theft related to the black market value of converters. The Board notes that the cable industry has alternative means, most notably criminal prosecution pursuant to N.J.S.A. 2C:20-8, to pursue penalties against those individuals who steal or receive cable services without paying for them.

The Board's Office of Cable Television (OCTV) has found that there are currently three types of cable security technologies in use in New Jersey: (1) Addressability, which authorizes or deauthorizes converters through the operator's computer system. Converter addressability is a technical function which permits the company to remotely send a message to a subscriber's terminal or converter ("address") which allows the company to add, delete or deactivate services entirely; (2) Positive or negative traps (filters) at the pole, which scramble or descramble the picture, making the converter irrelevant; and (3) converters with programmable chips known as PROMs or chips. These are devices which are designed to unscramble certain pay services and are installed inside the converter.

It is the latter category of converters which have a higher black market value and which, if used illegally, could result in lost revenues for the cable operator. However, according to OCTV records, five systems serving only 6.5 percent of subscribers in the State are using programmable chips. Three systems owned by Storer Cable, one system owned by TKR, and a Warner Cable system are the only systems using non-addressable PROM technology according to the OCTV records. The aggregate

umber of subscribers served by these five systems is 120,000. However, nly pay TV subscribers have PROMs, therefore the actual number of ubscribers using PROM technology is considerably less than 120,000. 'he remaining systems either trap or are in the process of converting all ubscribers to addressable converters. Therefore, the comments focus on diminishing concern.

COMMENT: Adelphia, Riverview, and Monmouth all noted that lamaged or destroyed converters should be treated differently than lost ır stolen converters.

RESPONSE: As there is diminishing use of PROMs and chips (see ıbove response) by the systems operators, there is diminishing usefulness ɔf same on the black market; therefore the Board sees no need to disinguish treatment of damaged or destroyed converters from those which ıre lost or stolen.

COMMENT: Several commenting cable operators offered differing deas of what elements should comprise "replacement cost." Harron Cable TV and C-TEC would include all charges incurred by a cable ɔperator in replacement of a lost, stolen or damaged converter. Adelphia ınd Suburban Cablevision specifically note that postage, shipping and ıandling should be included. UA-Columbia Cablevision agreed with Adelphia but also suggested taxes as an element to include in replacement ɔost.

RESPONSE: The Board expects that normal postage, shipping and handling costs for the individual converter could be included in the operator's replacement cost because these costs are specific to that replacement, and has added a new subsection (f) at N.J.A.C. 14:18-3.23 upon adoption to include those elements in the definition. However, the Board believes that other administrative costs for replacement are a normal cost of doing business.

COMMENT: The New Jersey Cable Television Association (NJCTA) posed Constitutional objections to the proposed rule, arguing in general terms that it was beyond what is permitted under the Cable Communications Policy Act of 1984, confiscatory under the Fifth Amendment and violative of the operator's First Amendment rights. Assuming the rule is legally permissible, however, the NJCTA had no objection to the rule limiting charges to reasonable repair or replacement cost with respect to damaged converters.

RESPONSE: This rule is not directed to any rates or services provided by cable television operators. It solely addresses the customer's responsibility and appropriate levels of compensation for lost, stolen or damaged equipment which is property of the cable operator. In adopting this rule, the Board believes it is acting within the scope of its consumer protection authority under the Federal Cable Act, 47 U.S.C. §542 and its authority under N.J.S.A. 48:5A-1 et seq., to resolve disputes and complaints between cable television operators and their customers.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***.

14:18-3.23 Reimbursement for lost, stolen or damaged equipment

(a) The cost charged to subscribers by cable television operators to replace lost or stolen converters or other auxiliary equipment shall be in an amount not to exceed the actual cost or the cable television operator's replacement cost, whichever is greater, of the equipment at the time the equipment was installed in the subscriber's home.

(b) The cost charged to subscribers by cable television operators for damaged equipment shall not exceed the reasonable repair costs or actual replacement cost, whichever is lesser.

(c) A cable television company shall not charge a subscriber for any damage to converters or other auxiliary equipment which may have resulted from the design, operation or maintenance of the equipment or from normal wear and tear.

(d) In the event the cable television company seeks to impose a charge for a subscriber pursuant to this section, the company shall give written notice to the subscriber of the amount sought and the reasons for the charge. The subscriber shall also be notified of the opportunity to refer the matter to the Office of Cable Television or the appropriate complaint officer pursuant to N.J.S.A. 48:5A-26.

(e) Cable television operators shall provide written notification to all new subscribers and subscribers receiving new or additional equipment of the rights and obligations of this section.

***(f) The operator's replacement cost may include normal postage, shipping and handling costs*.**

(a)

BOARD OF PUBLIC UTILITIES

Regulations of Cable Television Late Fees and Charges

Adopted New Rule: N.J.A.C. 14:18-3.24

Proposed: September 17, 1990 at 22 N.J.R. 2893(a).

Adopted: January 24, 1991 by Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).

Filed: January 24, 1991 as R.1991 d.81, **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. 48:5-10.

Effective Date: February 19, 1991.

Expiration Date: July 26, 1995.

The purpose of this rulemaking (BPU Docket No. CX90050379) is to require itemization of late fee or penalty charges on subscriber bills and to establish a minimum period before they could be imposed.

The present rulemaking originated with a notice of preproposal on the readoption of N.J.A.C. 14:18 which was published at 22 N.J.R. 327(c) on February 5, 1990 in the New Jersey Register. A notice of hearing was also published in the State's major daily newspapers at least 15 days prior to a public hearing on February 20, 1990. Individual notices were sent to all cable television operators, legislators and municipalities.

The notice of proposed readoption, repeal and new rule as published in the New Jersey Register on May 7, 1990 at 22 N.J.R. 1330 and a hearing was held on May 15, 1990. Notice of the hearing was published in 10 daily newspapers throughout the State. Letters to all municipalities gave notice of the hearing and summarized the proposed changes in the rules. Notice of the full text of the agency proposal was sent to all cable television systems, their attorneys, legislative committees concerned with cable television, parties who provided oral or written comment on the preproposal hearing and any other interested parties who requested copies or otherwise had been identified by the Office of Cable Television as having an interest in the proceeding. Following the hearing, comments were accepted until June 6, 1990.

On July 18, 1990, the Board decided to adopt the original proposal for readoption with amendments, and in response to comment, to address subscriber concerns about late charge practices.

The notice of proposal preceding this adoption was published in the New Jersey Register on September 17, 1990 at 22 N.J.R. 2893(a), and a hearing was held on Friday, October 5, 1990. At least 15 days' notice of the hearing was published in 10 daily newspapers of general circulation throughout the State. Notices were also sent to all municipalities, cable television systems, their attorneys, legislative committees concerned with cable television, commenters for the earlier proceedings and other persons identified as having an interest in the proceeding. On October 17, 1990, the Board extended the comment period to October 31, 1990. The proposal was discussed and approved for adoption with a change at the Board's November 21, 1990 meeting.

Summary of the Public Comments and Agency Responses:

COMMENT: Riverview Cablevision Associates (RCA), Monmouth Cablevision Associates (MCA) and TKR Cable Company commented that pursuant to the Board's rules, bills are late on the 16th day. The companies further stated that the severity of penalty for late payment does nothing to encourage customers to pay their bills on time and fails to target the costs incurred in the delinquent payment process.

The companies argued that the proposed rule is inconsistent with N.J.A.C. 14:18-3.9, which provides for disconnection, after notice, for non-payment 45 days after the unpaid bill is mailed. This arises under the proposed rule because a late fee could not be imposed until the 60th day after the bill is mailed, which is 15 days after service could be disconnected for non-payment. MCA believes that a 15 day grace period to pay the bill is appropriate and it meets subscribers halfway who object to the practice of advance billing. They contended the purpose of a late fee is to reduce disconnections and delinquent accounts. They further contended that limiting late charges is not fair to subscribers who make timely payments.

