

NEW JERSEY REGISTER



THE JOURNAL OF STATE AGENCY RULEMAKING

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(Includes adopted rules filed through September 10, 1990)

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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 16, 1990
See the Register Index for Subsequent Rulemaking Activity.
NEXT UPDATE: SUPPLEMENT AUGUST 20, 1990

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **October 31, 1990**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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December 3 issue:	
Proposals	October 30
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NEW JERSEY REGISTER

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

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR

Governor James J. Florio

Executive Order No. 14(1990)

Continuation of New Jersey Advisory

Council on Holocaust Education

Issued: August 31, 1990.

Effective: August 31, 1990.

Expiration: Indefinite.

WHEREAS, the New Jersey Advisory Council on Holocaust Education (Advisory Council) was created by Executive Order on October 5, 1982 to assist and advise in the implementation of education programs on the Holocaust and genocide in the public schools; and

WHEREAS, the Advisory Council is currently scheduled to terminate on September 1, 1990; and

WHEREAS, the Advisory Council has provided valuable assistance that should continue to be available for public school districts that seek to enhance their curricula on the Holocaust and on genocide in world history;

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

1. The New Jersey Advisory Council on Holocaust Education shall continue in existence through and including September 1, 1991.

2. The Council shall provide a report to the Governor by June 30, 1991 describing its recent activities and any additional future projects that it recommends be undertaken with regard to Holocaust education.

3. Except as expressly provided herein, Executive Order Nos. 17, 87, 168 and 225 (Kean) shall remain in full force and effect.

4. This Order shall take effect immediately.

RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Local Government Financial Regulations Municipal, County and Authority Employees Deferred Compensation Programs

Proposed Readoption with Amendments: N.J.A.C. 5:37

Authorized By: Barry Skokowski, Sr., Director, Division of
Local Government Services, Department of Community
Affairs.

Authority: N.J.S.A. 43:15B-1 et seq., specifically N.J.S.A.
43:15B-3.

Proposal Number: PRN 1990-516.

Submit comments by October 31, 1990 to:

Harry L. Mansmann, Executive Secretary
Local Finance Board
Division of Local Government Services
Department of Community Affairs
101 S. Broad Street
CN 803
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 43:15B-1 et seq. authorizes counties, municipalities and authorities thereof to enter into agreements with employees for deferring a portion of their compensation. Furthermore, the law mandates the Director of the Division of Local Government Services to approve each contract entered into by a local unit with one or more private organizations for the administration of any part of its deferred compensation program. This mandate created the necessity of promulgating rules governing the operation of such programs. Such rules became effective on October 16, 1980.

The rules provided for an orderly system of approval for deferred compensation programs. Furthermore, the rules ensure a degree of responsibility in the administration of the involved public funds and, therefore, also assist the program participants. Thus, the rules enhance the Division's continuing goal of protecting the integrity of the fiscal affairs of local governmental units.

The above original purposes of the rules remain vital and significant. The number of local units offering deferred compensation programs is growing at an increasingly rapid pace. It is essential that there continue to be orderly approval and administrative processes. Therefore, the Division seeks to readopt N.J.A.C. 13:37 prior to the scheduled expiration on November 18, 1990, pursuant to Executive Order No. 66(1978).

N.J.A.C. 13:37 contains the following provisions:

Subchapter 1 contains definitions;

Subchapter 2 describes the role of the Director of the Division of Local Government Services;

Subchapter 3 states the duties and responsibilities of the employer;

Subchapter 4 requires the employer to adopt a plan by resolution and to obtain Director approval. It also requires a certification from the local attorney relative to Internal Revenue Code compliance;

Subchapter 5 concerns the appointment of a local administrator and outlines the responsibilities of this position;

Subchapter 6 describes who is eligible to participate in the deferred compensation program;

Subchapter 7 concerns the enrollment process;

Subchapter 8 states the requirements relative to deferred amounts;

Subchapter 9 indicates eligible types of investments and contains other requirements incident to implementing the investment;

Subchapter 10 contains accounting procedures including provisions for a quarterly report and annual audit or review;

Subchapter 11 provides a mechanism for amendment of the deferred compensation program;

Subchapter 12 concerns the confidentiality and availability of records;

Subchapter 13 provides requirements for contractors contracted by the employer to administer all or part of the deferred compensation program; Subchapter 14 is the new enforcement provision which is described hereinafter;

Subchapter 15 is reserved; and

Subchapter 16 contains a severability provision.

In addition to the proposed readoption, the Division seeks to amend the rules. The purposes of the proposed amendments are threefold. First, the application of the rules over the past five years has brought to the attention of the Division language which is inappropriate, unnecessary or confusing. The proposed amendment will clarify and/or eliminate such language.

In short, the amendments will "clean up" the regulatory form and language in a manner which will make the rules more easily understood.

Secondly, the amendments will formalize the current Division directive which permits an alternative to the certification requirements of N.J.A.C. 5:37-4.4. This new rule, N.J.A.C. 5:37-4.5, makes acceptable an attorney certification which is guided by the Internal Revenue Service ruling for a substantially similar deferred compensation plan. The availability of deferred compensation programs is thereby increased, since the Internal Revenue Service currently assesses a \$2,500 fee for a plan ruling.

Thirdly, the amendments add significant new provisions at N.J.A.C. 5:37-14, which provide an administrative procedure to consider instances of regulatory noncompliance. Division experience has clearly demonstrated the need for such procedures. The new subchapter will provide a uniform method of regulatory enforcement.

In summary, the amendments seek to clarify the regulatory requirements for deferred compensation programs while enhancing the goal of protecting the public interests.

Social Impact

The number of local units operating deferred compensation plans has increased significantly in the previous few years. The popularity of the plans, as an employee investment option, continues to rise dramatically. The plan also provides a significant benefit as a supplemental retirement plan. Presently, there are 287 local units operating deferred compensation plans approved by the Division of Local Government Services. Employees of the local units participate on a voluntary basis. Each individual determines his or her own amount of deferral, subject to a predetermined minimum.

The approval and administrative processes provided by the rules continue to afford the participating governmental units and individuals a necessary degree of security in their deferred compensation programs. This is especially important to the fiscal integrity of the involved local units and to the individuals planning on utilizing the deferred funds to provide supplemental retirement income. Thus, many local units and plan participants would be adversely affected if the rules were allowed to expire.

The proposed amendments to the deferred compensation rules should ease the approval process by allowing an alternative certification. In furtherance of the Division's continuing concern for the fiscal integrity of deferred compensation programs, the proposed amendments also include provisions to ensure regulatory compliance (N.J.A.C. 5:37-14). Thus, additional local units may be encouraged to make a deferred compensation plan available to employees.

Economic Impact

The principal economic benefit of the rules lies in protecting the fiscal integrity of deferred compensation programs. Thus, participants are more able to rely upon the programs as a supplemental retirement fund. This benefit remains unchanged since the original promulgation of the rules in 1980 and provides a significant reason for their readoption.

Employees of local units operating deferred compensation plans participate on a voluntary basis. The amount deferred is determined by the individual employee participant subject to a predetermined minimum. Generally, there is no cost, except administrative expenses, to the local unit for operating a deferred compensation plan.

Since the proposed amendments will clarify the regulatory requirements, the impact may be to encourage the participation of additional local units and employees. Also, the inclusion of an enforcement provision (N.J.A.C. 5:37-14) will provide additional program security.

Regulatory Flexibility Analysis

These rules primarily affect the internal practices of local units in offering a personnel benefit. In addition, large companies are generally contracted to administer deferred compensation programs. Involved smaller companies are affiliated with larger companies and, therefore, are not individually directly affected by these rules. Thus, these rules should have limited impact, if any, on businesses addressed under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

It may be possible, however, for a smaller company to administer a deferred compensation program. The reporting and record keeping requirements imposed by these rules are relatively minor and costs are limited to those normally associated with such functions. It should be noted that the employer may pay for the required audit and the participants are often assessed a direct administrative fee.

Perhaps the single most noteworthy cost burden results from the bonding and insurance requirements of N.J.A.C. 5:37-13.11. The Division, however, believes this provision provides an essential protection and aids in the preservation of the fiscal integrity of the local unit.

In summary, involved smaller companies are affiliated with larger companies and any cost burden is shared. This proposed re-adoption with amendments does not impose any additional burdens on any companies. To date, these rules have not proved to be onerous and over 300 programs have been approved.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:37.

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

5:37-1.1 Definitions

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

...

"Code" means the Internal Revenue Code [of 1954], as amended.

["Private organization"] "**Contractor**" means any organization, firm, corporation, partnership, or individual, whether profit making or non-profit, which is not a governmental entity.

...

5:37-2.2 Approving plans

The Director shall be responsible for reviewing and approving all employer plans **and programs**.

5:37-2.3 Approving contracts

The Director shall review and approve all proposed contracts between an employer and a [private organization] **contractor**, wherein the employer proposes to contract for services to administer all or part of the deferred compensation program.

5:37-4.1 Standard plan

The employer shall draft, or have drafted, a standard plan which shall contain all of the policies and procedures to be used in operating a deferred compensation program. At a minimum this plan shall contain policies and procedures which address each of the issues in [N.J.A.C. 5:37-5 through 13] **N.J.A.C. 5:37-3 through 13**. While not mandatory, it is urged that the plan be drafted in consultation with representatives of the potential participants.

5:37-4.4 Opinion and certification on Internal Revenue Service compliance

The attorney for the employer shall file with the Director an opinion stating that the employer's plan meets the requirements of Section 457 of the Internal Revenue Code [of 1954], as amended. He or she must also certify that an application has been filed with the Internal Revenue Service for a ruling that the plan meets the requirements of Section 457 of the Internal Revenue Code [of 1954], as amended, and that such ruling will be forwarded to the Director when received.

5:37-4.5 Alternative certification on Internal Revenue Service compliance

(a) As an alternative to the Internal Revenue Service ruling required pursuant to N.J.A.C. 5:37-4.4, the attorney for the employer may certify that the employer is adopting a plan substantially similar to one

on which a satisfactory Internal Revenue Service ruling has already been obtained. A copy of the satisfactory ruling shall be attached to the certification. The certification shall also indicate the use of the ruling for guidance only and the realization that for Internal Revenue Service purposes, the ruling of another employer is not to be considered as precedent.

(b) The decision on whether a particular plan is substantially similar shall be made by the Director.

5:37-5.3 Staff and contracts

The administrator may perform the functions in N.J.A.C. 5:37-5.2 himself or herself, with staff, or through contracts with [private organizations] **contractors**.

5:37-9.7 Timing of investments

All funds from amounts deferred shall be invested by the administrator or [private] contractor responsible for investments within 72 hours, exclusive of Sundays and holidays, of the time the administrator or contractor receives the funds or is notified that the funds are available for investment or is in any other manner aware that the amounts deferred have been made and are available for investment.

5:37-10.4 Audit or review

(a) (No change.)

(b) If a [private] contractor is retained to administer all or part of the program and/or is retained to invest program funds, the employer shall cause a review of all program funds within five months after the close of the employer's fiscal year by the outside, independent registered municipal accountant pursuant to (b)4[.] below. A copy of each review shall be transmitted to the governing body and to the Director within five days after completion.

1. The [private] contractor must transmit to the employer a compilation of financial data in statement form giving a full accounting of all program transactions occurring during the employer's fiscal year, including beginning transactions and ending fund balance. The accounting for the transactions must reflect each participant's amount and date of each contribution received, the beginning fund balance by investment option, earnings and/or losses incurred, administrative charges and fees assessed, any transfers made among funds, all deposits and withdrawals, and the ending fund balance, including any and all adjustments made to such program funds. The [private] contractor must also submit to the employer applicable program statements together with the opinion from their latest firm audit report prepared by their Independent Public Accountant.

2. The outside independent auditor of the employer shall then evaluate the employer payroll records and joinder agreements against the information transmitted by the [private] contractor.

3.-5. (No change.)

6. The [private] contractor must also furnish a letter of internal accounting control to the Director, prepared by its independent accounting attesting to the [private] contractor's internal controls.

7. The [private] contractor must further certify to the Director that the annual accounting data supplied to the employer is accurate and complete.

5:37-11.3 Approval of amendment

Any amendment made to an [approval] **approved plan or program** must be submitted to the Director for approval prior to implementation with a resolution of the governing body adopting the amendment. Any amendments required by the IRS do not require Director approval before implementation; however, such amendments must be filed with the Director.

5:37-12.2 Program records

Any records, reports or other information relating to the program as a whole, including, but not limited to, cash flow analysis, investment reports, audits and [semi-annual] **quarterly** reports shall be made available by the administrator to any participant and/or the Division of Local Government Services upon request.

COMMUNITY AFFAIRS

PROPOSALS

5:37-13.6 Conflict of interest

(a) (No change.)

(b) No employer shall enter into a contract with a [private] contractor which pays money to an organization, of which the employer is a member, for endorsement of its plan.

5:37-13.8 Award of contracts

Any contracts to provide all or part of the administration of the [Employer's Deferred Compensation Program] **employer's deferred compensation program** shall comply with the Local Public Contracts Law. The [Employer] **employer** shall submit to the Director a certification from the [Employer's] **employer's** attorney which states that the award of said contract(s) complies with the **extraordinary, unspecifiable services bidding exemption of the Local Public Contracts Law** [, describes the procedure followed, and states the length of the contract].

SUBCHAPTER 14. [(RESERVED)] ENFORCEMENT

5:37-14.1 Compliance

All employers and contractors shall comply with the provisions of these rules at all times. Any contractor or employer deemed by the Director to be in noncompliance shall be notified by certified mail to appear before the Director, or his or her designee. Notice shall be given at least 14 days prior to the date of the appearance and shall detail the nature of the alleged noncompliance. Failure to appear shall result in appropriate penalties pursuant to N.J.A.C. 5:37-14.4.

5:37-14.2 Director determination

No later than 10 days after an appearance required by N.J.A.C. 5:37-14.1, the Director shall issue a written determination on the issue of regulatory compliance. A copy of the determination shall be forwarded by certified mail to the contractor and/or employer, as appropriate.

5:37-14.3 Grace period

A Director determination of noncompliance shall result in the immediate commencement of a 60 day grace period. During this time, the contractor and/or employer shall rectify all items of noncompliance, to the satisfaction of the Director.

5:37-14.4 Penalties

Failure to satisfactorily address noncompliance during the provided grace period shall result in the immediate ineligibility of a contractor to qualify for Division approval of any additional deferred compensation programs. The Director may also impose other penalties as provided for by law.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

**Marine Fisheries Administration
Striped Bass**

Proposed Amendment: N.J.A.C. 7:25-18.1

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

Authority: N.J.S.A. 23:5-43 et seq.

DEP Docket Number: 032-90-09.

Proposal Number: PRN 1990-528.

Submit comments by October 31, 1990 to:

Sue Kleinberg, Esq.

Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed amendment institutes a two month closed season for striped bass in the portion of Delaware Bay and Delaware River and its tributaries in which this particular population spawns. In addition, this

amendment provides access to anglers on the Atlantic Coast to an increased creel limit of two fish, one of which shall be no less than 38 inches in length, the other of which shall be no less than 28 inches in length. This amendment is designed to comply with the mandate of the Legislature, subject to the approval of the Atlantic States Marine Fisheries Commission (ASMFC), to institute a "trophy fish" regulation outside of the Delaware Bay and Delaware River areas, while protecting the latter fishery during spawning.

This amendment is the culmination of years of management of the migratory stock of striped bass by the ASMFC. During the mid-1970's, the coastal population declined sharply and has remained severely depressed until now. However, the young-of-year index for 1989, which is a measure of spawning success in the Maryland portion of Chesapeake Bay (the source of the coastal fishery), was high enough to indicate the success of previous management methods. As a result, the ASMFC formulated a plan which allows for the reinstatement of a harvest at a level equal to 20 percent of the historical commercial yearly average for the period from 1972 through 1979 to yield an allowable harvest of 63,800 pound of striped bass in New Jersey. Because commercial fishing of striped bass is now prohibited in this State, the ASMFC has approved the allocation of this projected harvest to the recreational fishery by means of the "trophy fish" allowance. This rule provides for the taking of such a fish as well as a method of tracking the harvest through use of tags provided by the Division of Fish, Game and Wildlife. The harvest will be closely monitored, and the fishery will be closed within 48 hours of the day when the projected 63,800 pounds harvest is anticipated to be achieved.

The Delaware Bay and River fishery is treated differently because it is a different fishery, as determined through sophisticated analysis of eye lens proteins and mitochondrial DNA. These stocks are sufficiently low as to require more stringent management techniques. Moreover, a closed season during spawning in April and May is required by the ASMFC as part of its striped bass management plan.

Penalties for violations of this act will include fines of \$100.00 per fish for the first offense and fines of \$200.00 per fish for each subsequent offense.

Social Impact

The striped bass trophy fish program will have a positive social impact due to the increased recreational opportunity that this increased creel limit will provide. Moreover, because the concept of a trophy fish program has been highly publicized, it may spur additional interest in the hook-and-line striped bass fishery. New sport fishermen may be attracted to this program. With existing prohibitions on netting and sale of striped bass in New Jersey, the ASMFC authorization of the 63,800 pound allocation of the resource to New Jersey is contingent upon its incorporation into a program such as the trophy fish program.

The Delaware River spawning season closure, however, will prevent sport fishermen from fishing for striped bass for a two-month period in certain areas of the Delaware Bay, the Delaware River and their tributaries.

This short-term decrease in recreational opportunity is expected to result in a recovery of the striped bass fishery which will eventually provide for an increase in the opportunity to participate in this sport.

Economic Impact

These amendments will have a very slight economic impact. The amendments, which do not involve fees, will increase the opportunity for the rod-and-reel angler to retain a striped bass along New Jersey's coast and will therefore increase fishing activity. This will in turn support increased business for sport fishery support industries, especially bait and tackle shops.

The Delaware River spawning season closure, on the other hand, will prevent striped bass fishermen from fishing for striped bass for a two month period. This inactivity might reduce revenues at fishing-oriented establishments, such as bait and tackle shops, since some anglers may choose to forego participation in the sport rather than to devote their energies to angling for other species. In the long term, however, the spawning season closure should speed up the natural recovery of the striped bass resource in the Delaware River and should increase recreational fishing opportunities and benefits to dependent commercial establishments.