The companies have stated that the collection process costs are subsidized by those subscribers who pay on time. They consider it to be

inappropriate for the Board to intercede and prevent delinquent subscribers from paying a penalty fee. The companies do not oppose the requirement to itemize late charges on subscribers bills, because it is consistent with their goal of keeping subscribers informed.

RESPONSE: The Board believes cable operators have sufficient freedom to set the amount of late fees to deter individuals from becoming delinquent in their payments. However, the Board believes by revising the imposition late fee date from 45 to 30 days after the past due date, cable subscribers who continuously pay their bills on time will not have to subsidize those individuals who continuously pay late. The Board does not seek to create a regulatory incentive to disconnect a subscriber rather than impose a late fee. The rule will be modified upon adoption to provide that late fees may be imposed on balances outstanding more than 30 days past the due date.

COMMENT: Garden State Cable TV stated the primary purpose of the late charge is to condition people to pay their bill before the company begins the disconnection process. It is designed to encourage people to pay promptly enough to avoid being in the dunning/disconnect cycle. Further, the additional work of sending out the late notices, doing addressable converters turnoffs and the actual field work imposes a significant amount of work load and disrupts office procedures.

RESPONSE: The Board believes that the proposed modifications will not deter subscribers from paying on a timely basis. The administrative and technical resources required to implement the proposal are part of a cable television operator's responsibilities.

COMMENT: Storer Cable Communications, Inc. questioned why it was necessary to itemize the late fee charge on the bill when the charage was in the tariff.

RESPONSE: The Board believes it is unreasonable to expect a subscriber to review the company's tariff each time the subscriber is subject to a late fee. If a late fee is itemized on the bill, the subscriber is aware of the charge without having to contact the company.

COMMENT: The New Jersey Cable Television Association (NJCTA), Monmouth and Riverview proposed that late fees be permitted to be charged no more than 10 days after a bill is past due in a manner similar to that applicable to public utility services. They state N.J.A.C. 14:18-3.9 permits disconnection 15 days before late fee is charged.

RESPONSE: The proposed rule has been changed upon adoption by reducing the waiting period for charge of late fees from 45 to 30 days. This makes the rule consistent with N.J.A.C. 14:18-3.9.

Requiring a longer period for cable than for utilities recognizes the uniqueness of cable television service, and a need to balance the interests of the consumer against the power of local market monopoly without rate regulation.

The Board after careful consideration believes that the proposed modifications will not deter subscribers from paying on a timely basis. It will set forth the respective rights and responsibilities of cable subscribers and operators.

COMMENT: The League of Municipalities stated that the 45 day grace period and the notice on the bill for a late charge is good for the individual subscriber's information and is consistent with practices governing the utilities.

RESPONSE: The Board after careful consideration believes that the proposed modification will provide sufficient protection to those subscribers who continuously pay their bills on time. Additionally, the rule will insure that cable subscribers will receive the service prior to facing a penalty for non-payment.

COMMENT: The Township of Lakewood, stated it has no objection to the proposed rule as long as no cost is passed onto cable subscribers.

RESPONSE: For those companies which currently have a charge for late payment, the cost impact will be minimal. Since billing for most companies is computerized, the only cost involved will be the cost to revise the computer program or system. For those companies which do not currently charge a fee for late payment, there will be no effect. Therefore, the Board does not anticipate costs involved with this rule to be passed along to subscribers.

COMMENT: A Suburban Cablevision subscriber stated that he was charged a late fee/administrative fee while he was disputing a bill. He believes this practice to be unfair to cable consumers.

RESPONSE: Although the customer's specific dispute would not have been resolved by this rule, this is a problem easily resolved by contacting the Board's Office of Cable Television. The Board believes the rule with modifications will better serve the public compared to no rule or standard.

COMMENT: A subscriber of Adelphia Cable stated that late fees are a gimmick and unfair to the cable consumer.

RESPONSE: The Board, upon further review, believes that a late fee structure is needed to protect prompt paying subscribers and cable television operators from subsidizing those who pay late, and that these modifications will offer adequate protection for all subscribers.

COMMENT: A subscriber of TKR Cable's Island system stated late fees should not be charged, because of advance billing practices by cable systems. Payments received by the end of the current month should be considered a timely payment.

RESPONSE: The Board, after careful consideration, believes that the revised modifications will provide protection to those subscribers who pay their bills on a timely basis. Additionally, the rule will insure that cable subscribers will receive the service prior to facing a penalty for non-payment. Please see the revisions to the proposed rule.

COMMENT: A subscriber of Adelphia Cable, commented that she feels a late fee is unfair because she sends the payment at the end of the month, once the service has been used and she objects to the company advance billing practices.

RESPONSE: The Board, after careful consideration, believes the revised modifications will provide protection to those subscribers who pay their bills on a timely basis. Additionally, the rule wil insure that cable subscribers will receive the cable service prior to facing penalties for non-payment. The rule does not preclude an operator from establishing a more liberal late fee structure. The questions of advance billing should be left in abeyance for future consideration by the Board.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

14:18-3.24 Late fees and charges

(a) In the event a cable television operator imposes an additional fee or charge or penalty to a subscriber for billing balances which are considered past due or late, the cable television operator shall clearly specify the amount of the fee, charge or penalty on the subscriber's bill. The cable television company shall also specify the method of calculation of the fee, charge or penalty on the bill.

(b) A cable television operator shall not impose an additional fee, charge or penalties specified in (a) above on any account balance less than *[45]* ***30*** days past due.

(a)

BOARD OF PUBLIC UTILITIES

Regulations of Cable Television
Location of Offices
Adopted Amendment: N.J.A.C. 14:18-5.1

Proposed: September 17, 1990 at 22 N.J.R. 2894(a).
Adopted: January 24, 1991 by Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).
Filed: January 24, 1991 as R.1991 d.82, **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. 48:5A-10.

Effective Date: February 19, 1991.
Expiration Date: July 26, 1995.

The purpose of this rulemaking (BPU Docket No. CX90060591) is to require Board approval prior to closing or relocation of an office. It is the adoption of a reproposal in response to comments on an earlier proposal which indicated republication for additional comments would be needed.

The present rulemaking originated with a notice of preproposal on the readoption with amendments of N.J.A.C. 14:18, which was published at 22 N.J.R. 327(c) on February 5, 1990 in the New Jersey Register. A notice of hearing was also published in the state's major daily newspapers at least 15 days prior to a public hearing on February 20, 1990. Individual notices were sent to all cable television operators, legislators and municipalities.

The notice of proposed readoption, repeal, and new rules was published in the New Jersey Register on May 7, 1990 at 22 N.J.R. 1330, and a hearing was held on May 15, 1990. Notice of the hearing was published

n 10 daily newspapers throughout the State. Letters to all municipalities ave notice of the hearing and summarized the proposed changes in the ules. Notice of the full text of the agency proposal was sent to all cable elevision systems, their attorneys, legislative committees concerned with able television, parties who provided oral or written comment on the reproposal, persons attending the preproposal hearing and any other nterested parties who requested copies or otherwise had been identified y the Office of Cable Television as having an interest in the proceeding. Following the hearing, comments were accepted until June 6, 1990.

On July 18, 1990, the Board decided not to adopt the original proposal, nd present a further substantively new proposal for further comments. See: 22 N.J.R. 2575, August 20, 1990)

The notice of the proposal that preceded this adoption was published n the New Jersey Register on September 17, 1990 at 22 N.J.R. 2894(a), nd a hearing was held on Friday, October 5, 1990. At least 15 days' notice of the hearing was published in 10 daily newspapers of general circulation throughout the State. Notices were also sent to all municipalities, cable television systems, their attorneys, legislative committees concerned with cable television, commenters from the earlier proceedings, nd other persons identified as having an interest in the rulemaking. On October 17, 1990 the Board extended the comment period to October 31, 1990. The proposal was discussed and approved for adoption with change at the Board's November 21, 1990 open public meeting.

Summary of the Public Comments and Agency Responses:

COMMENT: TKR Cable commented that it is appropriate for notification of changes in a location or hours of operation to be given, but does not believe Board approval should be required for what, in its view, is a business decision.

RESPONSE: N.J.A.C. 14:18-5.1 as proposed is intended to protect subscribers and municipalities from relocations which are not noticed. The Board rejects TKR's assertion that such a relocation, and the appropriate notice, is solely a business decision. As the public is affected by an office closure or relocation, adequate notice and an opportunity for input through the Board approval process is reasonable.

COMMENT: Storer Communications and Comcast Cable have stated that they believe that the decison for location of a business office is best left between the franchising municipality, as stated in the original franchise, and the company, and further, that the Board does not need to be involved in the process. Also, they have stated the notification requirements of this particular rule would cause unnecesary administrative burdens and additional costs to the consumer.

RESPONSE: The Board is the ultimate franchising authority for cable television operators. Additionally, a relocation or closing contemplated by an operator impacts all of the municipalities served by the operator, not just the one where the office is located.

Most of the information required by the adopted amendment is the same information as the OCTV has always required of an operator. By formalizing the requirement little or no additional burden to the companies is created. Therefore, little or no increased costs to the consumer are contemplated. The most costly element, a public hearing, is discretionary on the part of the Board.

The Board notes the rule will assure that the manner of the closure or relocation of an office is not unreasonable, and that the office closure or relocation is done with appropriate notice.

COMMENT: The League of Municipalities has indicated its approval of toll free numbers for local cable offices which are moved.

RESPONSE: The Board notes the approval of its initiatives by the League of Municipalities.

COMMENT: Suburban Cablevision and Adelphia Cable note the Board's concerns with a cable company closing an office. However, the companies contend that in many cases offices are leased and there may be an instance where a landlord raises the rent and the company chooses to relocate. Adelphia notes that the Board's process of approval may take longer than business decisions based on such intervening contingencies as lease expirations or eviction. Suburban states that the basis for approval or disapproval is not set forth in the rule and therefore it appears approval would be arbitrary. Suburban further states that the timetable for notification could be affected by circumstances out of the control of the company such as fires and landlord actions.

RESPONSE: The rules require an application by the company to demonstrate that the closing or relocation of its business office will neither be unreasonable nor unduly prejudice the public interest. The Board cannot define every instance under which an operator may request relocation or closure. Therefore, rather than setting forth an absolute basis for approval or disapproval, the Baord has proposed a mechanism to ensure appropriate notice to municipalities and subscribers while also considering the practical constraints on the operator.

The Board recognizes that there may be extreme cases where circumstances warrant the issuance of a waiver in the time requirements for Board approval of a relocation or closing.

COMMENT: The NJCTA stated that the proposed amendment to N.J.A.C. 14:18-5.1 would require cable television companies to apply to the Board for permission to close or relocate an office. As such, the promulgation of this rule as proposed would serve no regulatory purpose that could not otherwise be served with a requirement for notice to the Board and others prior to the closing or relocation of an office. N.J.A.C. 14:18-5.1(a) provides that each cable television company shall maintain an office in a reasonable proximity to its service area for the purpose of receiving applications for service, complaints, service inquiry, bill payments, etc. A requirement for notice would permit the Board to conduct an investigation into a particular move where deemed appropriate and provide opporutnity for those who might object to such a move to raise their concerns. The NJCTA contends the goals of the Cable Television Act and the Federal Cable Televison Act are to minimize burdensome and unnecessary regulation. Comments from operators further indicated that there would be a significant problem in conducting their business with the requirement for prior approval.

RESPONSE: The Board notes that the existing rule requires a cable company to maintain an office within reasonable proximity to its service area. The proposed rule will afford the additional protection of local officials and subscribers being notified. This gives them 20 to 30 days to comment on the relocation or closing of an office. The Board believes this would assure the public interest is not compromised.

The Board does not anticipate the rule resulting in a general problem in conducting business; it has noted and addressed specific concerns in response to other comments.

For many years the Board, often after public hearing, has required utilities contemplating office closings or relocations, to post signs, public notices and provide various kinds of information, along with service alternatives and options, to subscribers. During the course of these proceedings, the Board learned that these requirements have never been formally adopted. As a result, the Board is considering a parallel proposal to N.J.A.C. 14:3-5.1 at 22 N.J.R. 2404(a), New Jersey Register on August 20, 1990, (BPU Docket No. AX90060555) which would adopt a similar rule for utility offices. The Board notes that the rule adopted herein does not require hearings. The Board's role in these matters is to insure that subscribers are kept informed and that any inconvenience to them is minimized.

COMMENT: U.A. Columbia Cablevision and TKR Cable state that companies could become hostage to landlords who know of the conditions the companies must meet for approval. Companies also would become subject to an approval process by the Board, which means that the company loses its flexibility.

RESPONSE: The rule recognizes that there might be some administrative burdens on companies but believes that any negative impact will be offset by the protection afforded subscribers against unreasonable decisions to relocate or close a business office. The Board has followed a similar policy for utilities over many years and has found these cable operator concerns have not been a problem for utilities. Similarly, it does not believe they will be problematic for cable operators.

COMMENT: Monmouth Cablevision and Riverview Cablevision stated that in their role as retailers, cable operators should be allowed flexibility to open and close business offices at will (subject to reasonable notice to impacted subscribers). If operators do not feel free to open an office on a temporary or full-time basis because of the fear that closure of same will not be allowed without Board approval, operators will not open such offices regardless of any determination of subscriber need to the contrary. Thus, the imposition of this rule in such a circumstance would be an unintended impediment to the improvement service. Rather, operators should be permitted to open and close such offices wihtout Board approval by simply providing the Board, Office, municipal officials and subscribers with reasonable notice, such as notice required for channel modifications.

In the case of any office that is in compliance with a franchise requirement, they suggest that the Board's usual procedures governing franchise amendments would be appropriate.

RESPONSE: Companies already have business offices established and the rule does not preclude the addition of new offices to improve services; however, the rule's intent is to prevent problematic office closings or relocations. The Board does not view the franchised cable television

operator as a mere retailer. In a regulated industry it is reasonable for the Board to impose requirements intended to further the regulatory purposes of N.J.S.A. 48:5A-2, to promote efficient cable service, to promote harmony between cable companies and their subscribers, and to protect interests of municipalities in their municipal consents. Many municipal ordinances contain requirements for maintaining local offices.

COMMENT: Sammons Communications stated that even though it anticipated that the Board will act reasonably with regard to requests for the relocation of facilities, given the current economic factors and considering the existing real estate market there is a potential for serious economic harm to cable operators adversely impacted by requirements of this proposal.

RESPONSE: The Board disagrees with the presumption that conditions in the real estate market will generally lead to economic harm to cable operators impacted by the rule. The Board also disagrees with the commenters' presumption that the Board will be unable to act promptly on a request in light of the priorities and circumstances of any applicant.

COMMENT: Bridge Cable TV believes that the proposal is unnecessary because there have been very few situations, in which such a move has been proposed, which have not been satisfactorily resolved.

RESPONSE: The Board's intent is to provide for office relocations or closures that are not unreasonable, that will not unduly prejudice the public interest, and that provide the means by which customers and other interested parties will be adequately notified of the closing or relocation and the alternatives available.

COMMENT: The Borough of Metuchen submitted a resolution in support of the new rules and amendments.

RESPONSE: The resolution was noted by the Board in its deliberations.

COMMENT: The Township of Lakewood submitted a letter which raised an objection to the proposal if costs which are incurred when cable companies file petitions with Board for office closure or relocation are then passed on to the subscriber.

RESPONSE: As with any regulatory cost, the Federally mandated deregulation of cable television rates means that the Board cannot prevent such costs from being passed on to subscribers. Accordingly, the Board has determined the costs associated are limited and, as noted above, involve providing contact and information, which has been routinely provided, to the OCTV. The most costly element, a public hearing, is discretionary on the part of the Board. However, the protection afforded local jurisdictions to review comment or intervene in such a proposed office closure or relocation is believed in the best interest of municipalities and subscribers and offsets minimal related costs.

COMMENT: Garden State Cable commented that temporary offices used for marketing purposes, such as the distribution of converters, should not be construed as falling under this category.