Environmental Impact

The striped bass trophy fish program is expected to be beneficial to the environment. By limiting the increased harvest to fish large enough to have already spawned, it contributes to the prevention of overfishing

PROPOSALS

Interested Persons see **Inside Front Cover**

ENVIRONMENTAL PROTECTION

and does not impede the gradual recovery of this severely stressed population. It is therefore consistent with the coastwide management plan for striped bass.

In addition, every fishermen participating in the trophy fish program will be educated as to the appropriate handling of fish being released to prevent discard mortality on striped bass. Thus, for example, gaffing of fish to be released will be discouraged.

The Delaware River spawning season closure will result in protection of the spawning population of striped bass to aid in the natural recovery of the resource.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this rule will not impose reporting, record-keeping, or other compliance requirements on small businesses because there is no authorized commercial striped bass fishery in the State.

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

7:25-18.1 Size limits

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

(e) A person shall not take, attempt to take or have in his or her possession any striped bass while on or angling in that portion of the Delaware River or its tributaries from the Trenton Falls to the northernmost border shared by the States of New Jersey and Delaware from April 1 through May 31 of each year.

(f) Pursuant to the provisions of N.J.S.A. 23:5-45.1c, except in Delaware Bay and the Delaware River and tributaries, the possession of one "trophy sized" striped bass, measuring not less than 38 inches in length, will be allowed in addition to the one fish allowed under the provision of N.J.S.A. 23:5-45.1(a) in accordance with the following provisions:

1. Any person intending to take one striped bass measuring not less than 38 inches in length in addition to his normal possession of one striped bass measuring not less than 28 inches in length may apply to the Division for a "fish possession tag." Applications may be obtained from either of the following:

i. The Division of Fish, Game and Wildlife
Striped Bass Trophy Fish Program
CN 400
Trenton, NJ 08625; or

ii. Fish checking stations, as authorized by the Division and identified by public notice in the New Jersey Register;

2. The application form shall be completely filled in to include the name, address and telephone number of the applicant and any other information requested therein;

3. During 1990, applications for a fish possession tag will be accepted for participation in the trophy first program and processed in order of receipt by the Division beginning on the effective date of this rule amendment;

4. Beginning January 1, 1991, only those applications for a fish possession tag which are received during the period from January 1-February 15 of each year will be accepted for participation in the "trophy fish" program. In the event that more applications are received than can be accommodated by the program, fish possession tags will be awarded on the basis of a random drawing from among all applications received, the drawing to occur on the first business day after February 15; in the event that the number of available fish possession tags exceeds the number of applications received, the tags undistributed after the closing of the application period will be allocated to fish checking stations for distribution, as described below at (f)10;

5. Successful applicants will receive one, non-transferable fish possession tag. This tag is to be placed through the mouth and out behind the gill cover of the trophy fish and fastened to form a complete circle immediately upon capture;

6. Successful applicants shall keep records of their trophy fish fishing activity as requested on forms furnished by the Division. Such records shall include, but not be limited to, the days and hours fished, number of striped bass caught, size of striped bass caught, number and size of striped bass kept and location of fishing activity;

7. A person shall not have in his or her possession at any time more than two striped bass, of which one shall be not less than the size

provided for in N.J.S.A. 23:5-45.1 and the other shall be not less than 38 inches in length and shall have a properly affixed, completely fastened and legal fish possession tag;

8. Any striped bass taken under the provision of this subsection shall be transported to an authorized fish checking station by the person who caught the fish on the day so taken. A person shall not present for registration or permit to be registered in his or her name a striped bass which he or she did not catch;

9. A person shall not possess any striped bass taken or tagged under the provisions of this subsection which is damaged or mutilated to the extent that its length cannot be determined, other than immediately prior to preparation or being served as food. Any person who legally takes and tags a striped bass under these provisions and who cannot arrive at a fish checking station prior to closing time shall immediately report to the marine enforcement office at (609) 748-2050 and supply his or her name, the date, the time, and the striped bass tag number and shall check the fish at an authorized fish checking station the following day;

10. If available, an additional fish possession tag may be provided to the angler upon recording of his or her prior legally tagged striped bass at an authorized fish checking station; and

11. When, at any time during the calendar year, the Division has projected that 63,800 pounds of striped bass will have been harvested within the next 72 hours under the provisions of this section, the Division will close the State's waters to any further harvesting upon two days public notice in the Newark Star-Ledger, Asbury Park Press and The Press (of Atlantic City).

(g) Any person violating the striped bass size or possession limits as provided for in N.J.S.A. 23:5-45.1, or (e) and (f) above shall be liable to a penalty of \$100.00 per fish for the first offense and a penalty of \$200.00 per fish for each subsequent offense.

(h) All persons aboard any fishing vessel subject to this rule shall immediately comply with instructions and signals issued by a conservation officer, a marine police officer or other law enforcement officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for the purpose of enforcement of this rule.

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

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Solid Waste Fees

Proposed Amendments: N.J.A.C. 7:26-4.3, 4.4 and 15.6

Proposed New Rule: N.J.A.C. 7:26-4.6

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

Authority: N.J.S.A. 13:1E-18.

DEP Docket Number: 030-90-08.

Proposal Number: PRN 1990-510.

A public hearing concerning this proposal will be held on:
Tuesday, October 23, 1990, at 10:00 A.M.
New Jersey State Museum Auditorium
205 West State Street
Trenton, New Jersey

Submit written comments by November 30, 1990 to:
Samuel A. Wolfe, Esq.
New Jersey Department of Environmental Protection
401 East State Street, 7th Floor, West Wing
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing to amend its fee schedule for solid waste facilities and other submissions relating to solid waste. The Department also is proposing to adopt a schedule of fees to be payable in connection with recycling business loans made pursuant to N.J.A.C. 7:26-15.

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In 1974, the Department adopted its first solid waste fee schedule (see 6 N.J.R. 343(c)). This fee schedule was authorized by N.J.S.A. 13:1E-18, which then provided as follows: "The fees charged by the department pursuant to this section shall not be less than \$10.00 nor more than \$500.00 based on criteria contained in the fee schedule."

Pursuant to this statute, the Department since 1974 has capped its fees for the following services at \$500.00: review of a solid waste facility application for administrative completeness; technical reviews of an engineering design for a permit (or approval) or renewal of a permit or in response to a notice of deficiency; review of an environmental and health impact statement for a permit or renewal of a permit or in response to a notice of deficiency; technical review of a facility closure and post-closure plan; technical review of a sanitary landfill topographic survey, preparation and issuance of a solid waste facility permit or renewal; and review of solid waste collection or disposal facilities or operations submitted pursuant to N.J.A.C. 7:26-1.7(e). In addition, the existing fee schedule has limited to \$500.00 the total fees payable in connection with a vehicle used for transportation of both solid waste and hazardous waste. These fees generally do not reflect the amount of time and expertise required for the services performed by the Department. Nor do they defray a substantial part of the total cost the Department incurs to provide these services.

The Comprehensive Regulated Medical Waste Management Act, P.L. 1989, c.34, removed the \$500.00 cap imposed by N.J.S.A. 13:1E-18. The act also required that fees be linked to the complexity and duration of services performed by the Department.

The proposed amendments revise the annual fees for monitoring the volume of solid waste received by facilities, updating facility registrations, determining whether a facility is consistent with a district solid waste management plan, and monitoring facility compliance with applicable laws, regulations, permit conditions and other requirements.

The proposed amendments also revise the fees for the following services: pre-application meetings; technical reviews for a determination that an application is administratively complete; technical reviews of preliminary environmental and health impact studies; technical reviews of engineering design reports and final environmental and health impact statements; reviews for consistency with district recycling plans; preparation of hearing officer's reports; major modifications to solid waste facility permits; minor modifications to solid waste facility permits; solid waste facility permit renewals; transfers of ownership of solid waste facility permits; minor technical reviews; and, in some cases, site visits. The following is a description of such services:

1. Pre-application meeting. This activity includes the initial correspondence and verbal communication between the applicant/permittee and the Department as well as preparation for and attendance at any pre-application meetings.

2. Administrative completeness determination. This activity includes the review necessary to determine whether or not the submission is administratively complete, in accordance with N.J.A.C. 7:26-2.4(g), and the formal notification of the determination. It also includes one notice of deficiency (NOD) as well as the review of the response to the first NOD. Any additional reviews will be handled as minor technical reviews (see 11 below).

3. Preliminary environmental and health impact study (PEHIS) review. This activity includes the initial review of the PEHIS, one notice of deficiency (NOD), the review of the response to the first NOD, and the formal notification of approval/disapproval. Additional reviews will be handled as minor technical reviews (see 11 below).

4. Engineering design report review. This activity includes the initial review of the Final Environmental and Health Impact Study (FEHIS) and the engineering designs, one notice of deficiency (NOD), and the review of the response to the first NOD. Additional reviews of the FEHIS will be handled either as new submissions or as minor technical reviews (see 11 below).

5. Recycling plan consistency review. This activity includes the performance by the Office of Recycling in the Division of Solid Waste Management of the department's responsibilities under N.J.S.A. 13:1E-99.30a, which requires the department to determine that plans for a new or expanded solid waste facility incorporate the goals of the relevant district recycling plan. In connection with this determination, the Office of Recycling performs the following services:

a. An analysis of the composition and volume of the various types of wastes to be received at the proposed facility, to confirm that no materials designated for recycling under the district recycling plan are included in such wastes;

b. An analysis of the proposed operating capacity of the facility, to establish that the proposed capacity reflects the waste reduction goals of the district recycling plan;

c. An analysis of the composition and volume of nonprocessable or bypass wastes, to determine whether such wastes can be recycled;

d. An analysis of the preliminary and final operations and maintenance manual for the facility, to determine whether the manual includes an acceptable plan for inspection of incoming waste, which will ensure to the greatest extent practicable that recyclable materials will not be disposed of as solid waste; and

e. An analysis of the draft and final solid waste facility permit, to confirm that it contains the above requirements.

6. Hearing Officer's Report (HOR). This activity includes the preparation of the draft permit and public notice, preparation for and conducting of the public hearing, and preparation of the HOR and the final permit (if applicable).

7. Major modification to permit or approval. This activity includes processing any permit modification that necessitates a public hearing, which in turn includes preparation of the draft modified permit and public notice, conducting the public hearing, and preparation of the HOR and the final modified permit (if applicable).

8. Minor modification to permit or approval. This activity includes all processing of any modification that does not require a public hearing, other than processing covered by another category listed herein or in other fee rules of the Department.

9. Solid waste facility permit renewal. This activity includes processing of the renewal of a solid waste facility permit pursuant to N.J.A.C. 7:26-2.7(b), other than processing covered by another category listed herein or in other fee rules of the Department.

10. Transfer of ownership of permit. This activity includes processing of the transfer of ownership of a permit, other than processing covered by another category listed herein or in other fee rules of the Department.

11. Minor technical reviews. This activity includes supplemental reviews for the preceding as well as any minor technical reviews not included in the preceding categories, that is, reviews of proposed technologies, applicability determination, data requests requiring file searches, etc.

12. Site visits. This activity includes the hours for the actual site visit (including, without limitation, site visits for the purpose of inspecting a facility under construction or expansion), as well as for follow-up reports and correspondence.

The proposed amendment to N.J.A.C. 7:26-4.3 establishes fees for these services, where applicable, for the following types of facilities: thermal destruction facilities, sanitary landfill facilities, transfer station and materials recovery facilities, and compost facilities. The amendment also establishes fees for these services, where applicable, for submissions relating to closure plans and topographic maps.

The extent of these services required in connection with landfill disruptions, methane venting systems, on-site disposal, and cover material vary widely. Accordingly, the amendment provides for an initial review of submissions in these areas, which will include a determination of the fees to be charged.

Registration and inspection of solid waste cabs, single-unit vehicles, trailers and containers require other types of services. The amendment revises the existing fee schedule for such services. The amendment also deletes the provision in the existing rules which caps at \$500.00 the maximum total fee which a transporter using a vehicle for the transportation of both solid waste and hazardous waste can be required to pay in combined solid waste and hazardous waste registration fees.

The proposed amendment to N.J.A.C. 7:26-15.6 also establishes new fees to be paid by New Jersey businesses and industries applying for and receiving recycling business loans and loan guarantees pursuant to N.J.A.C. 7:26-15. These fees are intended to defray the Department's costs in connection with the loan or loan guarantee, as such costs arise in the course of conducting an initial review and technical review, issuing the commitment, preparing for and conducting the closing, and managing the loan or loan guarantee after closing.

In the initial review of the loan or loan guarantee application, the Department pre-screens the applicant by telephone or meeting, acknowledges receipt of the application, reviews the application, and obtains from the applicant additional information or materials omitted from the application, reviews the additional information and materials. The technical review includes one or more site visits, completion of a loan review document, preparation of a letter to the applicant stating the Department's initial decision concerning the proposed loan or loan guarantee, technical analysis of the loan or loan guarantee, preparation of a rec-

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ommendation to the New Jersey Economic Development Authority (NJEDA), conducting meetings, and serving as a liaison among the applicant, NJEDA, and other parties to the transaction. Issuing the commitment includes drafting of the commitment and having it reviewed by appropriate Department personnel. Closing includes preparation and review of closing documents, and attendance at closing. Post-closing loan management includes review of an annual report, site visits, and intervention in the case of non-compliance with the terms of the loan or loan guarantee.

The Department has studied its records for the nine-month period ending March 31, 1990, to determine the types of services it performs, and the number of each type of service it reasonably expects to perform each year. The Department used a cost accounting analysis for fiscal year 1988 to determine the number of hours generally required to perform each service. The proposed fees are based upon this determination of hours required, multiplied by an hourly rate. The calculation of the proposed fees is explained in more detail in the economic impact statement below.

The fee schedule provides, through proposed new rule N.J.A.C. 7:26-4.6, for fees to be increased automatically each year to reflect increases, if any, in the Consumer Price Index. The increases will become effective on July 1 of each year, which is the beginning of the Department's fiscal year. The Department expects to publish a revised schedule each year; however, the fee increase will take effect automatically, and will not depend upon publication of the revised schedule.

The fee schedule excludes hazardous waste fees. The Department has adopted a separate hazardous waste fee schedule (see N.J.A.C. 7:26-4A, 20 N.J.R. 1995(a), 21 N.J.R. 190(a)).

Social Impact

The proposed amendments will have a positive social impact. The funds to be provided by the amendments are essential to support the services which the Department is required to provide under the Solid Waste Management Act. The amendments will shift the responsibility for the cost of these services from the general tax base to those who receive the most direct benefits of the services.

The Department will, however, continue to require a significant amount of tax-based support to provide general services for the public at large. These services normally include: responses to public inquiries regarding solid waste issues, public information, regional and statewide planning and other generic activities.

Economic Impact

The Department expects that the proposed solid waste fees will increase the costs which the solid waste industry pays for the Department's services by approximately \$8.6 million for the first year in which the fees are charged. The Department also expects that costs will increase in subsequent years as a result of inflation, though the exact amount of the increase will depend upon the extent of the increase in the Consumer Price Index. The proposed fees will cover a larger portion of the Department's costs in providing the services required under the Solid Waste Management Act, but will not cover all such costs.

The Department has determined the cost of the services listed in the proposed amendments based upon its calculation of the average hourly cost of each full-time employee, the number of person-hours generally required to perform each service, and the cost of special purpose items (including scientific equipment, safety equipment, and data and word processing charges), and maintenance, supplies and training for such equipment. In addition, the Department has calculated the number of attorneys necessary to render legal services in connection with the services performed by the Division of Solid Waste Management. The Department has assumed that the number of person-hours spent in rendering legal services in connection with each of the types of activities for which fees are assessed is proportional to the number of person-hours which the Division of Solid Waste Management spends on such activities. The proposed amendments apportion the total cost of legal services in accordance with these proportions.

Average hourly cost per employee

The cost of an employee is comprised of salary, fringe benefits, indirect costs, and normal operating expenses. The Department has calculated the average hourly cost for full-time employees as follows:

1. The average salary for a full-time employee is \$35,321.
2. Fringe benefits average 27.65 percent of salary, or \$9,766.
3. Indirect costs average 32.7 percent of salary plus fringe benefits, or \$14,744.

4. Normal operating expenses, such as postage, telephone, travel, supplies and data system management, average \$15,000 per employee.

5. The annual total of salary, fringe benefits, indirect costs, and normal operating expenses average \$74,831 per employee. The Department estimates that each employee averages 1,560 hours per year performing "billable" services for which fees are to be imposed under N.J.A.C. 7:26-4.3, 4.4 and 15.6. Accordingly, the average hourly cost per employee is \$47.97. Adding the cost of special purpose items and legal services, as discussed below, increases this hourly rate to \$52.20. The hourly rate will increase each year by an amount corresponding to the annual increase in the Consumer Price Index.

Methodology for determining types of services, staffing needs and fees

The Department has conducted an analysis of its billing records for the nine-month period ending March 31, 1990. Based upon these records, the Department has estimated the number and types of services for which fees are imposed under the proposed amendment. In preparing these estimates, the Department has assumed that this data will provide a reasonably accurate prediction of the number and types of services to be performed in the future. In addition, a cost accounting analysis of fiscal year 1988 is used to determine the base four figure for each activity.

The Department also has correlated the number of hours required to perform a service with the size and nature of the facility or the extent of the activity to which the service relates. Accordingly, the proposed amendment to N.J.A.C. 7:26-4.3 divides regulated solid waste facilities and certain activities into classes, and assesses fees upon each class in proportion to the effort involved in performing the services for the class. The classifications are based upon the following: the capacity of the facility (for thermal destruction facilities, transfer stations, and materials recovery facilities); the type of waste accepted by the facility (for sanitary landfills and compost facilities); and the acreage affected by a submission (for closure plans). The Department's analysis of its currently available data base has yielded no readily apparent correlation between the cost of rendering services in connection with disruption submissions, methane venting systems, on-site disposal submissions, and cover material submissions, and the size or nature of the facility involved or the extent of the activity contemplated.

The Department has determined that the number of hours required to perform facility volume monitoring activities, facility registration updates, determinations of facility consistency with the relevant district solid waste management plan, and services rendered in connection with recycling business loans are relatively constant, and do not depend upon the nature or size of the facility in question. The Department also has determined that the number of hours required for the annual registration of solid waste transporters depends upon the number of solid waste cabs, single-unit vehicles, trailers and containers used by the transporter.