RESPONSE: Proposed N.J.A.C. 14:18-5.1(a) identifies the purpose for the local offices. It does not apply to the temporary facilities referenced by the company.

Summary of Agency Changes Upon Adoption:

The Board, upon adoption, has added a requirement to N.J.A.C. 4:18-5.1(d). The requirement was included in the Board's similar proposed amendment to N.J.A.C. 14:3-5.1 which regulates utilities. It was published in the New Jersey Register at 22 N.J.R. 2404(a), on August 20, 1990. The requirement assures that the local exchange number or toll free number is included in any notice required under the rule.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

14:18-5.1 Location and closing

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

(c) At least 60 days prior to the closing or relocation of an office described in (a) or (b) above, a cable television company shall file a petition for approval with the Board demonstrating such closure or relocation is not unreasonable, will not unduly prejudice the public interest, and setting forth the means upon Board approval of the petition, by which customers and other interested parties will be adequately notified of the closing or relocation and alternatives available in the case of a closed office. The cable television company shall simultaneously notify its customers and the clerk of each affected municipality of the pending application for permission to relocate or close the subject office by means of posting notice at the office location and, within three days of filing the petition, by placing noti of the office closing or relocation in the newspaper(s) serving t affected area. Said notice shall inform customers of their right present to the Board, in writing, any objections they may have the office closure or relocation. The notice shall specify a date certa for submission of comments which date shall not be less than 20 more than 30 days after publication and posting. Such office sh not be closed or relocated until the utility has been informed, writing, that the Board has approved such request.

(d) Cable television companies are required to maintain ar provide toll free or local exchange telephone numbers for use by tl general public and subscribers affected by an office closing or reloc tion for billing, service and sales inquiries. ***This toll free number local exchange number shall be posted on any notice at the offi location as well as in the notice placed in the newspaper(s), pursua to (c) above, serving the affected area.***

(a)

BOARD OF PUBLIC UTILITIES

Regulations of Cable Television Procedures for Use of Public, Educational and Governmental Access (PEG) Channels

Adopted New Rule: N.J.A.C. 14:18-7.5

Proposed: September 17, 1990 at 22 N.J.R. 2894(b).

Adopted: January 24, 1991 by Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).

Filed: January 24, 1991 as R.1991, d.83, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 48:5A-10.

Effective Date: February 19, 1991.

Expiration Date: July 26, 1995.

The purposes of this rulemaking (BPU Docket No. CX90050380) ar to require that guidelines and procedures for the use and operations o public, educational, and governmental channels be committed to writing and to establish minimum record keeping.

The Notice of Proposal preceding this adoption was published in th New Jersey Register on September 17, 1990 at 22 N.J.R. 2894(b), an a public hearing was held on Friday, October 5, 1990. At least 15 days notice of the hearing was published in 10 daily newspapers of genera circulation throughout the State. Notices were also sent to all munici palities, cable television systems, and their attorneys, State legislativ committees concerned with cable television, commenters from the earlie proceedings, and other persons identified as having an interest in th rulemaking. On October 17, 1990 the Board extended the comment perio to October 31, 1990. The proposal was discussed and approved fo adoption with changes at the Board's November 21, 1990 open publi meeting.

Summary of the Public Comments and Agency Responses:

COMMENT: The Township of Lakewood stated that the cost for th establishment of new rules and guidelines for public, educational, an governmental (PEG) access channels should be borne by the cable tele vision operator. The ratepayer should not have to bear the financia burden which is the product of the promulgation of written procedure and the scheduling of cable programming.

RESPONSE: The scope of PEG channel requirements, and therefore, the costs, are determined by each municipality within broad parameters of State and Federal law. The PEG channels are set aside for community purposes either in the cable operator's application which is then reviewed and approved by the municipality, or under the municipal consent ordinance. If the municipality does not want the responsibility to program, schedule users, and maintain the PEG channels, it should designate an individual, group or entity to do so. The rule adopted herein is to require that when the franchise agreement makes the cable operator the designee, that the operator have established procedures and guidelines, as well as essential records, to insure fair use and administration of the access channel.

The Board recommends that all municipalities consider the allocation of day to day administrative and management costs for PEG channel operations when developing access requirements in their renewal proceedings. The extent of the cable operator's role in the operation of PEG access channels, and thus, the applicability of N.J.A.C. 14:18-7.5, should be negotiated locally during that process.

COMMENT: The League of Municipalities stated that the League would like to see language inserted in the rule which reaffirms the right of a municipality to require PEG access channels and facilities in the franchise agreement.

RESPONSE: The right of a municipality to require PEG access in the franchise agreement is derived from the Federal Cable Communications Policy Act of 1984. The Federal act, 47 U.S.C. SEC. 531, affirms the franchising authority's right to establish requirements with respect to the designation or use of channel capacity for public, educational and governmental use. The Board's regulations governing the determination of cable-related community needs and interests (N.J.A.C. 14:18-13.2) and the application for municipal consent (N.J.A.C. 14:18-11.2(a)(5)) empower the municipality to establish PEG requirements during the consent process. Most municipalities include PEG access requirements in their consent ordinances or incorporate PEG commitments by reference to the operator's application. The proposed PEG access rules are aimed at establishing structured guidelines ensuring access and encouraging use.

COMMENT: A number of cable television companies including TKR Cable Company, Garden State, Suburban Cablevision, Comcast Corporation, Storer Cable Communications, Bridge Cable TV, Sammons Communications of New Jersey, UA-Columbia Cablevision and the New Jersey Cable Television Association stated their opposition to the rule because: (1) the administrative burden is placed on operators; and (2) not all operators actively manage access channel use, making it impractical for them to keep usage records. For example, programming on many of these channels originate from high schools and other locations within the communities.

RESPONSE: In adopting proposed rule N.J.A.C. 14:18-7.5, the Board's intent for PEG access is to establish user guidelines aimed at simplifying and insuring a user's ability to gain access to said channels. The proposed rule applies only in situations where the cable television operator has a gatekeeper role or managerial control of access channel operations. Operators concerned about the burden of record keeping in those situations have the option, by mutual agreement in franchise documents, to delegate the requirement to establish and maintain schedules and records. However the adopted rule does not require local groups or officials to undertake this responsibility, nor does the rule apply where the access channel is managed by a designated local entity, access channel committee or group other than the cable operator.

The Board is also aware that many cable companies already have guidelines for the use of the access channels. However, in situations where the public access channel is controlled by the cable operator, it is the operator's responsibility in conjunction with users to establish the procedures and guidelines set forth in this proposal.

The Board notes that in many cases PEG access channels are dedicated to, and controlled and programmed by, the municipality or an entity so designated by the municipality. The cable operator provides little or no assistance in the operation of the channel. The intent of this proposed rule is not to take away control or management responsibility from public, educational or governmental entities in communities in which operational management has been vested by the franchise documents or the local government.

COMMENT: The Cable Users Association of New Jersey agrees with the cable industry that it would be inappropriate for a cable operator to be required to provide reports in situations where access channels were dedicated to entities such as municipal governments, educational institutions or corporations created to provide access in general. Additionally, the association has also encouraged the Board to grant to the operators of access channels freedom from liability for content of programs produced by producers other than the channel managers themselves.

RESPONSE: As noted above, the Board agrees that the entire responsibility under this rule should not fall on the cable operators. Accordingly, the Board has changed the rule to clarify the scope of the rule that it will only apply to access channels in franchises where the management and operation of the access channel is vested with the cable operator and that the operator must inform the Office of Cable Television if another person or entity is responsible for the operation of the channel. To change the rule upon adoption to account for the variety of operational arrangements used for access channels would require republication and further comment.

The Board believes the question of content liability for access channels is a matter of well established law.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletion from proposal shown in brackets with asterisks *[thus]*):

14:18-7.5 Written procedures for use of public, educational and governmental access channels

(a) All cable television operators ***which have managerial or operational control over an access channel*** shall develop written guidelines concerning the use of channel capacity designated as public, educational and/or governmental access channels. These guidelines shall contain information on the following:

1. The designation of and restrictions upon any channels available for such use;
2. The number of channels available for such use;
3. The municipalities served by each channel;
4. The procedure by which persons arrange to use each channel;
5. The cost, if any, for use of each channel;
6. The method by which persons deliver programming for insertion of on channel;
7. The studio and production equipment available, including costs and restrictions on use;
8. The method by which persons arrange to use any available studio or production equipment;
9. The training which is available in use of any studio or production equipment;
10. A written agreement between user groups, operators, and companies which states the rights and responsibilities of each; and
11. A specified contact person to see that interested parties are accommodated.

(b) Each cable television operator ***who has managerial or operational control over an access channel*** shall keep a record of all users of access channels available for public inspection at the local business office of the cable television operator. This record shall contain the names, addresses, and telephone numbers of access users, and shall be kept for a period of two years.

(c) A cable television operator ***who has managerial or operational control over an access channel*** shall provide a copy of the revision to the OCTV and the municipality within 30 days of any revision to the procedural rules for the use of a channel. All parties affected by the revision shall be provided immediate written notice by the operator.

(d) These guidelines shall be posted and available at local business offices and studios in the cable system.

(e) For any access not within the cable operator's control or management, each cable television operator shall maintain a listing of the person or entity having such control and management authority.

(a)

BOARD OF PUBLIC UTILITIES

Regulations of Cable Television Pole Plant Rearrangement Verification

Adopted New Rule: N.J.A.C. 14:18-12.3

Proposed: September 17, 1990 at 22 N.J.R. 2897(a).

Adopted: January 24, 1991 by Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).

Filed: January 24, 1991 as R.1991, d.84, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 48:5A-10.

Effective Date: February 19, 1991.

Expiration Date: July 26, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: New Jersey Bell filed a comment suggesting that N.J.A.C. 14:18-12.3(b),3 be revised to read as follows: "A field survey conducted at the applicant's cost by the pole owning utility or other such utility that owns or controls those portions of the poles to which the applicant proposes to attach." The purpose of this change would recognize that many poles are owned by the electric utility, and that the communications space on the poles is administered by the telephone utility. In addition, it provides clarification that the applicant is to bear the cost of field survey. Atlantic City Electric also requests that the Board recognize the electric utility leases the communications space to the telephone company.

RESPONSE: The Board agrees that the comments serve to clarify the circumstances of utility pole ownership and control and will modify the rule accordingly.

COMMENT: Shore Cable Company comments that there should be some cost allocation for overbuild make-ready as well as a stipulation which dictates where cable attachment is to go. Shore states that guidelines should be established as to where everybody belongs, and who shall pay for the relocation of the lines. Shore also suggested that incumbent operators be required to resurvey their pole attachments as part of re-franchising and certify that they are attached in compliance with applicable governing standards.

RESPONSE: The Board believes that existing orders, utility pole license agreements and other standard utility reference documents define the make-ready and pole attachment process, including cost allocation and survey work. Therefore, additional guidelines are not necessary. Further, the Board does not believe there is any reason to require cable operators to resurvey pole attachments during re-franchising since this would be a costly and time consuming process. In response to the comment concerning verification of data submitted in opposition to overbuilds, the Office maintains that all filings are subject to verification, and the need to verify is decided on a case by case basis with the majority of informational filings.

COMMENT: The Township of Lakewood objects to this rule if the cost of this rule for an over-build operator is passed on to subscribers. The OCTV assessment should account for the economic limitation of subscribers already receiving services.

RESPONSE: The economic impact of this rule on an over-builder is very limited, and would not affect existing cable TV operations. The survey work required by this rule must be completed at any event. The proposed rule merely advances the submission of make-ready estimates so that they precede certification, so there is no new cost created by the rule.

Summary of Agency-Initiated Changes:

The proposed rule was incorrectly proposed for codification at N.J.A.C. 14:18-12.2; upon adoption it is being properly codified at N.J.A.C. 14:18-12.3. The missing word "surveys" has been added to subsection (c).

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from the proposal indicated in brackets with asterisks *[thus]*).

14:18-*[12.2]***12.3*** Requirements for plant rearrangement verification

(a) Applicants for a certificate of approval for an additional cable television franchise shall submit verifiable cost estimates of projected aerial utility and cable television plant rearrangement needed (make-ready work) to permit the attachment of the proposed cable television system.

(b) The estimates shall be compiled by one of the following methods:

1. A field survey conducted by the applicant of all utility poles on which the applicant may attach in the proposed service area;

2. A field survey conducted by the applicant of at least 10 percent of the poles on which the applicant may attach using a statistical random sampling method and extrapolation process. The sample shall include the full range of all make-ready work categories which the applicant can reasonably expect to encounter in the proposed service area; or

3. A field survey conducted ***at the applicant's cost*** by the pole-owning utility ***or other such utility that owns or controls those portions of the poles to which the applicant proposes to attach***.

(c) Any survey shall be submitted in a form permitting verification by the pole owning utility, the Office or an independent party with experience in conducting utility make-ready ***surveys***. All surveys shall contain the underlying facts and assumptions determining the cost estimate and a description of the process for conducting the survey.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Rules of the Games

Supplemental Wagers Made After Come Out Roll in Support of Pass, Don't Pass, Come and Don't Come Bets (Making and Laying Odds)

Adopted Amendment: N.J.A.C. 19:47-1.6

Proposed: August 6, 1990 at 22 N.J.R. 2254(a).

Adopted: January 23, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: January 24, 1991 as R.1991 d.73, **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. 5:12-63(c), 69(c), 70(f) and 100(e).

Effective Date: February 19, 1991.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Greate Bay Hotel and Casino, Inc., t/a Sands Hotel, Casino & Country Club, a licensed casino operator, submitted a comment in which it did not object to the proposed amendments.

RESPONSE: The Casino Control Commission ("Commission") agrees with this comment as evidenced by its adoption of the proposed amendment. The Commission authorized the temporary adoption of these amendments for the purpose of conducting experiments to determine whether the amendments should be adopted permanently (see 22 N.J.R. 2187(b) and 22 N.J.R. 3392(a)). The available results of those experiments indicate that the amendments offer casinos marketing flexibility without jeopardizing the public interest or the integrity of casino operations.

COMMENT: The Division of Gaming Enforcement ("Division") supports the amendments, and suggests that the Commission should also consider permitting casino licensees to offer supplemental wagers greater than five times the original wager as permitted by the proposed amendments.

RESPONSE: The Division's suggestion that the Commission consider unlimited supplemental wagers is acknowledged by the Commission. Depending upon the Commission's experience with the supplemental wagers permitted by the adopted amendment, a proposal to permit unlimited supplemental wagers may be published in the future.

Summary of Agency-Initiated Changes:

The adopted amendment includes minor substantive and technical changes from the proposed amendment which do not require republication. One such change clarifies that the minimum amounts of the additional wagers which must be offered remain the amount of the original wager for Pass and Come Bets, and the amount calculated to win the amount originally wagered for Don't Pass and Don't Come Bets. The proposed amendment retained the requirement that the patron must have the right to make additional wagers, but inadvertently deleted reference to the minimum amounts which must be permitted. Obviously, it makes little sense to have a minimum supplemental wager requirement if the amount of the minimum wager can be limited to some mere nominal amount. Therefore, the Commission has decided not to adopt those portions of the proposed amendments which would have deleted reference to the minimum amount of the supplemental wager which must be offered in subsections (a) through (d).

That the proposed amendments did not intend to eliminate these minimum wager requirements is further evidenced by the proposed amendments to subsection (f). Those amendments require casinos to post signs only if they offer multiples greater than the amount of the original wager. The fact that the offer of an additional wager equal to the original bet

need not be posted implies that this additional wager will always be the minimum available.

In addition, the adopted amendment includes an explanation of what is understood in the casino industry as double, triple, quadruple and quintuple odds for the game of craps. Such multiple "odds" actually refer to permitted additional, or supplemental wagers. The proposed amendment simply recited the permitted multiple "odds," while the adopted amendment explains what is permitted in terms of additional wagers.