Classification of facilities and activities

Thermal destruction facilities are defined by classes as follows:

- Class A: design capacity of less than 800 pounds per hour, and accepting only on-site generated waste
- Class B: design capacity of at least 800 pounds per hour, but less than 50 tons per day, and accepting only on-site generated waste
- Class C: commercial, with design capacity of less than 50 tons per day
- Class D: design capacity of at least 50 tons per day, but less than 100 tons per day
- Class E: design capacity of at least 100 tons per day, but less than 400 tons per day
- Class F: design capacity of at least 400 tons per day.

Sanitary landfills are defined by classes pursuant to the following definitions set forth in N.J.A.C. 7:26-1.4:

- Class A: Class I sanitary landfill
- Class B: Class II sanitary landfill
- Class C: Class III sanitary landfill

Transfer stations and materials recovery facilities are defined by classes as follows:

- Class A: design capacity of less than 100 tons per day
- Class B: design capacity of at least 100 tons per day but less than 250 tons per day
- Class C: design capacity of at least 250 tons per day

Compost facilities are defined by classes as follows:

- Class A: vegetative, sole source
- Class B: vegetative, regional

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Class C: compostable type 10 solid waste, less than 100 tons per day
 Class D: compostable type 10 solid waste, at least 100 tons per day

Closure plan submissions are defined by classes as follows:

Closure Plan I (pre-1982)

- Class A—less than 10 acres
- Class B—10 to 30 acres
- Class C—more than 30 acres

Closure Plan II (sanitary landfills operating on or after January 1, 1982)

- Class A—less than 10 acres
- Class B—10 to 30 acres
- Class C—more than 30 acres

The proposed amendment to N.J.A.C. 7:26-4.3 distinguishes between closure plan submissions for landfills operating on or after January 1, 1982, and other landfills. The Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq., became effective January 1, 1982. The Act requires the owner or operator of every sanitary landfill facility to make monthly deposits into an escrow account, based upon the amount of solid waste accepted for disposal by the facility in the previous month. Escrow accounts exist only for landfills operating on or after the effective date of the Act.

Accordingly, the closure and post-closure plan regulations set forth in N.J.A.C. 7:26-2A.9 impose certain requirements concerning escrow accounts which apply only to landfills which were in operation on or after January 1, 1982. For example, the plan must project the funds available from the escrow account and restrict withdrawals from the escrow account under certain circumstances. These escrow account requirements complicate the Department's review and analysis of the closure and post-closure financial plan described in N.J.A.C. 7:26-2A.9(f). The closure and post-closure care plan described in N.J.A.C. 7:26-2A.9(e) is also complicated by the existence of the escrow account. For these reasons, the fee for review of a Closure Plan I of a certain class is less than the fee for a Closure Plan II of a corresponding class.

Hours required to perform services

Volume monitoring and annual registration updates:

Permittees of certain solid waste facilities are required to submit monthly summaries of waste received by such facilities. The Department spends an average of 17.3 hours per facility each year to review and analyze these summaries. The annual update of the facility's registration requires an average of 6.0 hours.

Based upon the Department's estimates of the number of facilities requiring volume monitoring and updates of registration each year, the Department expects that three employees will be necessary to perform these services. The budgeted cost of these employees for fiscal 1991 is as follows:

Salaries/indirect/fringe	\$183,174
Normal operating expenses	\$ 45,923
Legal services	\$ 20,236
Total	\$249,333

Planning consistency reviews:

Reviews to determine consistency with a district solid waste management plan require 9.6 hours per facility. Based upon the Department's estimates of the number of plan compliance reviews, the Department expects that one-third of the time of an employee will be necessary to perform these services. The budgeted cost of such portion of the time of the employee for fiscal 1991 is as follows:

Salaries/indirect/fringe	\$22,091
Normal operating expenses	\$ 5,538
Legal services	\$ 2,441
Total	\$30,070

Compliance monitoring site visits:

The following table sets forth the number of person-hours required for each compliance monitoring site visit, and the average frequency of such site visits. The annual compliance monitoring fee is based upon these average frequencies; for example, the annual compliance monitoring fee for sanitary landfills accepting 31,200 tons of waste per year is calculated by multiplying 14.4 hours per visit by 52 visits per year, for an annual total of 748.8 hours. The annual total of hours is then multiplied by the hourly rate (described below) to determine the amount of the fee.

1. Sanitary Landfill—31,200 tons per year (tpy) or more—14.4 weekly
2. Sanitary Landfill—less than 31,200 tpy—9.6 monthly
3. Thermal Destruction Facility—9.6 tons per day (tpd) or more—28.8 260/year

4. Thermal Destruction Facility—less than 9.6 tpd—9.6 weekly
5. Transfer Station—31,200 tpy or more—9.6 semi-monthly
6. Transfer Station—less than 31,200 tpy—7.2 monthly

Based upon the Department's estimates of the likely annual number of compliance monitoring site inspections of the above types of facilities, the Department expects that 33½ employees will be necessary to perform these services. The budgeted cost of these employees for fiscal 1991 is as follows:

Salaries/indirect/fringe	\$2,004,423
Normal operating expenses	\$ 502,523
Legal services	\$ 221,438
Total	\$2,728,384

Thermal destruction facilities:

Thermal destruction facilities require the following number of hours of staff time for the listed activities:

	Class		
	A	B	C
1. Pre-application meeting	16	16	30
2. Administrative completeness determination	30	30	60
3. Preliminary environmental and health impact study review	300	450	600
4. Engineering design report review	150	225	400
5. Recycling plan consistency review	122	122	243
6. Hearing officer's report	100	200	300
7. Major modification to permit	100	200	300
8. Minor modification to permit	40	60	80
9. Solid waste facility permit renewal	100	200	300
10. Transfer of ownership of permit	100	200	300
11. Minor technical reviews	20	30	40

	Class		
	D	E	F
1. Pre-application meeting	50	75	100
2. Administrative completeness determination	120	180	240
3. Preliminary environmental and health impact study review	600	900	1200
4. Engineering design report review	2100	3900	4200
5. Recycling plan consistency review	192	288	384
6. Hearing officer's report	1200	1800	2400
7. Major modification to permit	900	1350	1800
8. Minor modification to permit	200	300	400
9. Solid waste facility permit renewal	950	1350	1800
10. Transfer of ownership of permit	600	900	1200
11. Minor technical reviews	40	60	80
12. Construction Inspection (per visit, with fees based on average of 26 visits)	9.6	9.6	9.6

Based upon the Department's estimates of the likely number of thermal destruction facilities for which each type of service will be performed each year, the Department expects that four employees will be necessary to perform these services for Class A, B and C thermal destruction facilities, and that 19½ employees will be necessary to perform these services for Class D, E, and F thermal destruction facilities. The budgeted cost of these employees for fiscal 1991 is as follows for Class A, B and C thermal destruction facilities:

Salaries/indirect/fringe	\$237,860
Normal operating expenses	\$ 59,633
Legal services	\$ 26,278
Total	\$323,771

The budgeted cost of these employees for fiscal 1991 is as follows for Class D, E, and F thermal destruction facilities:

Salaries/indirect/fringe	\$1,169,206
Normal operating expenses	\$ 293,128
Legal services	\$ 133,406
Total	\$1,595,740

Sanitary landfill facilities:

Sanitary landfill facilities require the following number of hours of staff time for the listed activities:

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	Class		
	A	B	C
1. Pre-application meeting	100	90	50
2. Administrative completeness determination	240	216	120
3. Preliminary environmental and health impact study review	1200	1080	600
4. Engineering design report review	1800	1620	900
5. Recycling plan consistency review	157	142	79
6. Hearing officer's report	600	540	300
7. Major modification to permit	1400	1260	700
8. Minor modification to permit	360	324	180
9. Solid waste facility permit renewal	1200	1080	600
10. Transfer of ownership of permit	1200	1080	600
11. Minor technical reviews	80	72	40
12. Construction Inspection (per visit, with fee based upon average of 4 visits)	14.4	14.4	14.4

Based upon the Department's estimates of the likely number of sanitary landfill facilities for which each type of service will be performed each year, the Department expects that 17¼ employees will be necessary to perform these services. The budgeted cost of these employees for fiscal 1991 is as follows:

Salaries/indirect/fringe	\$1,059,288
Normal operating expenses	\$ 265,571
Legal services	\$ 117,025
Total	\$1,441,884

Transfer stations and materials recovery facilities:

Transfer stations and materials recovery facilities require the following number of hours of staff time for the listed activities:

	Class		
	A	B	C
1. Pre-application meeting	40	60	60
2. Administrative completeness determination	40	60	80
3. Preliminary environmental and health impact study review	400	600	800
4. Engineering design report review	800	1200	1600
5. Recycling plan consistency review	118	177	236
6. Hearing officer's report	200	300	400
7. Major modification to permit	500	800	1000
8. Minor modification to permit	120	200	240
9. Solid waste facility permit renewal	300	400	600
10. Transfer of ownership of permit	300	400	600
11. Minor technical reviews	10	20	40

Based upon the Department's estimates of the likely number of transfer stations and materials recovery facilities for which each type of service will be performed each year, the Department expects that 4½ employees will be necessary to perform these services. The budgeted cost of these employees for fiscal 1991 is as follows:

Salaries/indirect/fringe	\$263,120
Normal operating expenses	\$ 65,966
Legal services	\$ 29,068
Total	\$358,154

Compost facilities:

Compost facilities requires the following number of hours of staff time for the listed activities:

	Class			
	A	B	C	D
1. Pre-application meeting	15	40	75	100
2. Administrative completeness determination	12	40	180	240
3. Preliminary environmental and health impact study review	30	400	900	1200
4. Engineering design report review	50	800	1350	1800
5. Recycling plan consistency review	17	51	84	118
6. Hearing officer's report	50	200	450	600
7. Major modification to permit	50	500	1050	1400
8. Minor modification to permit	30	120	270	360
9. Solid waste facility permit renewal	100	300	900	1200
10. Transfer of ownership of permit	100	300	900	1200
11. Minor technical reviews	20	30	40	60
12. Pre-construction site visits and construction inspections	3	4.8	3	4.8

Based upon the Department's estimates of the likely number of compost facilities for which each type of service will be performed each year, the Department expects that 12½ employees will be necessary to perform these services. The budgeted cost of these employees for fiscal 1991 is as follows:

Salaries/indirect/fringe	\$ 738,563
Normal operating expenses	\$ 185,163
Legal services	\$ 81,593
Total	\$1,005,319

Closure plan submissions:

Closure plan submissions require the following number of hours of staff time for the listed activities:

Closure Plan I (pre-1982)

	Class		
	A	B	C
1. Pre-application meeting	5	10	10
2. Administrative completeness determination	10	20	20
3. Preliminary environmental and health impact study review	N/A	N/A	N/A
4. Engineering design report review	50	80	100
5. Hearing officer's report	N/A	N/A	N/A
6. Major modification to approval	50	80	100
7. Minor modification to approval	20	25	30
8. Solid waste facility approval renewal	20	25	30
9. Transfer of ownership of approval	50	80	100
10. Minor technical reviews	5	10	10

Closure Plan II (post-1982)

	Class		
	A	B	C
1. Pre-application meeting	30	40	50
2. Administrative completeness determination	30	40	50
3. Preliminary environmental and health impact study review	N/A	N/A	N/A
4. Engineering design report review	100	300	400
5. Hearing officer's report	N/A	N/A	N/A
6. Major modification to approval	100	300	400
7. Minor modification to approval	30	100	150
8. Solid waste facility approval renewal	30	100	150
9. Transfer of ownership of approval	100	300	400
10. Minor technical reviews	10	10	10

Based upon the Department's estimates of the likely number of closure plan submissions for which each type of service will be performed each year, the Department expects that 8¼ employees will be necessary to perform these services. The budgeted cost of these employees for fiscal 1991 is as follows:

Salaries/indirect/fringe	\$520,275
Normal operating expenses	\$130,437
Legal services	\$ 57,477
Total	\$708,189

Annual topographic surveys:

Annual topographic surveys require the following number of hours of staff time for the listed activities:

1. Pre-application meeting	N/A
2. Administrative completeness determination	N/A
3. Preliminary environmental and health impact study review	N/A
4. Engineering design report review	40
5. Hearing officer's report	N/A
6. Major modification to permit	N/A
7. Minor modification to permit	N/A
8. Solid waste facility permit renewal	N/A
9. Transfer of ownership of permit	N/A
10. Minor technical reviews	N/A

Based upon the Department's estimates of the likely number of annual topographic survey submissions for which each type of service will be performed each year, the Department expects that one-fourth of the time of an employee will be necessary to perform these services. The budgeted cost of this portion of the employee's time for fiscal 1991 is as follows:

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Salaries/indirect/fringe	\$15,326
Normal operating expenses	\$ 3,842
Legal services	\$ 1,693
Total	\$20,861

Disruption submissions, methane venting system submissions, on-site disposal submissions, and cover material submissions:

While the Department has attempted to define appropriate fees for a comprehensive range of services, the Department recognizes that services in the categories of disruption submissions, methane venting system submissions, on-site disposal submissions, and cover material submissions will vary significantly. Accordingly, the proposal provides for an applicant to request an initial review of the submission. As part of its initial review, the Department will prepare a determination of fees for the submission. The fee will equal the number of hours the Department expects the submission to require, multiplied by the hourly rate of \$52.20 (which rate will be adjusted annually to reflect increases in the Consumer Price Index). The cost of the initial review is \$250.00, which will be credited against future fees incurred for that submission. The initial review fee must accompany the request for the initial review. If the applicant elects not to pursue the submission, the initial review fee is nonrefundable. The Department may, in its discretion, refrain from commencing work on the submission until the applicant has paid the total fee for the submission. The amendment also allows an applicant to request a determination of the fee for an activity not included in the fee schedule.

With respect to disruption submissions, an applicant might make a simple submission involving the drilling of a set of gas monitoring wells through solid waste to enhance an existing gas monitoring system. The Department might require as little as 20 person-hours to evaluate the submission, and between 10 and 60 person-hours to evaluate the administrative completeness of the submission and conduct pre-application meetings. Accordingly, some disruption submissions may be so simple that the Department could completely process the submission in 30 person-hours, and for which the fee would be approximately \$1,500. Alternatively, a complex submission might involve the removal of substantial quantities of waste, the digging of test pits and installation of wells, the installation of gas monitoring systems, review of testing results for hazardous constituents, evaluation of other issues arising in connection with construction of improvements, and consultation between divisions within the Department and with other agencies. The Department believes that such a submission could easily require 700 person-hours, including administrative completeness reviews and pre-application meetings. Therefore, the fee for such a submission could be \$35,000 or more.

Based upon the Department's estimates of the likely annual number of disruption submissions for which each type of service will be performed, and nature of the submission expected, the Department expects that 13 employees will be necessary to perform these services. The budgeted cost of these employees for fiscal 1991 is as follows:

Salaries/indirect/fringe	\$ 777,800
Normal operating expenses	\$ 195,000
Legal services	\$ 85,927
Total	\$1,058,727

Methane venting submissions could be as simple as the addition of a single well to an existing evacuation system. Such a simple submission could be completed in as little as 20 person-hours (including administrative completeness reviews and pre-application meetings), for a resulting fee of approximately \$1,000. A more complicated submission might involve a new gas evacuation system including numerous wells, gas flares, monitoring wells and sampling points, requiring field visits, inter-divisional and inter-agency consultation, and public hearings. Such a submission could easily require 500 person-hours (including administrative completeness reviews and pre-application meetings). Therefore, the Department expects that the fee for such a submission could be \$25,000 or more.

Based upon the Department's estimates of the likely annual number of methane venting submissions for which each type of service will be performed, and the nature of the submissions expected, the Department expects that one-half of the time of an employee will be necessary to perform these services. The budgeted cost of this portion of the time of the employee for fiscal 1991 is as follows:

Salaries/indirect/fringe	\$25,313
Normal operating expenses	\$ 6,346
Legal services	\$ 2,796
Total	\$34,455

On-site disposal submissions could be for proposals as simple as the disposal of 100 cubic yards of clean concrete, or as complicated as the disposal of 1,000 cubic yards of mixed materials in an environmentally sensitive area. Accordingly, the Department expects that staff time could range from 30 to 200 hours (including administrative completeness reviews and pre-application meetings), and the fee could be as little as \$1,500 or more than \$10,000.

Based upon the Department's estimates of the likely annual number of on-site disposal submissions for which each type of service will be performed, and the nature of the submissions expected, the Department expects that one-sixth employees will be necessary to perform these services. The budgeted cost of these employees for fiscal 1991 is as follows:

Salaries/indirect/fringe	\$ 9,205
Normal operating expenses	\$ 2,308
Legal services	\$ 1,017
Total	\$12,530

Cover material submissions could be for a simple proposal to use small amounts of ordinary materials, or for complex proposals to use large quantities of experimental materials. The Department expects that simple submissions could be processed in as little as 30 hours, while complex submissions could require more than 500 hours (including administrative completeness reviews and pre-application meetings). Accordingly, fees could range from \$1,500 to more than \$25,000.

Based upon the Department's estimates of the likely annual number of cover material submissions for which each type of service will be performed, and the nature of the submissions expected, the Department expects that one-half of the time of an employee will be necessary to perform these services. The budgeted cost of this portion of the employee's time for fiscal 1991 is as follows:

Salaries/indirect/fringe	\$31,825
Normal operating expenses	\$ 7,979
Legal services	\$ 3,516
Total	\$43,320

Solid waste transporters:

To determine the annual registration fees for solid waste cabs, single-unit vehicles, and trailers, the Department has determined the amount of time required to perform the registration, and apportioned the cost of the Department's waste flow compliance activities among all such cabs, single-unit vehicles and trailers. Each cab, single-unit vehicle and trailer requires 4.25 person-hours for such registration and waste flow compliance activities.

To determine the annual registration fees for solid waste containers, the Department has considered only the time required to perform the registration services. The cost of the Department's waste flow compliance activities has not been apportioned among containers, because containers normally are used in conjunction with a cab, single-unit vehicle or trailer, which already bears part of the cost of such waste flow compliance activities.