Finally, the adopted amendment establishes a notice requirement for changing the maximum additional wager being offered with minor differences from the present notice requirement. Casino licensees are now required to give notice to the Commission 24 hours in advance of such a change through a rules of the game submission. The adopted amendment permits casino licensees to make such a change with notice to the Commission one-half hour in advance. This change does not significantly curtail the requirement that a casino provide notice to the Commission in advance of such a change.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisk ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

19:47-1.6 Supplemental wagers made after the come out roll in support of pass, don't pass, come and don't come bets (making and laying odds)

(a) Whenever a player makes a Pass Bet and a total of 4, 5, 6, 8, 9 or 10 is thrown on the come out roll, he shall have the right to make an additional wager in support of the Pass Bet ***which may be limited by the casino licensee to an amount equal to the amount of the original Pass Bet.*** If, in such circumstances, the Pass Bet wins, the original amount of the Pass Bet shall be paid at odds of 1 to 1 and the supplemental amount shall be paid at odds of 2 to 1 if the come out point was 4 or 10, 3 to 2 if the come out point was 5 or 9, and 6 to 5 if the come out point was 6 or 8.

(b) Whenever a player makes a Don't Pass Bet and a total of 4, 5, 6, 8, 9 or 10 is thrown on the come out roll, he shall have the right to make an additional wager in support of the Don't Pass Bet ***which may be limited by the casino licensee to an amount so calculated as to provide winnings not in excess of the amount originally wagered on the Don't Pass Bet.*** If, in such circumstances, the Don't Pass Bet wins, the original amount of the Don't Pass Bet shall be paid at odds of 1 to 1 and the supplemental amount shall be paid at odds 1 to 2 if the come out point was 4 or 10, 2 to 3 if the come out point was 5 or 9, and 5 to 6 if the come out point was 6 or 8.

(c) Whenever a player makes a Come Bet and a total of 4, 5, 6, 8, 9 or 10 is thrown on the roll immediately following placement of such bet, he shall have the right to make an additional wager in support of the Come Bet ***which may be limited by the casino licensee to an amount equal to the amount of the original Come Bet***. If, in such circumstances, the Come Bet wins, the original amount of the Come Bet shall be paid at odds of 1 to 1 and the supplemental amount shall be paid at odds of 2 to 1 if the come point was a 4 or 10, 3 to 2 if the come point was 5 or 9, and 6 to 5 if the come point was 6 or 8.

(d) Whenever a player makes a Don't Come Bet and a total of 4, 5, 6, 8, 9 or 10 is thrown on the roll immediately following placement of such bet, he shall have the right to make an additional wager in support of the Don't Come Bet ***which may be limited by the casino licensee to an amount so calculated as to provide winnings not in excess of the amount originally wagers on the Don't Come Bet***. If, in such circumstances, the Don't Come Bet wins, the original amount of the Don't Come Bet shall be paid at odds of 1 to 1 and the supplemental amount shall be paid at odds of 1 to 2 if the come point was a 4 or 10, 2 to 3 if the come point was 5 or 9, and 5 to 6 if the come point was 6 or 8.

(e) **A casino may** *[offer up to five times odds at the game of craps in support of the Pass, Come, Don't Pass or Don't Pass Bets.]* ***allow an additional wager in support of a Pass or Come Bet in an amount up to five times the amount of the original Pass or Come Bet. A casino may allow an additional wager in support of a Don't Pass or Don't Come Bet in an amount so calculated as to provide winnings not in excess of up to five times the amount originally wagered on the Don't Pass or Don't Come Bet. The original Pass, Don't Pass, Come or Don't Come Bet and any additional wager allowed pursuant to this subsection shall be paid at the same odds as the original and supplemental wagers are paid under (a) through (d) above. The amount of the additional wager accepted from the patron may exceed the maximum additional wager otherwise allowed and posted pursuant to (f) below, to the extent that a wager in excess of the maximum is necessary to facilitate the payout permitted herein.***

(f) Any casino offering *["double odds," "triple odds," "quadruple odds," or "quintuple odds" in craps]* ***additional wagers greater than the additional wagers authorized under (a) through (d) above*** shall post signs *[within its casino room]* ***at the appropriate tables*** advising the patrons of the *[option]* ***maximum additional wager*** being offered provided that the location, size and language contained on such signs are submitted to and approved by the Commission *[or its authorized designee]*. ***A casino shall not change the maximum additional wager being offered at a table unless, at least one-half hour in advance of such change, it announces the change to patrons at the table and posts notice of such change on the table, and so advises the principal inspector or his or her designee.***

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Notice of Receipt on Petition to Amend the Standards for Individual Subsurface Sewage Disposal Systems

Petitioner: Normandeau Associates, Inc.

Take notice that on September 21, 1990, the Department of Environmental Protection (Department) received a petition for rulemaking concerning the amendment of the standards for individual subsurface sewage disposal systems.

The Petitioner requests that the Department amend the standards for individual subsurface sewage disposal systems at N.J.A.C. 7:9A to identify a leaching chamber as an accepted treatment and disposal alternative, thus eliminating the need for a Treatment Works Approval pursuant to N.J.A.C. 7:9A-3.9.

(b)

DIVISION OF WATER RESOURCES

Notice of Action on Petition for Rulemaking N.J.A.C. 7:9, 7:14, and 7:14A

Petitioner: Association of Environmental Authorities.

Take notice that on December 5, 1990, the Department of Environmental Protection (Department) received a petition concerning N.J.A.C. 7:9, the Department's rules governing water pollution control, N.J.A.C. 7:14, the rules concerning wastewater treatment and sludge quality assurance pursuant to the Water Pollution Control Act, and N.J.A.C. 7:14A, the rules regarding effluent parameters for New Jersey Pollution Discharge Elimination System (NJPDES) permits. Public notice of this petition was published in the January 22, 1991 New Jersey Register at 23 N.J.R. 222(a).

In accordance with N.J.A.C. 1:30-3.6 and after thorough review of the petition, the Department has determined that the matter will receive further deliberation and consideration in conjunction with comments received in connection with the readoption of N.J.A.C. 7:9, and rulemaking necessitated by the Clean Water Enforcement Act (N.J.S.A. 58:11-64 et seq.) both of which are now in progress. Upon the conclusion of the Department's deliberations, on or about April 5, 1991, the decision will be mailed to the petitioners and published in a future New Jersey Register.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

(c)

DIVISION OF WATER RESOURCES

Notice of Action on Petition for Rulemaking N.J.A.C. 7:14-4

Petitioner: Public Interest Research Group.

Take notice that on December 18, 1990, the Department of Environmental Protection (Department) received a petition for rulemaking concerning the amendment of regulations related to sludge quality assurance. Public notice of this petition was published in the February 4, 1991 New Jersey Register at 23 N.J.R. 316(b).

In accordance with N.J.A.C. 1:30-3.6 and after thorough review of the petition, the Department has determined that the matter will receive further deliberation and consideration in conjunction with an ongoing evaluation of these issues including examination of the existing sludge management alternatives and policies through an independent review by experts in the New Jersey academic community, development of the Department's "White Paper on Beneficial Use of Sewerage Sludge", updating of the Statewide Sludge Management Plan, and third party mediation of conflicts utilizing the contracted services of the Department of the Public Advocate, all of which processes are currently in progress and in which the Petitioner already takes part. Upon the conclusion o the Department's deliberations, on or about October 1, 1991, the decisior will be mailed to the petitioners and published in a future New Jersey Register.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that on January 9, 1991, pursuant to the provisions of th Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.), and the State wide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), ar amendment to the Atlantic County Water Quality Management Plan wa adopted by the Department. This amendment changes the alignment o the sanitary sewer line to serve the site of the Atlantic County Utilitie Authority's Environmental Park solid waste facility from that specifiec in the Egg Harbor Township Wastewater Management Plan to a mor northerly alignment. The new alignment will run from the Park in th rights-of-way of Pleasant Avenue, Mill Road and Ohio Avenue.

(e)

DIVISION OF WATER RESOURCES

Amendment to the Cape May County Water Quality Management Plan

Public Notice

Take notice that on January 14, 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 Cape May County Water Quality Management Plan was adopted by the Department. This amendment was for the Dennis Township Wastewater Management Plan (WMP). This WMP identifies the use of individual subsurface sewage disposal systems for wastewater treatment facilities within the township. The WMP also provides for the utilization of on-site wastewater treatment facilities provided that they comply with the NJPDES permit requirements. Environmentally sensitive areas are shown as not to be served.

(f)

DIVISION OF WATER RESOURCES

Amendment to the Lower Delaware Water Quality Management Plan

Public Notice

Take notice that an amendment to the Lower Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow the Sunnyside Vegetable Packing Company facility, located at Block 172, Lots 11-14 in Deerfield Township, Cumberland County, to construct a treatment works to upgrade and expand its existing on-site spray irrigation discharge to 72,000 MGD. In addition, a subsurface disposal system is proposed to accommodate the facility's wastewater discharge during freezing weather.

This notice is being given to inform the public that a plan amendment has been developed for the Lower Delaware 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 Upper Delaware Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for the Borough of Alpha, Warren County. This WMP would supersede the information contained in the Town of Phillipsburg, Borough of Alpha, Pohatcong Township, Lopatcong Township WMP dated May 1988. The Alpha WMP identifies an expanded Town of Phillipsburg Sewage Treatment Plan sewer service area within its municipal borders.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. 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 and must be submitted within 30 days of the date 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.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would identify a proposed discharge to groundwater treatment facility at Block 93, Lot 79 Mount Olive Township to service the TM Enterprises commercial development. The facility consists of four individual subsurface sewage disposal systems each serving a single commercial building.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. 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.

HUMAN SERVICES

(c)

OFFICE OF EDUCATION

Notice of Availability of State Funds

Title of Funding Source: State Facilities Education Act (P.L. 1979, c. 207)

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq., the Department of Human Services, Office of Education hereby announces the availability of the following State funds.

Name of program: Educational Related Services for fiscal year 1992.

Purpose: To provide the delivery of physical, occupational and speech/language therapy services in State-operated facilities located throughout New Jersey. These facilities provide special education programs to severely handicapped children, ages 3 through 21.

Amount of money in the program: Approximately $4,500,000.

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: Physical therapists must be licensed and school certified. Speech/language therapists must be licensed and school certified. Occupational therapists must be registered and school certified. All therapists must carry malpractice insurance.

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 5, 1991.

Date by which applicant shall be notified of approval or disapproval: April 26, 1991.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Notice of Receipt on Petition for Rulemaking Jackpot Payouts of Merchandise or Other Things of Value; Slot Machines and Bill Changers N.J.A.C. 19:45-1.37(a), 1.40A(n) and (o), and 19:46-1.26(a)

Petitioner: Marina Associates, d/b/a Harrah's Casino Hotel, Atlantic City.

Authority: N.J.S.A. 5:12-69(c) and N.J.S.A. 52:14B-4(f).

Take notice that on January 4, 1991, petitioner filed a petition with the Casino Control Commission requesting amendments to N.J.A.C. 19:45-1.37(a), 19:45-1.40A, and 19:46-1.26(a) concerning slot machine jackpot payouts of merchandise or other things of value.

The amendments requested by petitioner would permit a casino licensee to establish a time limit for offering a jackpot of merchandise or other thing of value subsequent to the initial offering of the merchandise or other thing of value.

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 n this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this ssue 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 he 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 he 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 ure 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 ny related entries.

***At the bottom* of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the January 7, 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 DECEMBER 17, 1990

NEXT UPDATE: SUPPLEMENT JANUARY 22, 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. 585 and 686	February 20, 1990	22 N.J.R. 2623 and 2860	September 4, 1990
22 N.J.R. 687 and 884	March 5, 1990	22 N.J.R. 2861 and 3072	September 17, 1990
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		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.2, 14.10	Interlocutory appeal for review of hearing location	22 N.J.R. 3278(a)	R.1991 d.34	23 N.J.R. 194(a)
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)
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
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)
1:13A-14.1	Lemon Law hearings: failure to appear	22 N.J.R. 3278(b)	R.1991 d.44	23 N.J.R. 293(a)
1:30	Agency rulemaking	22 N.J.R. 3281(a)	R.1991 d.85	23 N.J.R. 399(a)
	Most recent update to Title 1: TRANSMITTAL 1990-6 (supplement November 19, 1990)			
AGRICULTURE—TITLE 2				
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
2:16	Plant certification	22 N.J.R. 3285(a)	R.1991 d.28	23 N.J.R. 194(b)
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 1990-10 (supplement December 17, 1990)			
BANKING—TITLE 3				
3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
3:1	General provisions of Department	22 N.J.R. 3425(a)	R.1991 d.48	23 N.J.R. 294(b)
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)		
3:6-14.2	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)		
3:26	Savings and loan associations	22 N.J.R. 3428(a)	R.1991 d.41	23 N.J.R. 205(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)		
	Most recent update to Title 3: TRANSMITTAL 1990-8 (supplement December 17, 1990)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)			

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PERSONNEL—TITLE 4A				
Most recent update to Title 4A: TRANSMITTAL 1990-5 (supplement November 19, 1990)				
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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)		
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)		
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)		
5:28	State Housing Code	22 N.J.R. 1456(a)	R.1991 d.18	23 N.J.R. 57(a)
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)		
5:30-6.1	Local Finance Board: address correction	———	———	23 N.J.R. 57(b)
5:34-4.2	Local public contracts: administrative correction	———	———	23 N.J.R. 57(b)
5:37	Municipal, county and authority employees deferred compensation programs	22 N.J.R. 3076(a)	R.1991 d.19	23 N.J.R. 57(c)
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)		
5:80-29	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)		
5:92	Council on Affordable Housing: substantive rules	22 N.J.R. 3671(a)		
5:92-7.1(b)	Council on Affordable Housing: notice of invalidation of 1,000 unit cap	———	———	23 N.J.R. 58(a)
Most recent update to Title 5: TRANSMITTAL 1990-12 (supplement December 17, 1990)				
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)
6:12	Governor's Teaching Scholars Program	22 N.J.R. 3672(a)		
6:20-2A.11	Accounting in local districts: administrative correction	———	———	23 N.J.R. 59(a)
6:22-2.1, 5.2, 5.3, 5.4, 5.5	School Facility Planning Service: administrative corrections	———	———	23 N.J.R. 59(b)
6:24	Controversies and disputes	22 N.J.R. 2841(a)	R.1991 d.57	23 N.J.R. 297(b)
6:28-3.6, 11.5	Special education: administrative corrections	———	———	23 N.J.R. 59(c)
Most recent update to Title 6: TRANSMITTAL 1990-9 (supplement December 17, 1990)				
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7:1E-2.2, 4.3, 4.4	Bureau of Discharge Prevention: address correction	———	———	23 N.J.R. 60(a)
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)		
7:7-2.3	Waterfront development: administrative correction	———	———	23 N.J.R. 60(b)
7:7-2.3(a)2	Waterfront development: rule invalidation	———	———	23 N.J.R. 406(b)
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)		
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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)		
7:25	Division of Fish, Game, and Wildlife	23 N.J.R. 37(a)		
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)		
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
7:26-8.2, 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)		
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)		
7:27-3.2	Air Pollution Control: administrative correction	———	———	23 N.J.R. 61(a)
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:27-23.5	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)		
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 1990-12 (supplement December 17, 1990)