Based upon the Department's estimates of the likely number of transporter registrations, renewals and waste flow compliance actions, the Department expects that 46¼ employees will be necessary to perform these services. The budgeted cost of these employees for fiscal 1991 is as follows:

Salaries/indirect/fringe	\$2,766,023
Normal operating expenses	\$ 693,462
Legal services	\$ 305,576
Total	\$3,765,061

Recycling business loans:

Recycling business loan operations require the following number of hours of staff time for each of the stages of such loans described in the Summary above:

1. Initial review	2.4
2. Technical review, commitment and closing	27.6
3. Loan management	12.0

Based upon the Department's estimates of the likely number of recycling business loans made each year, the Department expects that one-half of the time of an employee will be necessary to perform these services. The budgeted cost of such portion of the time of the employee for fiscal 1991 is as follows:

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Salaries/indirect/fringe	\$31,526
Normal operating expenses	\$ 7,905
Legal services	\$ 3,482
Total	\$42,913

Cost of legal services

In fulfilling its responsibilities under the Solid Waste Management Act, the Department requires certain legal services rendered by Deputy Attorneys General in the Division of Law in the Department of Law and Public Safety.

Deputy Attorneys General in the Division of Law provide legal advice to the Department, including advice regarding the legality of all regulations or legislation affecting the Department. These attorneys work directly with the Department in the performance of most of the services listed in the proposed amendments. The attorneys provide guidance and interpretation to the Department with respect to the nature and substance of the Solid Waste Management Act, the Department's regulations thereunder, and other various statutes and regulations governing the responsibilities of the Department.

In performing these duties, Deputy Attorneys General render day-to-day legal advice to Department personnel involved in administering and enforcing solid waste laws and regulations. Guidance from the attorneys also may include assisting the Department in preparation for pre-application meetings, as well as attending such meetings. Such guidance also will include reviewing, analyzing and assisting in the drafting of modifications and transfers of ownership of solid waste facility permits, hearing officers' reports, recycling business loan documents, and other documents and correspondence prepared by the Department. In providing this guidance, the attorneys ensure that these documents satisfy the statutes and regulations governing the Department.

Deputy Attorneys General also may participate in negotiations on behalf of the Department in enforcement proceedings which may arise in connection with the laws and regulations governing solid waste. In addition, the attorneys assist the Department in several areas which are not attributable to a particular facility or submission for which fees are charged. Examples of these areas include the drafting of solid waste regulations, and the review and certification of district solid waste management plans and amendments thereto. The services performed in these areas benefit owners and operators of solid waste facilities; for example, a facility generally must be included in a district solid waste management plan before a permit can be issued for the facility.

The Deputy Attorneys General also are responsible for conduct of all judicial and administrative litigation involving the Department. Department personnel may provide litigation support to assist in the conduct of such litigation.

The Department, after consultation with the Division of Law, has estimated that a total of 11 Deputy Attorneys General are necessary for the performance of legal services in connection with the activities described above. The Division of Law bills the Department for the salaries of the Deputy Attorneys General, fringe benefits at a rate of 27.65 percent of total salary, and \$5,000 per Deputy Attorney General for recurring non-salary expenses. In addition, the Division of Law calculates the salary of secretarial, word processing and other support staff working with these attorneys at a rate of \$18,000 per attorney, or \$198,000 for 11 attorneys. The Division of Law also bills the Department for fringe benefits for this support staff, and for recurring non-salary expenses at a rate of \$2,000 per attorney, or \$22,000 for 11 attorneys. The following table sets forth the total cost of these positions:

Deputy Attorneys General:	
Total Salaries:	\$ 597,912
Fringe Benefits (27.65%):	165,323
Recurring Non-Salary Expenses:	55,000
Subtotal:	<u>\$ 818,235</u>
Support Staff:	
Total Salaries:	\$ 198,000
Fringe Benefits (27.65%):	54,747
Recurring Non-Salary Expenses:	22,000
Subtotal:	<u>\$ 274,747</u>
TOTAL:	\$1,092,982

Hourly rate used to calculate fees

The total cost to the Department to provide the services included in the proposal for fiscal 1991 is \$13,414,474, which is the sum of the following: The cost of Department employees needed to perform the

activities set forth in the proposal, which is \$12,325,743; and the cost of legal services rendered to the Department in connection with these activities and related activities, which is \$1,092,982.

The hourly rate used to determine the fees set forth in the proposal is \$52.20. This rate is calculated by dividing the total cost by 164.71 employees, and dividing that result by 1560 hours per employee each year. Total staff required to provide all services (including Deputy Attorneys General, but excluding support staff in the Division of Law) is 175.71 employees.

Environmental Impact

The proposed amendments will have a positive environmental impact. The proposed fees, combined with existing fees and State appropriations, will increase the funds available to pay for the Department's efforts to ensure that solid waste is disposed of in an environmentally sound manner in accordance with the Solid Waste Management Act. Without these funds, the Department is likely to suffer a shortage of personnel, which will delay the approval of registration statements and engineering designs for solid waste facilities and the performance of other services required under the Solid Waste Management Act. Avoiding such delays will help to prevent regional disruptions of waste disposal.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments will not impose recordkeeping or reporting on small businesses (as defined in the Regulatory Flexibility Act). However, the proposed amendments will impose new or increased compliance requirements upon small businesses.

Few, if any, Class D, E and F thermal destruction facilities or sanitary landfills are owned or operated by small businesses. However, many of the other types of solid waste facilities affected by the proposed fee increases are owned and operated by small businesses. The Department also expects that small businesses will make many of the other types of submissions for which fees will increase. The following table sets forth the total fees for the permitting of new facilities likely to be owned or operated by small businesses, and for submissions likely to be made by small businesses, according to the class of facility or submission (as explained in the Economic Impact Statement above). Dollar amounts separated by slashes are for Class A, B, and C, respectively; with respect to compost facilities, the amounts are for Class A, B, C, and D, respectively.

1. Transfer stations and materials recovery facilities: \$83,410/\$125,118/\$165,781
2. Class A, B and C thermal destruction facilities: \$37,459/\$54,428/\$85,262
3. Compost facilities: \$9,079/\$79,892/\$158,648/\$211,822
4. Closure plan submissions (pre-1982): \$3,395/\$5,744/\$6,784
5. Closure plan submissions (post-1982): \$8,350/\$19,832/\$26,102
6. Disruption submissions: \$37,584
7. Methane venting system submissions: \$28,188
8. On-site disposal submissions pursuant to N.J.A.C. 7:26-1.7(e): \$10,649
9. Cover material submissions: \$2,349
10. Annual topographic map submissions: \$2,086
11. Solid waste cab, solid waste single-unit vehicle, or solid waste trailer registration: \$222.00
12. Solid waste container registration: \$47.00

Though the Department has determined that small businesses will bear a significant economic impact from the proposed amendments, the Department believes that exempting small businesses from the increased fees would undermine the ability of the Department to carry out its duties under the Solid Waste Management Act and would be detrimental to the environment. However, the graduated fee structure of the proposed amendment imposes proportionally lower fees upon smaller facilities, which are generally least capable of bearing an increase in costs.

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

7:26-1.4 Definitions

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

...
"CPI" means the Consumer Price Index (Urban Wage Earners and Clerical Workers—All Items, 1982-1984 = 100) for the New York,

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New York-Northeastern New Jersey area, which is currently computed by the Bureau of Labor Statistics of the United States Department of Labor. If the method of computing the CPI is changed materially and the Federal agency computing the same publishes a conversion factor to calculate the CPI as currently computed from the CPI as so newly computed, such conversion factor shall be applied to the newly computed CPI to determine the CPI for purposes of this chapter.

7:26-4.3 Fee schedule for solid waste facilities

(a) The fee schedule for solid waste [facilities] annual facility registration, volume monitoring and planning consistency activities is as follows:

1. [A facility monitoring fee from all facilities that are] **The permittee for a facility who is required to submit to the Department monthly summaries of waste received at such facility shall [be paid when submitting the annual registration update] pay an annual facility volume monitoring fee of \$902.00. The annual facility volume monitoring fee is due at the time the annual registration update is submitted, but in no event later than May 1 of each calendar year. [The fee is \$500.00 per year.]**

2. [A facility initial registration fee shall be paid before a solid waste facility permit is issued. The fee is \$500.00.] **The permittee for a facility shall pay an annual facility registration update fee of \$313.00. The annual facility update fee is due at the time the annual registration update is submitted, but in no event later than May 1 of each calendar year.**

3. [A facility annual registration update fee shall be paid when submitting the update. The fee is \$175.00.] **An applicant for a solid waste facility permit shall pay a fee of \$501.00 for determination of consistency with the district solid waste management plan. The fee is due at the time the application is submitted.**

4. A fee for review of a solid waste facility application for administrative completeness shall be paid when submitting the application which is due prior to May 1 of each calendar year. The fee is \$500.00.

5. A fee for determination of facility application compliance with a district solid waste management plan shall be paid when submitting the application. The fee is \$270.00.

6. A fee for technical review of engineer design shall be paid when submitting the design or updated design if applying for a renewal permit, and when additional information is required as a result of the Department issuing a notice of deficiency. The fee is \$500.00 for each submittal.

7. A fee for technical review of environmental and health impact statement shall be paid when submitting the statement or updated statement if applying for renewal permit, and when additional information is required as a result of the Department issuing a notice of deficiency. The fee is \$500.00 for each submittal.

8. A fee for technical review of facility closure and post-closure plan shall be paid when submitting the plan. The fee is \$500.00.

9. A fee for technical review of a sanitary landfill topographic survey shall be paid when submitting the survey. The fee is \$500.00.

10. A fee for preparation and issuance of a solid waste facility permit or renewal shall be paid before the permit is issued. The fee is \$500.00.

11. A fee for engineering review of solid waste collection or disposal facilities or operations submitted pursuant to N.J.A.C. 7:26-1.7(e) shall be paid when submitting the application. The fee is \$500.00.]

(b) [Fees for compliance monitoring of solid waste facilities shall be pre-billed on a quarterly basis and shall be paid within 30 days of the date on the bill issued by the Department. Fees shall be in accordance with the following table:] **The permittee of a solid waste facility shall pay the annual fees listed in the following table for compliance monitoring services. The fees are payable in equal quarterly installments, due on January 1, April 1, July 1 and October 1 of each year.**

Type of Facility	Compliance Monitoring Fees	
Sanitary Landfill—operating at 31,200 tons per year (tpy) or more	[\$405.00 per site visit]	\$ 39,087
Sanitary Landfill—operating at less than 31,200 tpy	[\$270.00 per site visit]	\$ 6,013
[Sanitary Landfill under construction or expansion	\$405.00 per site visit]	
[Incinerators—operating at 9.6 tons per day or more	\$340.00 per site visit]	
[Incinerators—operating at less than 9.6 tons per day	\$205.00 per site visit]	
Transfer Stations and Materials Recovery Facilities—operating at 31,200 tpy or more	[\$270.00 per site visit]	\$ 12,027
Transfer Stations and Materials Recovery Facilities—operating at less than 31,200 tpy	[\$205.00 per site visit]	\$ 4,510
[Resource Recovery] Thermal Destruction Facilities—operating at 9.6 tons per day or more	[\$500.00 per day that an inspector is on the premises]	\$390,874
[Resource Recovery] Thermal Destruction Facilities—operating at less than 9.6 tons per day	[\$270.00 per site-visit]	\$ 26,058
[Resource Recovery under construction or expansion	\$270.00 per day that an inspector is on the premises]	

(c) The following tables set forth the classifications of solid waste facilities:

1. Thermal destruction facilities:

Class A: design capacity of less than 800 pounds per hour of on-site generated waste

Class B: design capacity of at least 800 pounds per hour, but less than 50 tons per day of on-site generated waste

Class C: commercial, with design capacity of less than 50 tons per day

Class D: design capacity of at least 50 tons per day, but less than 100 tons per day

Class E: design capacity of at least 100 tons per day, but less than 400 tons per day

Class F: design capacity of at least 400 tons per day.

2. Sanitary landfills:

Class A: Class I sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)

Class B: Class II sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)

Class C: Class III sanitary landfill (as such term is defined at N.J.A.C. 7:26-1.4)

3. Transfer stations and materials recovery facilities:

Class A: design capacity of less than 100 tons per day

Class B: design capacity of at least 100 tons per day but less than 250 tons per day

Class C: design capacity of at least 250 tons per day

4. Compost facilities:

Class A: vegetative, sole source

Class B: vegetative, regional

Class C: compostable type 10 solid waste of less than 100 tons per day

Class D: compostable type 10 solid waste of at least 100 tons per day

5. Closure plan submissions:

Closure Plan I (pre-1982)

Class A: less than 10 acres

Class B: 10 to 30 acres

Class C: more than 30 acres

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Closure Plan II (post-1982)

Class A: less than 10 acres

Class B: 10 to 30 acres

Class C: more than 30 acres

(d) The following table sets forth fees (in dollars) for services for the classes of solid waste facilities set forth in (c) above, specified by activity. The Department may, in its discretion, refrain from commencing work or suspend work at any time until the applicant or permittee has paid the designated fee.

1. Thermal Destruction Facilities

	Class		
	A	B	C
a. Pre-application meeting	833	833	1,566
b. Administrative completeness determination	1,566	1,566	3,132
c. Preliminary environmental and health impact study review	15,660	23,490	31,320
d. Engineering design report review	7,830	11,745	20,881
e. Recycling plan consistency review	6,352	6,352	12,703
f. Hearing officer's report	5,218	10,442	15,660
g. Major modification to permit	5,218	10,442	15,660
h. Minor modification to permit	2,086	3,132	4,178
i. Solid waste facility permit renewal	5,218	10,442	15,660
j. Transfer of ownership of permit	5,218	10,442	15,660
k. Minor technical reviews	1,046	1,566	2,086

	Class		
	D	E	F
a. Pre-application meeting	2,612	3,915	5,218
b. Administrative completeness determination	6,264	9,396	12,528
c. Preliminary environmental and health impact study review	31,320	46,980	62,640
d. Engineering design report review	109,620	203,580	219,240
e. Recycling plan consistency review	10,016	15,024	20,032
f. Hearing officer's report	62,640	93,960	125,280
g. Major modification to permit	46,980	70,470	93,960
h. Minor modification to permit	10,450	15,660	20,900
i. Solid waste facility permit renewal	49,592	70,470	93,960
j. Transfer of ownership of permit	31,320	46,980	62,640
k. Minor technical reviews	2,086	3,132	4,178
l. Construction Inspections (per facility)	13,029	13,042	13,042

2. Sanitary Landfill Facilities

	Class		
	A	B	C
a. Pre-application meeting	5,218	4,698	2,612
b. Administrative completeness determination	12,528	11,275	6,264
c. Preliminary environmental and health impact study review	62,640	56,376	31,320
d. Engineering design report review	93,960	84,564	46,980
e. Recycling plan consistency review	8,208	7,388	4,104
f. Hearing officer's report	31,320	28,188	15,660
g. Major modification to permit	73,082	65,772	36,538
h. Minor modification to permit	18,792	16,913	9,396
i. Solid waste facility permit renewal	62,640	56,376	31,320
j. Transfer of ownership of permit	62,640	56,376	31,320
k. Minor technical reviews	4,178	3,758	2,086
l. Construction Inspections (per facility)	3,007	3,007	3,007

3. Transfer Stations and Materials Recovery Facilities

	Class		
	A	B	C
a. Pre-application meeting	2,086	3,132	3,132
b. Administrative completeness determination	2,086	3,132	4,178
c. Preliminary environmental and health impact study review	20,878	31,320	41,762
d. Engineering design report review	41,762	62,640	83,518
e. Recycling plan consistency review	6,156	9,234	12,313
f. Hearing officer's report	10,442	15,660	20,878
g. Major modification to permit	26,102	41,762	52,198
h. Minor modification to permit	6,264	10,442	12,528
i. Solid waste facility permit renewal	15,660	20,878	31,320
j. Transfer of ownership of permit	15,660	20,878	31,320
k. Minor technical reviews	520	1,046	2,086

4. Compost Facilities

	Class			
	A	B	C	D
a. Pre-application meeting	783	2,086	3,915	5,218
b. Administrative completeness determination	626	2,086	9,396	12,528
c. Preliminary environmental and health impact study review	1,566	20,878	46,980	62,640
d. Engineering design report review	2,612	41,762	70,470	93,960
e. Recycling plan consistency review	879	2,638	4,397	6,156
f. Hearing officer's report	2,612	10,442	23,490	31,320
g. Major modification to permit	2,612	26,102	54,810	73,082
h. Minor modification to permit	1,566	6,264	14,094	18,792
i. Solid waste facility permit renewal	5,218	15,660	46,980	62,640
j. Transfer of ownership of permit	5,218	15,660	46,980	62,640
k. Minor technical reviews	1,046	1,566	2,086	3,132
l. Pre-construction site visits and construction inspections (per visit)	157	251	157	251

5. Closure Plan I (pre-1982)

	Class		
	A	B	C
a. Pre-application meeting	263	520	520
b. Administrative completeness determination	520	1,046	1,046
c. Preliminary environmental and health impact study review	N/A	N/A	N/A
d. Engineering design report review	2,612	4,178	5,218
e. Hearing officer's report	N/A	N/A	N/A
f. Major modification to approval	2,612	4,178	5,218
g. Minor modification to approval	1,046	1,303	1,566
h. Solid waste facility approval renewal	1,046	1,303	1,566
i. Transfer of ownership of approval	2,612	4,178	5,218
j. Minor technical reviews	263	520	520

6. Closure Plan II (post-1982)

	Class		
	A	B	C
a. Pre-application meeting	1,566	2,086	2,612
b. Administrative completeness determination	1,566	2,086	2,612
c. Preliminary environmental and health impact study review	N/A	N/A	N/A
d. Engineering design report review	5,218	15,660	20,878
e. Hearing officer's report	N/A	N/A	N/A
f. Major modification to approval	5,218	15,660	20,878
g. Minor modification to approval	1,566	5,218	7,830
h. Solid waste facility approval renewal	1,566	5,218	7,830
i. Transfer of ownership of approval	5,218	15,660	20,878
j. Minor technical reviews	520	520	520

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7. Annual Topographic Map Submissions	
a. Pre-application meeting	N/A
b. Administrative completeness determination	N/A
c. Preliminary environmental and health impact study review	N/A
d. Engineering design report review	2,086
e. Hearing officer's report	N/A
f. Major modification to permit	N/A
g. Minor modification to permit	N/A
h. Solid waste facility permit renewal	N/A
i. Transfer of ownership of permit	N/A
j. Minor technical reviews	N/A

N/A means the item is not applicable to that submission type.

(e) For submissions concerning disruption, methane venting systems, on-site disposal, or cover material, the applicant/permittee shall request an initial review of the submission. As part of its initial review, the Department shall determine the fees for performing its services in connection with the submission. Such fees shall be equal to the number of hours estimated by the Department to be required for the performance of such services, multiplied by an hourly rate of \$52.20. The fee for the initial review of the submission is \$250.00, due at the time of the request for the initial review. The fee for initial review will be applied against fees payable for the Department's services in connection with the submission. The fee for initial review is nonrefundable if the applicant/permittee elects not to pursue the submission further.

(f) The omission of any type of service from the fee schedules set forth in (a), (b), (d) and (e) above shall not be construed as a waiver of the Department's authority to assess fees for such services. An applicant/permittee making a submission which it believes is not included in any of the schedules set forth in (a), (b), (d) and (e) above shall request an initial review of the submission. As part of its initial review, the Department shall determine the fees for performing its services in connection with the submission. Such fees shall be equal to the number of hours estimated by the Department to be required for the performance of such services, multiplied by an hourly rate of \$52.20. The fee for the initial review of the submission is \$250.00, due at the time of the request for the initial review. The Department will calculate the fee for performance of the Department's services as follows:

1. If the Department determines, in its discretion, that the activity is of a type listed in (a), (b), (d) or (e) above, the amount of the fee shall be equal to the sum of the following:
 - i. The amount listed in (a), (b), (d) or (e); and
 - ii. The cost of preparing the cost determination pursuant to (f)3 below.
2. If the Department determines, in its discretion, that such activity is not of a type listed in (a), (b), (d) or (e) above, the fee shall be equal to the sum of the following:
 - i. The Department's estimate of the number of person-hours required to perform such activity, multiplied by the hourly rate of \$52.20; and
 - ii. The cost of preparing the cost determination pursuant to (f)3 below.

3. The cost of preparing the cost determination shall be the number of person-hours which the Department has spent in preparing the cost determination, multiplied by the hourly rate of \$52.20.

(g) A determination of a fee made pursuant to (e) or (f) above shall expire on the date which is 90 days after the date such determination has been issued, unless the applicant or permittee has paid such fee to the Department in full before expiration. If the applicant or permittee desires to continue to pursue the submission for which the fee determination has expired, such applicant or permittee shall again make the \$250.00 payment required by (e) or (f) above, and the Department shall redetermine the fee in accordance with (e) or (f) above, as applicable.

(h) The Department may, in its discretion, refrain from commencing work on the activity which is the subject of a fee determined pursuant to (e) or (f) above until the Department has received full payment of the fee. If the Department has already commenced work, the Department may, in its discretion, suspend such work until it has received full payment of the fee.

7:26-4.4 Fee schedule for transporters

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

(c) All transporters shall pay [a] an annual fee of [\$120.00] **\$222.00** for each solid waste cab or for each solid waste single unit-vehicle.

(d) All transporters shall pay [a] an annual fee of [\$120.00] **\$222.00** for each solid waste trailer.

(e) All transporters shall pay [a] an annual fee of [\$25.00] **\$47.00** for each solid waste container.

(f) (No change.)

(g) A transporter registering a vehicle for both solid waste and hazardous waste transportation shall not pay more than \$500.00 in combined registration fee.]

7:26-4.6 [(Reserved)] Adjustment of fees to reflect inflation

(a) Except as provided in (b) below, each fee charged pursuant to N.J.A.C. 7:26-4.3 and 4.4 shall be increased on July 1 of each year, by a percentage equal to the percentage increase, if any, in the most current CPI available on July 1 of such year over the most current CPI available on July 1 of the immediately preceding year. Such increase shall become effective automatically on July 1 of each year, without the need for any action by the Department. Notice of the increased fees will be published in the New Jersey Register.

(b) The hourly rate used for the purpose of calculating fees pursuant to 4.3(e) and (f) above shall be increased on July 1 of each year. Such hourly rate shall increase by a percentage equal to the percentage increase, if any, in the most current CPI available on July 1 of such year over the most current CPI available on July 1 of the immediately preceding year. Such increase shall become effective automatically on July 1 of each year, without the need for any action by the Department. Notice of the increased rates will be published in the New Jersey Register.

7:26-15.6 Application and award procedures for Recycling Business Loans

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

(i) The applicant for the loan or loan guarantee shall pay the following fees:

1. Loan Application Review—\$125.00 per application, payable at the time of the application.
2. Loan Closing and Technical Review—\$1,441 per loan, payable at closing.
3. Loan Management—\$626.00 per loan, payable at the time of application.

(a)

DIVISION OF SOLID WASTE MANAGEMENT Recycling Rules

Proposed New Rules: N.J.A.C. 7:26A

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

Authority: N.J.S.A. 13:1E-1 et seq., specifically N.J.S.A. 13:1E-99.11 et seq.

DEP Docket Number: 029-90-08.

Proposal Number: PRN 1990-505.

A public hearing concerning this proposal will be held on:
Wednesday, November 14, 1990 at 10:00 A.M.
Trenton War Memorial
Warren Street
Trenton, New Jersey

Submit written comments by December 1, 1990 to:

Aletha Spang, Administrator
Office of Recycling
Division of Solid Waste Management
New Jersey Department of Environmental Protection
840 Bear Tavern Road, CN 414
Ewing, New Jersey 08628

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The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (the Department) is proposing new rules concerning recycling at N.J.A.C. 7:26A.

Subchapter 1 contains the definitions applicable to the chapter as well as the scope, authority and construction applicable to the entire chapter. In addition, subchapter 1 lists the recycling activities that are exempted from regulation pursuant to this chapter and contains the criteria that must be met to qualify for the exemptions.

Subchapter 2 proposes fees for the approval of recycling centers which receive, store, process or transfer non-traditional recyclable materials, and fees for the approval of the out-of-State transport of recyclable material. The proposed fee schedule contains the following fees:

Minimum fee for application for a general or limited approval to operate a recycling center or mobile recycling center—\$3,530;

Annual fee for a general or limited approval to operate a recycling center or mobile recycling center—\$8,820;

Minimum fee for an approval for out-of-State transport of source separated recyclable materials—\$72.00; and

Annual fee for an approval for out-of-State transport of source separated recyclable materials—\$180.00.

The fees proposed for general and limited approvals to operate recycling centers or mobile recycling centers for non-traditional recyclable material will cover the Department's costs in reviewing submittals for recycling center approval for compliance with the substantive criteria at N.J.A.C. 7:26A-3. Additionally, these fees will cover the costs incurred by the Department in preparing letters of approval or denial and in inspecting recycling center sites. Finally, the fees will also be used by the Department to enforce the approval conditions.

The fees proposed for approval for out-of-State transport of source separated recyclable material will cover the Department's costs of keeping records of materials transported and of determining whether the transport activity complies with the Department's interdistrict and intradistrict solid waste flow regulations at N.J.A.C. 7:26-6. The basis and justification for the fees is explained more fully in the Economic Impact section of this proposal.

Subchapter 3 contains the Department's rules for facilities designed and operated solely to receive, store, process or transfer source separated waste materials such as construction/demolition debris, wood waste, tree stumps and scrap tires (non-traditional recyclable material). While recycling centers are exempt from the Department's solid waste facility permitting process, recycling centers which propose to receive, store, process or transfer source separated materials other than source separated metal, glass, paper, or plastic containers, and corrugated and other cardboard, such as the non-traditional recyclable materials indicated above, must receive the prior written approval of the Department. This subchapter details the procedures, qualifying factors and information submittal requirements by which this approval is obtained. Subchapter 3 also details the approval procedures for recycling centers which propose to operate as mobile facilities, as well as the approval procedures for recycling centers which propose to operate a temporary recycling operation for such non-traditional recyclable materials for no more than 180 days. For recycling centers operating pursuant to a limited approval, there are no means for renewal of approval in subchapter 3. Persons seeking to operate a recycling center on a limited basis should therefore apply for a general approval where there is a possibility that operations may exceed 180 days.

For recycling centers operating pursuant to Department approval issued prior to the effective date of this chapter, subchapter 3 details filing requirements that must be met within 120 days of the effective date of the chapter in order for these recycling centers to continue operating. It is noted here that many of the recently approved recycling centers have been issued approvals which substantially conform to the approvals that are required pursuant to subchapter 3 of these rules. Nonetheless, the Department will review all approvals issued prior to the effective date of this chapter in an effort to assist the holders of these approvals to meet the standards of subchapter 3.

Recordkeeping and reporting requirements are also established in this subchapter, as well as procedures by which recycling center approvals may be renewed, modified, revoked, denied or transferred. An appeal procedure is also proposed in this subchapter to provide an avenue for contesting Departmental decisions. In addition, this subchapter contains the Department's clean fill approval procedures and criteria.

Subchapter 4 establishes operational standards which apply to all recycling centers which handle traditional and non-traditional recyclable materials. The standards proposed pertain to the receipt, storage, pro-

cessing or transfer of source separated recyclable materials and any residue which may result from the operation. In addition, the standards proposed call for recycling centers to be in conformance with all applicable Federal, State and local laws and regulations, including, but not limited to, nuisance codes. If it is determined that the performance standards are not being followed, the facility may be declared a solid waste facility and be required to submit a registration statement, engineering design and environmental and health impact statement in accordance with N.J.A.C. 7:26-2. In addition, subchapter 4 sets forth the requirement that all recycling centers be included in the applicable district solid waste management plan. Subchapter 4 also addresses the Department's right to enter and inspect any building or other portion of a recycling center at any time. An approval procedure is also proposed for the out-of-State transport of source separated recyclable materials. Reporting requirements for recycling tonnage are also established in subchapter 4.

Subchapter 5 contains refrigerant reprocessing requirements. This subchapter proposes rules which require refrigerant fluid to be captured prior to shearing, shredding or baling of discarded refrigerators and freezers. In addition, the captured refrigerant fluid is required to be transported to a facility which reprocesses the fluid to specifications suitable for reentry into commerce.

Subchapter 6 contains the Department's criteria for the reuse and treatment of source separated soils classified by the Department as waste type I.D. 27, dry industrial waste. Subchapter 6 requires that a classification be obtained for all source separated soil which is the subject of a reuse or treatment project. Soils which are classified as I.D. 27 may be reused for certain purposes without Department approval. Other reuse projects are subject to approval by the Department according to criteria set out in subchapter 6. Approval for the treatment of source separated I.D. 27 soil must be obtained from the Division of Water Resources. A NJPDES permit will be required where there is a potential for discharge to the land or waters of the State. Finally, subchapter 6 contains criteria for the storage of source separated I.D. 27 soils awaiting reuse or treatment.

In keeping with the legislative intent of the "New Jersey Statewide Mandatory Source Separation and Recycling Act", N.J.S.A. 13:1E-99.11 et seq., (the Act), and the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Department is proposing the above noted subchapters. The purpose of the subchapters is to establish the approval requirements of recycling centers, establish a fee system which will enable the Department to better regulate recycling centers and recycling related activities, and to formalize the performance standards which are to be followed by the recycling industry. The subchapters will provide direction and guidance to the recycling industry and will distinguish the separate operational requirements applicable to recycling centers as opposed to those which are applicable to solid waste facilities.

With the unprecedented increases in disposal costs associated with decreasing New Jersey landfill availability, it is imperative to allow for the expansion of legitimate recycling activities in an environmentally sound manner. The proposed rules will provide the mechanism for that expansion by establishing a framework through which legitimate recycling businesses are kept to uniform standards of operation which, in turn, will ensure that businesses which do not conform to the standards or which are not legitimate recycling businesses are kept out of the industry. The fees required for general or limited approval will enable the Department to establish and maintain this framework.

The recycling industry of New Jersey will be directly affected by the adoption of the proposed rules. Recycling centers which receive, store, process or transfer any source separated recyclable materials other than metal, glass, paper, or plastic containers, and corrugated and other cardboard will be most affected by the rules because such facilities are required to receive the prior approval of the Department. Nevertheless, all recycling centers will be affected by the rules since all recycling centers will be required to operate according to the proposed recycling center performance standards. There are over 225 existing recycling centers which will be affected by the proposed operational standards. The number of recycling centers affected by the approval requirement of the proposed rules will be considerably less. The Department estimates that at least 50 recycling centers will be affected by this approval requirement. It is anticipated that interest in the recycling industry will remain high and that, consequently, the number of facilities which will be affected by the proposed rules will increase over time.

Recycling centers which require the prior approval of the Department are required to submit information, including, but not limited to, the materials to be received, stored, processed or transferred, the amount of

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materials to be received, stored, processed or transferred, the end markets to be utilized, a site plan, a soil conservation district certification and evidence that the facility is included in the applicable county solid waste management plan. The services of a licensed professional engineer or surveyor will be required to comply with certain submittal requirements. The operators of approved recycling centers are required to maintain daily records of all materials received, stored, processed or transferred, including the amounts of each material, origin for each material, the market or markets for each material and the amount of non-recyclable residue disposed of as solid waste. This information shall be submitted to the Department on an annual basis.

The cost of compliance with the proposed rules will vary according to whether the activity for which approval is sought is for a permanent or temporary recycling center or for approval of the out-of-State transport of source separated recyclable materials. These rules establish the criteria by which recycling centers may receive, store, process or transfer non-traditional recyclable material, and in doing so, the rules help to prevent the operation of illegal solid waste facilities. Through the regulatory oversight represented by the approval process, as well as through the establishment of performance standards, operators of all recycling centers will be more likely to operate in the manner prescribed by the Department so as to avoid enforcement actions and potential monetary fines.

Social Impact

The proposed rules contained in subchapters 1 through 6 will encourage the development of recycling, especially the recycling of source separated construction/demolition debris, wood waste, tree stumps and scrap tires. The removal of such recyclable materials from the waste stream will lessen New Jersey's solid waste crisis by saving valuable landfill space and natural resources. While recycling centers are exempt from the solid waste facility permitting process, those facilities which receive, store, process or transfer source separated materials other than source separated metal, glass, paper, or plastic containers, and corrugated and other cardboard, such as the materials indicated above, require the prior written approval of the Department. This approval requirement is beneficial to the population at large because it will help to prevent the operation of illegal solid waste facilities, while legitimizing those facilities which are actually operating recycling centers. In addition, by providing approval guidelines and operational standards for recycling centers, persons proposing to engage in recycling will be able to do so with greater certainty and less delay.

Existing and prospective operators of recycling centers are those most affected by the proposed rules. However, the approval requirements and operating standards proposed will not only help serve those legitimate recyclers but will also benefit the recycling industry as a whole. All sectors of the public are ultimately affected by the proposed rules since all sectors of the public are required to source separate traditional recyclable materials. The source separation requirement is more than offset by the environmental and economic benefits that will result from the operation of a sound recycling industry. The proposed rules are even more important in light of the rapid growth of the recycling industry. Thus, the social impact of the proposed rules will be beneficial.

The projected reaction to the rules is positive. The recycling industry, as well as the public, should welcome the direction and guidance which is provided in the proposed rules. While a consequence of the proposed rules is an increase in the regulation of the private sector, illegal solid waste facilities which claim to be recycling centers not requiring a solid waste facility permit have become a serious problem in New Jersey and have hastened the need for a better regulated recycling industry. The proposed rules provide for a better regulated recycling industry while they encourage the development of a sound recycling industry.

Economic Impact

The economic impact of the proposed new rules will fall primarily upon all recycling centers which apply for and obtain a general or limited approval to operate a recycling center or mobile recycling center pursuant to N.J.A.C. 7:26A-3, and all persons seeking permission for the out-of-State transport of recyclable material pursuant to N.J.A.C. 7:26A-4.2. The economic impact on recycling centers seeking general or limited approval is based in the \$3,530 minimum application fee and \$8,820 annual fee required by N.J.A.C. 7:26A-2.1. The economic impact on persons seeking permission for the out-of-State transport of recyclable materials is based in the \$72.00 minimum application fee and \$180.00 annual fee required by N.J.A.C. 7:26A-2.2.

While it is expected that these impacts will be significant, the Department has determined that the fees are necessary to provide adequate staffing to administer the recycling center approval program. A discussion

of the Department's staffing needs for the administration of the recycling center program and an analysis of the basis for the fees follows.

Based upon the Department's records of currently approved recycling centers, it is anticipated that approximately 50 recycling centers will seek approval to operate pursuant to N.J.A.C. 7:26A-3 in fiscal year 1991 (FY91). Additionally, it is anticipated that approximately 50 recyclers will seek approval for the out-of-State transport of recyclable material in FY91. The Department has studied current staffing levels needed to administer the recycling center approval program and has projected that the following levels of staffing will be necessary to administer the proposed new program in FY91.

1. Division of Solid Waste Management, Office of Recycling: The Office of Recycling (OR) will have the primary responsibility and leading role in administering the recycling center approval program. The greatest portion of administrative work will involve the review of general and limited approval application submittals. Among the functions of the OR in conducting such a review are the following: evaluation of the ability of on-site equipment to process recyclable materials received at the recycling center; verification of end-markets for recyclable material; analysis of the site plan map, tax map and USGS Quadrangle Map; evaluation of noise control methods to be used at the site; examination of site access controls; analysis of the Operations and Maintenance Manual; and, determination of whether the recycling center is included in the applicable county solid waste management plan and holds all permits which may be required by the Department (for example, air pollution control, stream encroachment, etc.).

Subsequent to the review procedures listed above, the OR must prepare letters detailing the deficiencies of application submittals. Once the deficiencies are corrected and it is determined that the submittals meet the requirements of N.J.A.C. 7:26A-3, the OR will conduct site visits to inspect the operations and equipment of the recycling centers. The OR will then formulate and issue approval or denial letters to the applicants. Finally, the OR must analyze all annual reports submitted by approved recycling centers to verify continued compliance with the criteria of N.J.A.C. 7:26A.

Other tasks involved in administering the recycling center approval program are the processing of renewals, modifications, revocation and transfer of general and limited approvals, coordination with other bureaus and divisions of the Department on matters of regulation and enforcement, and the handling of all questions and correspondence regarding the recycling program.

In addition to administering the procedures for general and limited approval, the OR also must process all submittals relating to the out-of-State transport of recyclable material. Among the necessary administrative functions are the following: review of application submittals; verification of out-of-State facilities; issuance of approval or denial letters; coordination with county recycling programs; and site visits.