HEALTH—TITLE 8

8:9	Handling of human remains	22 N.J.R. 3458(a)		
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:24	Retail food establishments	23 N.J.R. 168(b)		
8:31A-1, 2, 5, 7, 9, 10	Standard Hospital Accounting and Rate Evaluation (SHARE) Manual	22 N.J.R. 3460(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:31B	Hospital reimbursement	22 N.J.R. 3724(a)		
8:31B-3	Hospital rate setting	Emergency (expires 3-1-91)	R.1991 d.42	23 N.J.R. 227(a)
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(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	Emergency (expires 2-11-91)	R.1991 d.22	23 N.J.R. 124(a)
8:33L-2.4	Home health services for AIDS and HIV-infected patients	Emergency (expires 2-11-91)	R.1991 d.22	23 N.J.R. 124(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)		
8:41-8.1	Mobile intensive care units: administration of medications	22 N.J.R. 3104(a)	R.1991 d.12	23 N.J.R. 61(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))	22 N.J.R. 1214(b)	R.1990 d.569	22 N.J.R. 3581(b)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 3582(a))	22 N.J.R. 2501(a)	R.1991 d.29	23 N.J.R. 206(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 1990-12 (supplement December 17, 1990)

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

10:6	Administrative hearings	22 N.J.R. 3115(a)	R.1991 d.13	23 N.J.R. 61(c)
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)		
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:48	Developmental Disabilities: appeal procedure; viral hepatitis and legal poisoning control programs	22 N.J.R. 3192(a)	R.1991 d.27	23 N.J.R. 209(b)
10:49-6.6	Recoveries involving county welfare agencies/boards of social services	22 N.J.R. 2672(a)		
10:50	Transportation Services Manual	23 N.J.R. 5(a)		
10:50-1.3, 1.4, 1.5, 3.2	Transportation Services Manual: administrative corrections	———	———	23 N.J.R. 63(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)		
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)		
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)		
10:59	Medical Supplier Manual	22 N.J.R. 3712(a)		
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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:64	Hearing Aid Services Manual	22 N.J.R. 3614(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)		
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)		
10:71	Medicaid Only Manual	22 N.J.R. 3357(a)	R.1991 d.33	23 N.J.R. 215(a)
10:71-4.5–4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)	R.1991 d.32	23 N.J.R. 215(b)
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)
10:81-1.12, 2.2, 2.8, 2.9, 2.17, 2.18, 3.16, 3.18, 3.19, 3.31, 4.7, 4.10, 4.16, 4.23, 5.4, 5.6, 5.9, 6.11, 6.14, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 10.7, 12.1, 12.3, 12.4, 12.6, 12.7, 12.8, 12.11, 14.1–14.8, 14.10–14.15, 14.17, 14.19–14.22, 14.24	Public Assistance Manual: JOBS program	22 N.J.R. 2405(b)	R.1991 d.8	23 N.J.R. 63(b)
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)		
10:82-1.6, 1.7, 1.8, 2.1, 2.3, 2.8, 2.9, 2.10, 2.19, 3.2, 3.14, 4.1, 4.4, 4.8, 4.14, 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9	Assistance Standards Handbook: JOBS program	22 N.J.R. 2445(a)	R.1991 d.7	23 N.J.R. 93(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)		
10:89-2.2, 2.3	Home Energy Assistance: eligibility criteria	22 N.J.R. 3590(a)	R.1991 d.39	23 N.J.R. 218(a)
10:91-4.4, 7.1	Commission for Blind and Visually Impaired: administrative corrections	————	————	23 N.J.R. 99(a)
10:109-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)		
10:121A-1.3, 1.5, 2.2, 5.8	Manual of standards for adoption agencies	22 N.J.R. 2674(b)	R.1991 d.6	23 N.J.R. 99(b)
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)

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CORRECTIONS—TITLE 10A

10A:2-3	Expenditure of inmate welfare funds	23 N.J.R. 155(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)		
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)		
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)		
10A:35	Alternatives to Juvenile Incarceration Grant Program	23 N.J.R. 156(b)		

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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)		
11:1-29	Insurer's temporary certificate of authority	22 N.J.R. 2453(a)	R.1991 d.15	23 N.J.R. 100(a)
11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
11:2	Insurance group rules	22 N.J.R. 1673(a)	R.1991 d.4	23 N.J.R. 103(a)
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)		
11:2-32	Custodial deposits	22 N.J.R. 2640(a)	R.1991 d.14	23 N.J.R. 105(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)
11:3-20.3, 20.6, 20.8, 20.11, 20.12, App.	Automobile insurers: filing Excess Profits Report	22 N.J.R. 2082(b)	R.1991 d.17	23 N.J.R. 106(a)
11:3-24.4	Automobile insurance coverage: policy constants	22 N.J.R. 3441(a)		
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	Medical fee schedules for PIP coverage: administrative correction	———	———	23 N.J.R. 125(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)
11:4	Actuarial services	22 N.J.R. 1689(a)	R.1991 d.3	23 N.J.R. 111(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)		
11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:5-1.36	Real Estate Guaranty Fund: special assessment	22 N.J.R. 3688(a)		
11:13-7	Commercial lines policy forms	23 N.J.R. 159(a)		
11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)	R.1991 d.16	23 N.J.R. 112(a)
11:16	Fraud prevention: claim from statement of liability; reporting of automobile theft or salvage	22 N.J.R. 3688(b)		
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)
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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)

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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)
12:235-3.11–3.23	Conduct of Judges of Compensation: notice of rule invalidation	———	———	23 N.J.R. 207(a)

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COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:80-2	Urban Development Corporation: public and nonpublic information	23 N.J.R. 20(a)		

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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)		
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	Motor Vehicles enforcement service	22 N.J.R. 3307(a)	R.1991 d.20	23 N.J.R. 207(b)
13:20-10.1	Automatic vehicle identification systems: traffic management	23 N.J.R. 21(a)		
13:21	Motor Vehicles licensing service	22 N.J.R. 3311(a)	R.1991 d.21	23 N.J.R. 207(c)
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 services: certificate of authorization for general business corporations	22 N.J.R. 3314(a)	R.1991 d.40	23 N.J.R. 207(d)
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)		
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)
13:36-10	Mortuary science: withdrawal of continuing education adoption	———	———	23 N.J.R. 117(a)
13:37-12.1	Certification of homemaker-home health aide: application fee	23 N.J.R. 24(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-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)		
13:44-2.12	Close of veterinary practice: maintenance of medical records	22 N.J.R. 1868(a)	R.1991 d.11	23 N.J.R. 117(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)		
13:48	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)		

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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)
13:71-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(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)
13:75-1.6	Victims of domestic violence: eligibility of claims	22 N.J.R. 3690(a)		
13:75-1.6, 1.7	Victims of drunk driving: payment of compensation	22 N.J.R. 3691(a)		
13:75-1.27	Violent crimes compensation: counseling fees	23 N.J.R. 167(b)		
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)		

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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)		
14:12	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: restoration standards	22 N.J.R. 2891(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)
14:30	Energy conservation	22 N.J.R. 3315(b)	R.1991 d.69	23 N.J.R. 413(b)
14:32	Submission and handling of information	22 N.J.R. 2649(a)	R.1991 d.31	23 N.J.R. 208(a)

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ENERGY—TITLE 14A

14A:2	Energy emergency	22 N.J.R. 3692(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:7	Submission and handling of information (recodified to 14:32)	22 N.J.R. 2649(a)	R.1991 d.31	23 N.J.R. 208(a)
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)		

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STATE—TITLE 15

15:10	Election rules	23 N.J.R. 288(b)		

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)		
16:22	Urban revitalization, special demonstration and emergency projects	22 N.J.R. 3196(a)	R.1991 d.25	23 N.J.R. 209(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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)		
16:28-1.38	Speed limit zones along Route 57 in Warren County	23 N.J.R. 50(a)		
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)		
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)		
16:28-1.97, 1.167	Speed limit zones along Route 77 in Cumberland, Salem and Gloucester counties, and Route 181 in Morris and Sussex counties	22 N.J.R. 3113(a)	R.1991 d.1	23 N.J.R. 118(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)		
16:28A-1.7, 1.15	Restricted parking and stopping along U.S. 9 in Freehold and Route 23 in Jefferson Township	22 N.J.R. 3319(a)	R.1991 d.9	23 N.J.R. 118(b)
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)		
16:28A-1.19	Restricted stopping or standing along Route 28 in Union County	23 N.J.R. 186(a)		
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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)		
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