Given the administrative functions of the OR, the Department estimates that three full-time professional staff persons will be necessary to run the recycling center approval program. The costs to the Department associated with this level of staffing are detailed below.

a. Salary		
—2 Energy Specialists		
2 @ \$32,700 =		\$ 65,400
—1 Supervising Energy Specialist		\$ 40,800
	Total Salary:	\$106,200
	Fringe Benefit @ 27.51%:	\$ 29,200
	Salary Subtotal:	\$135,400
b. Indirect Cost @ 32.7%		\$ 44,300
	Subtotal:	\$179,700
c. Operating Cost @ 25%		\$ 44,900
	Subtotal:	\$224,600
	TOTAL OR OPERATING COST:	\$224,600

2. Division of Solid Waste Management, Enforcement Element: Inspection and enforcement services which are performed on behalf of the recycling program are included in the proposed fees. Enforcement staff will review all Department files on a recycling center prior to an inspection. The inspection of a recycling center site is followed by the filing of a report which details the results of the inspection. If it is determined that enforcement action will be taken, the recycling center's file is reviewed again and a penalty assessment is prepared. After the enforcement action is finalized and issued, a hearing may be scheduled whereby a settlement may be negotiated. Follow-up site visits are then made to determine compliance with the settlement. The Department estimates that

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one full-time enforcement staff person will be needed to work on enforcement activities related to the recycling program.

a. Salary		
—1 enforcement position		\$ 35,400
	Total Salary:	\$ 35,400
	Fringe Benefit @ 27.51%:	\$ 9,700
	Salary Subtotal:	\$ 45,100
b. Indirect Cost @ 32.7%		\$ 14,700
	Subtotal:	\$ 59,800
c. Operating Cost @ 25%		\$ 15,000
	Subtotal:	\$ 74,800
	TOTAL ENFORCEMENT COST:	\$ 74,800

3. Department of Law and Public Safety, Division of Law (DOL), Environmental Protection Section: A deputy attorney general (DAG) from the Division of Law, Environmental Protection Section will work directly with the OR on the following matters: legal review of the approval or denial letters written by the OR prior to its finalization; review of letters approving or denying applications for out-of-State transport of recyclable material; review of applications for modification, renewal or transfer of a general approval submitted to the OR; work on any amendments to the existing recycling regulations (once adopted) and work on the development of additional recycling regulations which will be added to the recycling chapter.

Additionally, the DAG will work on any enforcement action which arises in connection with violations of the recycling center regulations or of the conditions of recycling center approvals issued by OR. This work will include litigation of enforcement cases involving violations of the recycling center regulations.

Generally, time will be expended by the DAG in rendering day-to-day legal advice to Department personnel involved in administering and enforcing the recycling center rules, as well as in drafting responses to legal questions regarding recycling posed to the Department by outside parties. The DAG will also be addressing such issues as the sufficiency of application submittals prior to the preparation of an approval or denial letter, questions relating to the solid waste planning process through which recycling centers must operate, and evaluation of legislation which impacts on recycling.

The Department has estimated that it will need one DAG 4 to service the recycling program.

a. Salary		
—1 DAG 4		\$ 52,000
	Fringe Benefit @ 27.51%:	\$ 14,300
	Salary Subtotal:	\$ 66,300
b. Indirect Costs (32.7%)		\$ 21,700
	Subtotal:	\$ 88,000
c. Operating Costs (25%)		\$ 22,000
	Subtotal:	\$ 110,000
	TOTAL COST:	\$ 110,000

For all budgetary information above, there is an indirect cost factor of 32.7 percent and an operating cost factor of 25 percent associated with staff positions. Indirect costs represent items such as transportation, supplies and equipment. Operating costs represent items such as building costs, maintenance, energy costs and other fixed costs. These factors are applied uniformly by the Department in all fee programs.

TOTAL DEPARTMENT COSTS

—OR:	\$224,600
—Enforcement:	\$ 74,800
—DOL:	<u>\$110,000</u>
—Subtotal:	\$409,400
—10% noncompliance:	\$ 40,940
	TOTAL: \$450,340
	ROUNDED TOTAL: \$450,000

A 10 percent noncompliance margin has been factored into the total Department budget to cover the costs associated with recycling centers which do not pay the proper fee as required by N.J.A.C. 7:26A-2, and for facilities which operate without proper approval as required by N.J.A.C. 7:26A-3. It is the Department's experience that programmatic costs are increased by collection actions and enforcement actions taken against facilities which do not comply with the fee submittal and application approval procedures. The 10 percent noncompliance factor is designed to cover these programmatic costs. The additional funds should also benefit recycling centers which comply with the regulatory require-

ments, however, inasmuch as the Department will be able to enforce the fee requirement against non-complying facilities.

Given the Department's estimated operating budget of \$450,000 and the anticipated workload of 50 general approvals and 50 approvals for out-of-State transport of recyclable material in FY91, the Department calculated the specific fees based upon the following assumptions. Five staff persons will be involved in administering the recycling program, three from OR, one from enforcement, and one from DOL. The Department calculates a full-time staff person working a seven hour day and five day week as working 1,560 hours per year. Five staff persons at 1,560 hours per year is equal to 7,800 staff hours per year spent by the Department in administering the recycling program. Of the total 7,800 hours, the Department estimates that approximately 156 hours (two percent) will be spent administering the out-of-State transport approvals and 7,644 hours (98 percent) will be spent administering the general and limited approvals.

The cost associated with the number of staff hours expected to be delegated to each of these administrative functions and the breakdown of specific fees is set out below.

TASK	TOTAL # HOURS	% OF HOURS AND COST	TOTAL COST
General Approval	7,644	98%	\$441,000
Out-of-State Approval	156	2%	\$ 9,000
	<u>7,800</u>	<u>100%</u>	<u>\$450,000</u>

TASK	EXPECTED # OF APPROVALS	ANNUAL FEE	TOTAL COST
General Approval	50	x \$8,820 =	\$441,000
Out-of-State Approval	50	x \$ 180 =	<u>9,000</u>
			<u>\$450,000</u>

Given the division of staff hours and overall costs associated with the two proposed fee programs in N.J.A.C. 7:26A-2, the calculation of specific minimum fees for a general approval and approval for out-of-State transport of recyclable material are based upon anticipated staff hours spent for all activities leading up to issuance of a letter of approval or denial and for all activities undertaken subsequent to approval. It is noted that a greater number of staff hours may be expended by the Department in regulating a large recycling center which accepts numerous recyclable materials than will be expended in regulating a small recycling center which accepts only one or two recyclable materials. Likewise, the Department may spend more time on an out-of-State transport approval which involves the investigation of an out-of-State end market which has not previously been investigated than it will spend on an out-of-State transport approval which involves an end market which has already been investigated.

The Department has determined, however, that estimated staff hours should be averaged for all regulated entities inasmuch as averaging more accurately reflects the actual time spent by the Department in performing administrative functions which service the overall recycling program. These overall programmatic costs are proportionally much greater than the actual cost differentials between relatively larger and smaller recycling centers. Accordingly, the greatest percentage of the Department's overall operating budget consists of costs which are applicable to all recycling centers and out-of-State recyclable materials transporters. Therefore, averaging of expended staff hours will result in the fairest distribution of overall programmatic costs. The specific calculation of average staff hours for each task is set out below.

All activities leading up to the issuance of either an approval or denial letter (pre-approval) are estimated to take approximately 60 hours of staff time divided between OR, enforcement and DOL for each applicant. Approximately 36 hours will be spent by the OR in reviewing applications, issuing letters of deficiency, reviewing subsequent submittals, conducting site visits, coordinating with the county and other Department offices, and preparing the approval or denial letter. Approximately 12

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hours will be spent by DOL and 12 hours by enforcement in assisting in the aforementioned tasks.

All activities involved in administering the recycling program subsequent to issuance of general approval (post approval) are estimated to take approximately 90 hours per approved recycling center in the first year of approval. Approximately 55 hours will be spent by the OR in analyzing the annual recycling report, issuing correspondence, and handling all other mail and telephone inquiries. Approximately 17.5 hours will be spent by DOL and 17.5 hours by enforcement per year in legal and enforcement support for OR for each of the approved recycling centers. After the first year of approval, and for all subsequent years, it is estimated that post approval activities will increase by approximately 60 hours to a total of 150 staff hours per recycling center per year. It is expected that the number of hours spent by OR will increase from 55 to 80 as OR begins to process renewals, modifications, revocations and transfers of general approvals in the years subsequent to the issuance of the general approval. It is expected that the number of hours spent by both enforcement and DOL will increase by approximately 17.5 hours each to a total of 35 staff hours each per recycling center as enforcement activity and the legal support therefore are increased in the years subsequent to the issuance of approval.

<u>TASK</u>	<u># HOURS</u>	<u>% OF HOURS AND FEE</u>	<u>FEE</u>
Pre-Approval	60	40%	\$3,530
Post-Approval	150	100%	\$8,820

All activities leading up to approval or denial of an application for the out-of-State transport of recyclable material (pre-approval) are expected to require an average of approximately three quarters of an hour of OR staff time. Additionally, it is expected that an average of approximately one quarter of an hour each will be expended by DOL and one half hour by enforcement for each approval prior to a determination by OR.

All activities undertaken subsequent to the issuance of an approval (post-approval) are expected to require an average of one and one half hours of OR staff time and an average of one quarter of an hour each for enforcement and for DOL in the first year of approval. After the first year of approval, and for all subsequent years, it is estimated that post approval activities will increase from two to 3.5 hours of staff time. It is expected that the number of staff hours spent by OR will increase from one and one half hours to two hours as more time is spent on processing information submitted by persons approved to transport recyclable materials out-of-State. Additionally, it is expected that the number of staff hours spent by both enforcement and DOL will increase from one quarter of an hour to three quarters of an hour each as enforcement activity and the legal support therefor increases subsequent to the issuance of approval.

<u>TASK</u>	<u># HOURS</u>	<u>% OF HOURS AND FEE</u>	<u>FEE</u>
Pre-Approval	1.5	40%	\$ 72
Post-Approval	3.5	100%	\$180

Thus, given that approximately 40 percent of staff hours are expended on activities leading up to the issuance of an approval or denial to operate a recycling center, the Department has determined that the minimum fee for the approval of an application should be 40 percent of the total annual fee of \$8,820 which equals \$3,530. Similarly, since 40 percent of staff hours are expended on activities leading up to approval or denial of an application for the out-of-State transport of recyclable material, the Department has determined that the minimum fee for such application should be 40 percent of the annual fee of \$180.00 which equals \$72.00.

The operational standards of subchapter 4 will impact all recycling centers which handle traditional and nontraditional recyclable material. These recycling centers will experience costs associated with storing and disposing of nonrecyclable residue in accordance with existing solid waste storage, disposal and waste flow criteria at N.J.A.C. 7:26. Inasmuch as most of the operational standards of subchapter 4 are limited to areas that are currently regulated pursuant to Federal, State and local laws and regulations, the economic impact of this subchapter will be no greater than is currently the case for any facility which generates and disposes of a quantity of solid waste. However, some of the requirements in subchapter 4, particularly tonnage reporting, will result in operational costs which may be moderately significant.

The economic impact of subchapter 5 will fall upon all persons which process discarded refrigerators and freezers prior to recycling or disposal. These persons will experience costs associated with capturing refrigerant fluid during processing and with transporting the refrigerant fluid to a reprocessing facility.

The economic impact of subchapter 6 is based primarily on the costs associated with preparation of a soil reuse plan that must be submitted to and approved by the Department prior to the reuse of source separated I.D. 27 soils. All persons seeking approval for certain reuse projects will need to expend whatever funds are necessary to compile the information required by subchapter 6. It is not expected that this cost will impose a greatly significant economic burden on persons engaging in the reuse of source separated I.D. 27 soils. Furthermore, the cost of preparation of a soil reuse plan may well be less than the cost of disposing of the soil as a solid waste at a permitted solid waste facility.

Environmental Impact

The environmental impact of the proposed rules is positive. The rules encourage the development of a sound recycling industry and will result in the recycling of more waste material. This is very important to New Jersey which faces a solid waste disposal crisis. By further utilizing recycling as a method of solid waste management, New Jersey will save valuable landfill space, natural resources and energy in manufacturing processes. Reducing the amount of solid waste requiring either landfilling or incineration through recycling activities will decrease the negative impact on surface and ground waters and the air quality of the State.

The approval procedure established for facilities receiving, storing, processing or transferring recyclable materials such as source separated concrete, asphalt, wood waste, tree stumps and tires provides needed oversight for this expanding segment of the recycling industry. The State will benefit from this approval procedure because the operators of these facilities are required to submit information regarding equipment and end-markets, among other things, to the Department for review. The information submittal requirement is important because facilities may no longer merely claim to be recycling centers, they must prove it. Therefore, this approval procedure will promote legitimate recycling operations and help prevent the creation of tire dumps, tree stump dumps and other illegal solid waste facilities that pose dangers to the environment.

The establishment of performance standards in subchapters 3 and 4 will help protect the environment of the State and health of the public because the standards require that all recycling centers operate in accordance with all applicable Federal, State and local laws and regulations, including but not limited to nuisance codes. In addition, the standards include requirements regarding the storage of recyclable materials and residue, as well as general requirements concerning site maintenance and operating hours. The environment of New Jersey will benefit from the proposed performance standards because they ensure that the recycling industry in New Jersey will operate in a safe and environmentally sound manner.

In addition, the proposed rules require that refrigerant fluid be captured and recycled. This will have a positive impact upon the environment because it will slow ozone depletion.

Finally, the proposed rules allow for the reuse and treatment of certain kinds of contaminated soil. This will have a positive environmental impact because it will eliminate from the waste stream materials which would otherwise be landfilled.

Regulatory Flexibility Analysis

Pursuant to the definition of "small business" in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the majority of the businesses regulated by N.J.A.C. 7:26A are small businesses and will be impacted by the rules. The rules will impose record keeping, reporting and other compliance requirements on small businesses, including a fee program as set forth in N.J.A.C. 7:26A-2.

Small businesses that are regulated pursuant to subchapters 3 and 4 will need to expend funds to meet the substantive operational requirements in the rules, and will experience costs associated with the annual fees that are required of all recycling centers which hold an approval for the receipt, storage or transfer of non-traditional recyclable material, or which hold an approval for the out-of-State transport of source separated recyclable material. While the Department anticipates that the impact of the rules on small businesses regulated pursuant to subchapter 3 will be significant, the Department has determined that the rules are necessary to protect the public and environmental health, safety and welfare. Accordingly, no exemptions from the substantive requirements for a general or limited approval have been provided.

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Small businesses that are regulated pursuant to subchapter 5 will need to expend funds to ensure that refrigerant fluid is captured during the processing of refrigerators and freezers prior to recycling or disposal. It is expected that this cost may be significant for those businesses which need to make capital investments in equipment to capture refrigerant fluid. The Department has determined that the environmental benefit of protecting the ozone layer from the release of refrigerant fluid outweighs the costs associated with compliance. Accordingly, no exemptions from this subchapter have been provided.

Small businesses that are regulated pursuant to subchapter 6 will need to expend funds in the preparation of a soil reuse plan that must be submitted to and approved by the Department prior to the commencement of certain reuse projects involving source separated I.D. 27 soil. Although the Department expects that the costs associated with preparation of a soil reuse plan will be moderately significant, the Department has determined that the environmental benefit of promoting soil reuse and of ensuring that reused soil does not contain impermissible levels of contaminants outweighs the moderate burden of compliance.

There is a number of exemptions in the proposed chapter which are applicable to facilities which, while not operating as recycling centers for the purposes of this chapter, are nonetheless engaging in recycling activities. These exemptions will reduce the regulatory burden on small businesses which engage in the exempted activities.

Full text of the proposal follows:

CHAPTER 26A
RECYCLING RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:26A-1.1 Scope and authority

Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department governing the approval to operate as a recycling center pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., particularly the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq.

7:26A-1.2 Construction and severability

(a) This chapter shall be liberally construed to permit the Department to effectuate the purposes of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.

(b) If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

(c) The Department may amend, repeal or rescind this chapter as necessary and in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:26A-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Act" means the New Jersey Statewide Mandatory Source Separation and Recycling Act, N.J.S.A. 13:1E-99.11 et seq.

"Clean fill" means an uncontaminated, nonwater-soluble, nondecomposable, inert solid such as rock, soil, gravel, concrete, glass and/or clay or ceramic products.

"Commingled source separated traditional recyclable materials" means a combination of source separated metal, glass, or plastic containers, or a combination of source separated paper grades.

"Contaminant" means any substance, matter or material which adheres to, or which is otherwise contained on or in, source separated recyclable materials.

"Department" means the New Jersey Department of Environmental Protection.

"Disposition" means the transportation, placement, reuse, sale, donation, transfer or temporary storage for a period not to exceed six months of source separated recyclable materials for all possible uses except for disposal as solid waste.

"End-market" means any person which receives processed or unprocessed source separated or source separated commingled recyclable material and utilizes the material as a finished product or as a raw material for a manufacturing process.

"General approval" means an approval to operate a recycling center for the receipt, storage, processing or transfer of non-traditional recyclable material for a period of time not to exceed five years.

"Limited approval" means an approval to operate a recycling center for the receipt, storage, processing or transfer of non-traditional recyclable material for a period of time not to exceed 180 days.

"Manufacturer" means any person which utilizes traditional recyclable material as raw materials in the production of new paper, metal, glass or plastic products.

"Mobile recycling center" is a recycling center for non-traditional recyclable material which does not operate from a permanent location and which consists of equipment that is capable of being transported from site to site for the purpose of receiving, storing, processing or transferring non-traditional recyclable materials.

"Non-traditional recyclable material" means any source separated or commingled source separated non-hazardous materials other than metal, glass, paper, or plastic containers; corrugated and other cardboard. Non-traditional recyclable materials include, but are not limited to, tires, wood waste and tree stumps and certain construction/demolition debris, such as concrete, bricks, cinder blocks and asphalt.

"Off-site" means any site other than the specific site or point of generation of recyclable materials.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), corporate official, partnership, association, Federal agency, state, municipality, commission, political subdivision of a state, county or municipality, or any interstate body.

"Processing" means the preparation of source separated recyclable materials so that they conform to end-market specifications.

"Product" means the material or good generated as a result of processing source separated recyclable materials or commingled source separated recyclable materials for which no further processing is required prior to final utilization.

"Recyclable material" means that material which may be collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

"Recycling" means any process by which materials are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.

"Recycling center" means a facility designed and operated solely for receiving, storing, processing or transferring source separated recyclable materials or commingled source separated recyclable materials, except that "recycling center" shall not include a "manufacturer."

"Refrigerant fluid" means chlorofluorocarbon, fluorocarbon, bromofluorocarbon or hydrochlorofluorocarbon chemical used as refrigerant in a refrigerator, freezer, air conditioner, chiller, or similar device. These chemicals include, but are not limited to, refrigerants 11, 12, 500, 502 and 22 (ASHRAE Standards 34-57 and 34-78).

"Refrigerant reprocessing facility" means a facility which receives captured refrigerant fluid, stored and transported in the appropriate containers, and cleans or otherwise reprocesses these refrigerant fluids to a level of purity consistent with industry standards for the use to which the reprocessed refrigerant fluid will be put, and which then returns the reprocessed refrigerant fluid to commerce.

"Residue" means any solid waste generated as a result of processing source separated recyclable materials at a recycling center which must be disposed of as solid waste in accordance with the interdistrict and intradistrict solid waste flow rules set forth at N.J.A.C. 7:26-6.

"Source separated I.D. 27 soils" means any nonwater-soluble, nondecomposable inert soil which meets the definitional criteria of solid waste type I.D. 27, dry industrial waste, at N.J.A.C. 7:26-2.13(g)1vi.

"Source separation" or "source separated" means the process by which solid waste materials are separated at the point of generation into discrete classes of materials which are kept separate and apart from residential, commercial and institutional solid waste by the generator thereof for the purposes of collection, disposition and recycling.

"Traditional recyclable material" means any source separated, nonhazardous metal, glass, paper, or plastic containers, and corrugated and other cardboard.

"Treat" or "treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of a material so as to:

1. Neutralize or otherwise change the pH of such material;
2. Recycle energy or material resources from the material;
3. Render such material non-hazardous, or less hazardous;
4. Render the material safer to transport, store or dispose of; or
5. Render the material more amenable for recycling or storage or which reduces the volume of the material.

"Use" or "reuse" means the procedure whereby a source separated I.D. 27 soil is:

1. Employed as an ingredient in an industrial process to make a product. However, a material will not satisfy this condition if distinct components of the material are reclaimed as separate end products (for example, if the soil must be treated or reclaimed prior to use or reuse); or
2. Employed in a particular function or application as an effective substitute for a commercial product.

7:26A-1.4 Exemptions

(a) The activities exempted from the requirement to obtain a general or limited approval pursuant to N.J.A.C. 7:26A-3 and the specific criteria applicable to these activities are as follows:

1. Manufacturers shall not be required to obtain general or limited approval pursuant to N.J.A.C. 7:26A-3 for the receipt or storage of source separated recyclable materials. This exemption shall also apply to asphalt manufacturing plants which receive only source separated recyclable milled asphalt which has been processed (milled) to raw material specification at the point of generation and which is further reprocessed prior to introduction into the manufacturing process;

2. The recycling of source separated recyclable materials which are generated, processed and reused exclusively at the point of generation. In no event shall source separated recyclable materials be stored at the point of generation for more than six months. Specifically excluded from this exemption are materials generated off-site;

3. Recycling activities in which tree branches, tree limbs and brush are the sole materials to be received, stored, processed or transferred provided that:

i. Only the amount of material which the equipment on-site is capable of processing within a one-month period is stored on-site; and

ii. Storage of material on-site shall not exceed six months;

4. Tire retreaders and tire remolders which receive, store, process or transfer tires provided that:

i. Only that amount of material which the equipment on-site is capable of processing within a one-month period is stored on-site; and

ii. Storage of material on-site shall not exceed six months;

5. Any person or recycling center which receives less than 1,000 scrap tires per month and which does not process the scrap tires provided that:

i. Storage of materials on-site shall not exceed six months;

ii. Tires shall only be stored in roll-off containers or trailers dedicated to scrap tire storage; and

iii. The provisions of N.J.A.C. 7:26A-3.8(b) and (c) are met;

6. The transport of source separated non-traditional recyclable materials to an in-State recycling center holding a general or limited approval pursuant to this subchapter; and

7. Any person or recycling center which receives source separated non-traditional recyclable materials, with the exception of scrap tires, for temporary storage, which shall not exceed one month provided that such person or recycling center meets the following criteria:

i. All source separated non-traditional recyclable material shall be stored in containers dedicated for the exclusive storage of non-traditional recyclable material;

ii. No source separated non-traditional recyclable material which is received and stored as per this exemption shall be processed in any way, including further separation, prior to the transfer of material to a recycling center approved by the Department to receive, store, process or transfer the non-traditional recyclable material;

iii. Source separated non-traditional recyclable material which is stored as per this exemption shall only be transferred to a recycling center approved by this Department to receive, store, process or transfer the non-traditional recyclable material; and

iv. Records of the daily amount and type of the non-traditional recyclable materials received, stored and transferred shall be kept and shall be maintained for three years from the date of recording by the person or recycling center operating pursuant to this exemption. The required records shall be kept on site, be made available to the Department during an inspection and be submitted to the Department upon request.

(b) The general requirements applicable to all exemptions set out in (a) above are as follows:

1. The receipt, storage, processing or transfer of recyclable material shall be conducted in a manner consistent with the protection of public health, safety and the environment in light of the nature, scale and location of the exempted activity;

2. Measures shall be taken to minimize any negative impacts of the receipt, storage, processing or transfer activities on existing transportation patterns, ambient acoustical conditions, drainage and soils characteristics, surface and ground water quality, wetlands, applicable Federal, State or local land uses including the Pinelands and agricultural development areas, dedicated recreational or open space areas, floodways and endangered or threatened wildlife and vegetation;

3. Activities exempted pursuant to this section which exceed or violate the criteria for exemptions specified in (a) above and of this subsection, or which are conducted in a manner which endangers the public health, welfare and safety or the environment, or which are in violation of Federal, State or local law, shall be subject to regulation as a recycling center pursuant to this chapter or as a solid waste facility pursuant to N.J.A.C. 7:26; and

4. Tonnage reports shall be submitted to the Department in accordance with N.J.A.C. 7:26A-4.5(c).

SUBCHAPTER 2. ANNUAL FEES FOR A GENERAL OR LIMITED APPROVAL TO OPERATE A RECYCLING CENTER OR MOBILE RECYCLING CENTER; FEE FOR PERSONS SEEKING APPROVAL TO TRANSPORT SOURCE SEPARATED RECYCLABLE MATERIALS OUT-OF-STATE

7:26A-2.1 Fees for general or limited approval

(a) The general conditions and applicability of the fee schedule for all persons seeking or holding general or limited approval to operate a recycling center or mobile recycling center are as follows:

1. The Department will collect an annual fee for the billing year July 1 to June 30 from all persons that are issued a general or limited approval to operate a recycling center or mobile recycling center or that submit an application for a general or limited approval. The fee will cover the Department's costs of reviewing application submittals, making modifications to applications, conducting site visits, preparing approval and denial letters, and reviewing annual and final reports.

2. All applicants for a general or limited approval shall submit the minimum fee as set forth in (a)5 below to the Department at the time of application.

3. Upon a determination by the Department that an application satisfies the criteria for a general or limited approval, the annual fee will be calculated and pro-rated for the period of the fee year remaining. For those persons seeking a limited approval from the Department, the annual fee will be pro-rated to correspond to the duration

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of the limited approval. The minimum fee already paid will then be subtracted from the pro-rated assessment. In no case will such payment of a pro-rated fee result in a fee that is less than the minimum fee listed in (a)5 below. No approval will be issued until the Department has received the pro-rated annual fee from the applicant.

4. The annual fee for the operation of a recycling center or mobile recycling center holding a general or limited approval from the Department is \$8,820 for the base year ending on June 30, 1990. Thereafter, the annual fee will be calculated in accordance with N.J.A.C. 7:26A-2.3 below.

5. The minimum fee for application for a general or limited approval to operate a recycling center or mobile recycling center is \$3,530 for the base year ending on June 30, 1990. Thereafter, the minimum fee will be calculated in accordance with N.J.A.C. 7:26A-2.3 below.

7:26A-2.2 Fee for approval of the out-of-State transport of recyclable material

(a) The general conditions and applicability of the fee schedule for all persons seeking approval from the Department pursuant to N.J.A.C. 7:26A-4.2 for the out-of-State transport of recyclable materials are as follows:

1. The Department will collect an annual fee for the billing year July 1 to June 30 from all persons that are issued an approval from the Department for the out-of-State transport of recyclable material or that submit an application for approval. The fee will cover the Department's cost of reviewing application submittals, coordinating the dissemination of recycling tonnage reports, verifying end markets and preparing approval and denial letters.

2. All applicants for an approval for the out-of-State transport of recyclable material shall submit the minimum fee as set forth in (b)5 below to the Department at the time of application.

3. Upon a determination by the Department that an application satisfies the criteria for an approval for out-of-State transport of recyclable material, the annual fee will be calculated and pro-rated for the period of the fee year remaining. For those persons seeking an approval for a period of less than one year, the annual fee will be pro-rated to correspond to the duration of the approval. The minimum fee already paid will then be subtracted from the pro-rated assessment. In no case will such payment of pro-rated fees result in a fee which is less than the minimum fee listed in (b)5 below. No approval will be issued until the Department has received the pro-rated annual fee from the applicant.

4. The annual fee for an approval of out-of-State transport of recyclable material is \$180.00 for the base year ending on June 30, 1990.

5. The minimum fee for application for approval of out-of-State transport of recyclable material is \$72.00 for the base year ending on June 30, 1990.

7:26A-2.3 Adjustment of fees

(a) All fees contained in N.J.A.C. 7:26A-2.1 and 2.2 above will be adjusted annually by the Department using the following factors:

1. R = adjustment rate
2. B = base fee
3. N = number of approvals

(b) The annual fee will be determined by computing the factor "R" so that the total fees collected equals the Department's cost of providing services. The fee will be calculated by multiplying the factor "R" times the base fee "B." The product of the above multiplication is then multiplied by the number of approvals "N." The equation for the foregoing is as follows:

$$N(R \times B) = \text{the cost of providing services}$$

(c) The adjustment rate will be determined by the Department annually and will be noticed in the New Jersey Register no later than April 30 of each year.

7:26A-2.4 Payment of fees

Payment of all fees shall be made by check or money order, payable to "Treasurer, State of New Jersey" and shall be submitted to:

New Jersey Department of Environmental Protection
 Bureau of Collections and Licensing
 CN 402
 Trenton, New Jersey 08625

SUBCHAPTER 3. RECYCLING CENTER APPROVAL

7:26A-3.1 General requirements applicable to all recycling centers which receive, store, process or transfer non-traditional recyclable material

(a) No recycling center shall receive, store, process or transfer any non-traditional recyclable material without the prior written approval of the Department. The procedures for obtaining approval are set forth at N.J.A.C. 7:26A-3.2, 3.3, 3.4, 3.5, 3.7 and 3.8.

1. The only putrescible materials which may be approved by the Department for receipt, storage, processing or transfer at a recycling center or mobile recycling center are source separated tree stumps, tree trunks and leaves.

(b) Any person who operates a recycling center for the receipt, storage, processing or transfer of non-traditional recyclable material without the prior written approval of the Department shall be considered to be operating an unlicensed solid waste facility and shall be subject to penalties as set forth in N.J.S.A. 13:1E-9 and N.J.A.C. 7:26-5 in addition to penalties which may be assessed by other regulatory agencies pursuant to their authority.

(c) Any facility which received written Departmental approval to receive, store, process or transfer any source separated recyclable materials prior to the effective date of this chapter may continue to do so if all other requirements of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. and this chapter have been met.

(d) The transport to, delivery to or acceptance of source separated non-traditional recyclable materials at any recycling facility in New Jersey which has not received the prior approval of the Department to operate as a recycling center pursuant to N.J.A.C. 7:26A-3 or the transport and delivery of source separated recyclable materials to any out-of-State facility without the prior approval of the Department pursuant to N.J.A.C. 7:26A-4 shall constitute a violation of the interdistrict and intradistrict solid waste flow rules set forth at N.J.A.C. 7:26-6.

7:26A-3.2 Application procedure for general approval to operate a recycling center for the receipt, storage, processing or transfer of non-traditional recyclable material

(a) Prior to the receipt, storage, processing or transfer of any non-traditional recyclable materials at a recycling center, the owner or operator of the recycling center shall submit to the Department the following information in addition to a fee in accordance with N.J.A.C. 7:26A-2:

1. The name, address and telephone number of the person or persons seeking to own and operate the proposed recycling center, and the address of the recycling center if different from the above;

2. A description of the geographical location of the recycling center identified by the name of the municipality in which the recycling center is located, by a tax map showing the lot and block numbers of the recycling center site and of all adjoining properties, and by a description of the current land use of the recycling center site and of all adjoining properties;

3. A listing, by name, address and telephone number, of all persons owning ten percent or more of corporation stock in the recycling center, or a listing of the general and limited partners where applicable. In the case where no persons own ten percent or more of corporation stock in the recycling center, the names of the corporation principals shall be listed. In particular, the owner or operator of the recycling center shall list any intra-corporate relationships between the recycling center and any solid waste hauler or disposal operation registered with either the New Jersey Board of Public Utilities or the Department or both;

4. A listing of the material or materials, including the types of any possible contaminants, to be received, stored, processed or transferred at the recycling center;

5. The maximum amount of each material, including contaminants, to be received, stored, processed or transferred at the recycling

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center per day, expressed in tons or cubic yards per day. Those persons specifying this information in cubic yards per day shall also indicate the conversion ratio of the materials from cubic yards to tons;

6. A listing of all products and residue resulting from the proposed recycling activities, and the amount of such products and residue expressed in tons or in cubic yards per day. Those persons specifying this information in cubic yards per day shall also indicate the conversion ratio of the material from cubic yards to tons;

7. The name, address and telephone number of all end-markets for the materials received, stored, processed or transferred by the recycling center.

i. End-market contracts or agreements shall be submitted as evidence of the applicant's ability to sell the products resulting from the proposed activities of the recycling center;

ii. Where end-market contracts or agreements are not available at the time of application for a general approval to operate a recycling center, the applicant shall submit letters of interest from prospective end-market users of the products resulting from the applicant's recycling operation. Letters of interest may be based on information provided by the applicant to prospective end-market users such as a description of the equipment to be used at the recycling center and the specifications of the products resulting from recycling center operation;

8. A description, including manufacturer's specification sheets, of all equipment to be utilized for the receipt, storage, processing or transferring of each non-traditional recyclable material received, stored, processed or transferred, including the name of the equipment manufacturer, model number and operating capacity of the equipment and a dated and signed invoice indicating receipt and ownership or lease of all equipment described above;

9. One copy of a site plan map, prepared, signed and sealed by a licensed New Jersey professional engineer or surveyor, which identifies (plots) the placement of all equipment, buildings, activities and areas related to the receipt, storage, processing and transferring of all unprocessed and processed recyclable materials. This site plan shall also:

i. Be drawn to a scale no larger than 1 inch equals 100 feet;

ii. Indicate the routing of vehicles between the recycling center and all nearby roadways serving the site, as well as the traffic flow within the site, and indicate the provisions incorporated into the site plan to ensure safe and efficient vehicular and pedestrian circulation, parking, loading and unloading;

iii. Delineate the floodplain as defined at N.J.A.C. 7:13-1.2;

iv. Delineate the incidence of wetlands, New Jersey Pinelands, prime agricultural lands, historic sites (where applicable) and other environmentally sensitive areas;

v. Identify the direction of water runoff both on and off-site and the screening and landscaping provisions which may be incorporated at the site; and

vi. Indicate topographic contours drawn at two-foot intervals;

10. An original 7.5 minute USGS Quadrangle map which includes the boundary of the recycling center plotted on the map. The map shall delineate any public access roads to the site and any streams or ponds and sensitive receptors (for example, hospitals, schools, playgrounds, homes, etc.) within a one-half mile radius of the site;

11. A copy of the deed of record establishing ownership of the recycling center property or, if the applicant is other than the landowner, a notarized legal agreement (for example, a legal lease agreement) to use the real property in question for the intended purpose;

12. A description of the design capacity of the recycling center setting forth the number and types of vehicles bringing material to the recycling center for receipt, storage or processing, and the number and types of vehicles transferring products and residue from the site on a daily basis;

13. A copy of a New Jersey air pollution control permit required pursuant to N.J.A.C. 7:27-8.2(a)1 and a copy of the application for the air pollution control permit or a written determination from the New Jersey Department of Environmental Protection that the requirements for a New Jersey air pollution control permit are not applicable to the proposed recycling center;

14. In the event that a proposed site of a recycling center is located within the one hundred year flood plain, the applicant shall obtain either a New Jersey stream encroachment permit or a written determination from the New Jersey Department of Environmental Protection that the requirements for a New Jersey stream encroachment permit are not applicable to the proposed recycling center. A copy of the permit or written determination shall be included in the applicant's submittal for recycling center approval;

15. A description of the methods of noise control which will be utilized at the recycling center and written demonstration of ability to comply with the noise control requirements of N.J.A.C. 7:29;

16. A description of the methods to be utilized at the recycling center to control litter, debris, off-site migration of litter and debris, and methods to prevent mud tracking into nearby streets;

17. A description of the methods to be utilized for source separation and recycling of any designated recyclable materials, as per the applicable district recycling plan, which may be generated at the recycling center by any on-site offices or other on-site activities;

18. A description of the site access controls to be employed at the recycling center;

19. Documentation establishing that the recycling center's soil erosion and sediment control plan has been approved by the appropriate local Soil Conservation District where applicable;

20. Documentation establishing that the recycling center is included in the solid waste management plan of the solid waste management district within which the recycling center is located;

21. A description of the source, or point of generation, and previous use of all materials to be received, stored, processed or transferred at the recycling center. This description may list the types of commercial activities (for example, construction sites) where the materials proposed to be received, stored, processed or transferred are generated, or the actual location, indicated by lot and block, where said materials are generated; and

22. An operations and maintenance (O and M) plan which shall include, at a minimum, the following:

i. Hours of operation of the recycling center;

ii. A maintenance plan for the equipment identified in (a)8 above;

iii. A safety plan which shall include a description of the measures to protect facility and other personnel from injury during operation, an indication of any exterior lighting provisions which may be needed for safety reasons, as well as any street lighting provisions which may be required, and the fire fighting procedures to be employed at the site, including documentation of the capacity of on-site water supply;

iv. A personnel training manual which shall outline those steps and procedures, written and otherwise, to instruct all personnel in the operation and maintenance of all equipment utilized in the receipt, storage, processing and transferring of source separated recyclable material and any possible residue which may result from the operation;

v. An incoming materials specification sheet which shall be provided to all persons bringing, delivering or sending non-traditional recyclable material to the recycling center and which shall include the following information:

(1) A listing of the source separated materials to be received by the recycling center;

(2) The size, weight, or other restrictions regarding materials to be received; and

(3) A notice that vehicles delivering materials to the recycling center will be inspected and, if found to contain more than allowable amounts of contaminants, will be barred from offloading vehicle payload;

vi. A Recyclable Materials Receipt Form which shall maintain the following information for each vehicle delivering recyclable material to the recycling center:

(1) The amount of source separated recyclable material received, expressed in tons or cubic yards. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons;

(2) The municipality of origin of the material received;

(3) The name of the person bringing source separated recyclable materials to the facility; and

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(4) The vehicle license plate number and NJDEP registration number, if applicable; and

vii. An incoming materials inspection plan which shall detail the manner by which all vehicles entering the facility with recyclable materials to be stored, processed or transferred will be inspected to determine the contents of the vehicle payload area, including the incidence of or extent of contaminants which may be present in the truckload of recyclable materials received.

(b) The information required pursuant to (a) above shall be accompanied by a written certification that all information submitted is complete and accurate.

(c) One original and two copies of the information required pursuant to (a) above shall be submitted to:

The New Jersey Department of Environmental Protection
 Division of Solid Waste Management
 Office of Recycling
 CN 414
 Ewing, New Jersey 08628

(d) One copy of the information required pursuant to (a) above shall be submitted to the solid waste or recycling coordinator of the county in which the recycling center is located.

(e) Every owner or operator of a recycling center for the receipt, storage, processing or transfer of non-traditional recyclable material seeking approval pursuant to this subchapter shall submit a fee as required by N.J.A.C. 7:26A-2.

(f) All persons who seek a general approval to operate a tire recycling center pursuant to this subchapter shall also comply with the requirements at N.J.A.C. 7:26A-3.8.

7:26A-3.3 Application procedure for general approval to operate a mobile recycling center

(a) Prior to the receipt, storage, processing or transfer of any non-traditional recyclable materials at a mobile recycling center, the owner or operator of the mobile recycling center shall submit to the Department the information required pursuant to N.J.A.C. 7:26A-3.2(a)1, 3, 4, 5, 6, 7, 8, 13, 15, 16 and 22 and a fee in accordance with N.J.A.C. 7:26A-2.

(b) The information required pursuant to (a) above shall be accompanied by a written certification that all information submitted is complete and accurate.

(c) The owner or operator of a mobile recycling center shall be responsible for complying with the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., in addition to all other applicable laws and regulations.

(d) All persons seeking approval to operate a mobile recycling center for tires pursuant to this subchapter shall also comply with the requirements at N.J.A.C. 7:26A-3.8.

7:26A-3.4 Supplemental requirements for a general approval

(a) Prior to the issuance of a general approval to operate a recycling center or mobile recycling center for the receipt, storage, processing or transfer of non-traditional recyclable materials the Department may, in the interest of public or environmental health, safety or welfare, require the submission of additional information from the applicant.

(b) Prior to the issuance of a general approval to operate a recycling center or mobile recycling center for the receipt, storage, processing or transfer of non-traditional recyclable materials, the applicant must receive all other applicable local, State, or Federal permits or approvals.

(c) Prior to issuance of approval to operate a recycling center or mobile recycling center, the Department may require an applicant to obtain and submit to the Department a performance bond or letter of credit in an amount determined by the Department as necessary to effectuate the proper removal, transportation and disposition of all materials which may be abandoned on a recycling center or mobile recycling center site. The criteria to be evaluated by the Department to determine if a performance bond or letter of credit is needed, and to be used in establishing the performance bond or letter of credit amount, are the following:

1. The history of enforcement actions taken by the Department against the applicant involving violations of any environmental stat-

utes of the State, of the Department's solid waste management rules, N.J.A.C. 7:26, of this chapter, and of all other rules contained in Title 7 of the New Jersey Administrative Code, and the history of enforcement actions taken by the State, county or local government or any political subdivision of the State, county or local government;

2. The current cost of disposal at a permitted solid waste facility which would receive the materials which may be abandoned on a site based on the maximum storage capacity of the recycling center;

3. The amount of material to be received, stored, processed or transferred at the recycling center over the duration of the general approval;

4. The types of materials to be received, stored, processed or transferred at the recycling center;

5. Whether the lease agreements related to property or equipment are less than three years in duration;

6. Whether the lease agreements related to property or equipment restrict the operation of the proposed recycling center or mobile recycling center; and

7. An analysis of the stability of end-markets for the non-traditional recyclable material received, stored, processed or transferred at the recycling center, which analysis shall consider the following:

i. The length of time the end-market has been in business;

ii. The length of time the end-market has been accepting the non-traditional recyclable material and using it as a raw material in a manufacturing process; and

iii. The number of end-markets in New Jersey, nationally and internationally which accept the non-traditional recyclable material in question.

7:26A-3.5 General approval

(a) Upon a determination that information submitted pursuant to N.J.A.C. 7:26A-3.2(a), 3.3, 3.4 and 3.8 is complete and meets the criteria of this subchapter, and that a fee has been submitted pursuant to N.J.A.C. 7:26A-2, the Department will issue a general approval to operate a recycling center or mobile recycling center for a period not to exceed five years. The general approval will accomplish the following:

1. Authorize the receipt, storage, processing or transferring of non-traditional recyclable materials at the recycling center or mobile recycling center;

2. Indicate the conditions of operation which shall be met by the recycling center owner or operator prior to the receipt, storage, processing or transfer of the approved source-separated recyclable materials; and

3. Indicate the limitations on recycling center operation, including, but not limited to:

i. Limitation on the amount of contaminants which may be present in any truckload of source-separated recyclable materials received at the recycling center;

ii. Limitation on the amount of residue which may be produced as a result of receiving, storing, processing or transferring source-separated recyclable materials at the recycling center; and

iii. Limitation on the commingling of non-traditional materials at the recycling center.

(b) All recycling centers receiving a general approval to operate a recycling center or mobile recycling center shall prominently post and maintain a legible sign, at or near the entrance to the recycling center, indicating that it is an approved New Jersey Department of Environmental Protection recycling center or mobile recycling center. In addition, the sign shall also indicate those items detailed in N.J.A.C. 7:26A-3.2(a)22i and v.

7:26A-3.6 Application for renewal of a general approval to operate a recycling center or mobile recycling center

(a) Applications for renewal of general approvals issued pursuant to this subchapter shall be submitted three months prior to expiration of the current approval and shall comply with all requirements for renewal set forth in this subchapter.

(b) Applicants for renewal of existing general approvals shall certify in writing to the Department that there have been no changes in the operations of the recycling center or mobile recycling center since the issuance of the general approval in order to renew the

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approval in its existing form. In the event that there have been changes in the operations of the recycling center or mobile recycling center or where changes are planned, the application for renewal of a general approval shall be accompanied by a written request to modify the general approval in accordance with N.J.A.C. 7:26A-3.10.

(c) In a case where the person who has received the general approval pursuant to this subchapter does not comply with (a) and (b) above and continues to operate without renewal of its general approval, the Department may take actions which include, but are not limited to, the following:

1. Appropriate enforcement action including the assessment of penalties under N.J.S.A. 13:1E-9; and

2. Require the person who has received the general approval to file an application as a new applicant for a general approval in accordance with N.J.A.C. 7:26A-3.2, 3.3, 3.4 or 3.8 and pay the annual fee as per N.J.A.C. 7:26A-2.

(d) The Department, following receipt of an application for renewal of an existing general approval, will, upon determining that the application submittals are complete and meet the criteria of this subchapter, grant an extension of the approval for a period not to exceed five years.

(e) All persons granted a renewal pursuant to (d) above shall continue to pay the annual fee as specified in N.J.A.C. 7:26A-2.

(f) The Department may deny an application for renewal of a general approval based on any of the criteria set out in N.J.A.C. 7:26A-3.11.

7:26A-3.7 Application procedure for limited approval to operate a recycling center for the receipt, storage, processing or transfer of non-traditional recyclable material

(a) No person shall operate a recycling center for the receipt, storage, processing or transferring of non-traditional recyclable materials for a period of time not to exceed 180 days without prior approval of the Department and without having submitted a fee in accordance with N.J.A.C. 7:26A-2 to the Department. The following information shall be submitted to the Department in order to obtain limited approval:

1. The information required pursuant to N.J.A.C. 7:26A-3.2(a)1, 3, 4, 5, 6, 7, 8, 9, 13, 14, 19 and 21;

2. A written narrative explanation of the recycling operation;

3. A written schedule for completion of the recycling operation; and

4. Written evidence of approval from the local municipal governing body, where applicable.

(b) The Department may require the issuance of a performance bond or letter of credit for persons granted a limited approval to operate a recycling center in accordance with the criteria of N.J.A.C. 7:26A-3.4(c).

(c) Prior to the issuance of a limited approval to operate a recycling center for non-traditional recyclable materials, and where the Department determines that additional information is needed to adequately address public or environmental health, safety or welfare, the applicant shall submit the additional information requested by the Department.

(d) Upon a determination that the information submitted pursuant to (a) through (c) above is complete and meets the criteria of this subchapter and that a fee has been submitted pursuant to N.J.A.C. 7:26A-2, the Department will issue a limited approval to operate a recycling center, valid for a specified period of time, for non-traditional recyclable materials which are indicated in the Department's approval. The approval will indicate the conditions, if any, which must be met by the recycling center owner or operator for the approval to remain in effect for a time period not to exceed 180 days.

(e) No less than 45 days after the expiration of the time period covered by the limited approval to operate a recycling center, a final report shall be prepared by the person issued the limited approval and submitted to the Department. The final report shall contain the following information:

1. The name, address and telephone number of the person or persons to whom the Department has issued the limited approval to operate a recycling center;

2. The location of the approved recycling center, if different than above, including the street address, lot and block, municipality and county;

3. A listing of the total amount of each non-traditional recyclable material received, stored, processed or transferred during the period of approved operation, expressed in tons or in cubic yards. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons;

4. The amount of residue disposed of, expressed in tons or in cubic yards, including the name and New Jersey Department of Environmental Protection solid waste registration number of the solid waste collector/hauler which provided the haulage/disposal service. Those persons specifying the total amount of residue in cubic yards shall also indicate the conversion ratio of the residue from cubic yards to tons;

5. A written certification that all residue has been disposed of in accordance with the solid waste management rules at N.J.A.C. 7:26;

6. The name, address and telephone number of the end-markets for all non-traditional recyclable materials transported from the recycling center, including the amounts, in tons or cubic yards, transported to each end-market. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons; and

7. A listing of each non-traditional recyclable material received at the recycling center by municipality of origin and by the amount per municipality.

(f) All persons operating a recycling center pursuant to a limited approval shall operate in accordance with the noise control rules at N.J.A.C. 7:29, and with all applicable fire and safety codes.

(g) All persons operating a recycling center pursuant to a limited approval shall ensure that no illegal and unauthorized dumping occurs at the recycling center site.

(h) One original and two copies of the information required pursuant to (a) and (e) above shall be submitted to:

The New Jersey Department of Environmental Protection
 Division of Solid Waste Management
 Office of Recycling
 CN 414
 Ewing, New Jersey 08628

(i) Limited approvals issued by the Department pursuant to (d) above may not be renewed pursuant to N.J.A.C. 7:26A-3.6. The Department may, however, extend the duration of the approval where the holder of the limited approval petitions the Department in writing explaining the need for an extension and where the Department determines that an extension is necessary to protect the public or environmental health, safety or welfare. Petitions shall be submitted to the address set out in (h) above. In no event will the Department extend the duration of the limited approval for more than 50 percent of the time of the original limited approval.

(j) All persons who seek limited approval to operate a tire recycling center pursuant to this subchapter must also comply with the requirements at N.J.A.C. 7:26A-3.8.

7:26A-3.8 Tire recycling centers and mobile tire recycling centers: additional requirements for general or limited approval

(a) The methods of processing tires that may be approved by the Department are limited to slicing, shredding, chipping, crumbing or similar activities as determined by the Department. At no time shall incineration, landfilling, abandonment or other disposal of tires, in whole or in part, occur at the recycling center.

(b) The owner or operator of a tire recycling center shall take all steps necessary to ensure that no mosquito colony formation or development is allowed to occur on the recycling center site.

(c) A fire control plan for the recycling center shall be filed with and approved by the local fire marshal or other person of competent jurisdiction and shall be filed with the local municipal code enforcement officer prior to operation of a tire recycling center.

7:26A-3.9 Storage of non-traditional recyclable materials

(a) The temporary storage of unprocessed and processed non-traditional recyclable material at recycling centers shall be limited to the amount indicated in the general or limited approval to operate

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and shall be determined by the Department based on the information submitted pursuant to N.J.A.C. 7:26A-3.2(a)7, 8 and 9, 7:26A-3.3 and 7:26A-3.7.

(b) Notwithstanding (a) above, in no event shall unprocessed or processed non-traditional recyclable material be stored on-site for a period in excess of six months.

7:26A-3.10 Modifications of general or limited approvals

(a) All owners and operators of recycling centers which have received Department approval to operate a recycling center pursuant to this subchapter shall obtain prior approval from the Department for any modification of the original approval.

(b) Modifications to the general or limited approval to operate a recycling center which require the prior approval of the Department include the following:

1. Any change affecting the conditions of the general or limited approval issued pursuant to N.J.A.C. 7:26A-3.5 or 3.7; and

2. Any change to the information submitted pursuant to N.J.A.C. 7:26A-3.2(a), 3.3, 3.4, 3.7 and 3.8.

(c) The owner or operator shall notify the Department in writing of the intended modification and shall update the information submitted pursuant to N.J.A.C. 7:26A-3.2(a), 3.3, 3.4, 3.7 and 3.8.

(d) The Department will review the information submitted in accordance with (c) above and will determine whether additional information is necessary to approve the modification. If additional information is required in order to evaluate the modification request, the Department will notify the owner or operator in writing. Thereafter, the owner or operator shall submit to the Department in writing the additional information.

(e) Upon determining that the information submitted for modification review is complete, the Department will approve or deny the modification by notifying the owner or operator in writing.

7:26A-3.11 Criteria for denial of a general or limited approval to operate a recycling center or mobile recycling center and for denial of a renewal of a general approval

(a) The following constitutes the criteria for denial of a general or limited approval or of a renewal of a general approval and will result in the issuance of a letter of denial of general or limited approval to operate a recycling center or mobile recycling center:

1. Failure to submit any of the information required pursuant to this subchapter;

2. Failure to have the recycling center included in the applicable district solid waste management plan where applicable;

3. Failure to correct any deficiencies in information submitted pursuant to this subchapter as determined by the Department, within 60 days of receipt of a letter detailing said deficiencies;

4. Failure to sign and return the general or limited approval to operate a recycling center or mobile recycling center to the Department's Office of Recycling for execution of the approval within 21 working days of its receipt;

5. Failure to demonstrate that only source separated recyclable materials will be received, stored, processed or transferred at the recycling center;

6. Failure to submit the appropriate fee required pursuant to N.J.A.C. 7:26A-2; and

7. Failure to obtain any required permit or approval from the Department or other State or Federal agency.

(b) In addition to the criteria for denial of a general or limited approval set out in (a) above, the Department may also deny a general or limited approval on the basis of the following criteria:

1. The applicant has been denied a license or registration pursuant to N.J.S.A. 13:1E-1 et seq.;

2. The applicant has been denied a certificate of public convenience and necessity pursuant to N.J.S.A. 48:13A-1 et seq.; or

3. The applicant has had its registration, license or certificate of public convenience and necessity revoked by the Board of Public Utilities.

(c) If the Department denies an application for a general or limited approval to operate a recycling center or mobile recycling center and bases the denial on a written determination that the facility for which the application was made is a solid waste facility for which a regis-

tration statement and engineering design is required pursuant to N.J.S.A. 13:1E-5, the owner or operator of the facility, in any appeal of the Department's denial, shall have the burden to show by clear and convincing evidence that the facility for which the application was made is not a solid waste facility for which a registration statement and engineering design is required pursuant to N.J.S.A. 13:1E-5.

7:26A-3.12 Procedures and criteria for revoking a general or limited approval

(a) The Department may revoke a general or limited approval upon a determination that a person holding a general or limited approval has:

1. Violated any provision of N.J.S.A. 13:1E-1 et seq., the Act, or any rule, regulation or administrative order promulgated pursuant to N.J.S.A. 13:1E-1 et seq. and the Act;

2. Violated any solid waste utility law at N.J.S.A. 48:2-1 et seq. or 48:13A-1 et seq., or any rule, regulation or administrative order promulgated pursuant to N.J.S.A. 48:2-1 et seq. or 48:13A-1 et seq.;

3. Violated any provision of any laws related to pollution of the waters, air or land surfaces of the State or of any other State or Federal environmental laws including criminal laws related to environmental protection;

4. Refused or failed to comply with any lawful order of the Department;

5. Has failed to comply with any of the conditions of the general or limited approval issued by the Department; or

6. Transferred a general or limited approval to a new owner or operator pursuant to N.J.A.C. 7:26A-3.14.

(b) The Department will revoke a general or limited approval by providing the holder of an approval with written notice of the action which details the reasons for the action.

7:26A-3.13 Appeal procedure

(a) An applicant who believes himself or herself to be aggrieved with respect to the following decisions made by the Department may appeal the decision within 20 calendar days after the date of the decision and request an administrative hearing:

1. Denial of a general or limited approval, or any part thereof; or

2. Revocation or modification of a previously issued approval.

(b) Requests for an administrative hearing shall be submitted to:
The New Jersey Department of Environmental Protection
Division of Solid Waste Management
Office of Recycling
CN 414
Ewing, New Jersey 08628

(c) All requests for an administrative hearing shall be submitted in writing to the Department and shall contain:

1. The name, address and telephone number of the person making the request;

2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;

3. A brief and clear statement of the Department decision being appealed, indicating the specific grounds for the applicant's appeal;

4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue must also be included; and

5. All information supporting the request or other written documents relied upon to support the request, unless this information is already in the administrative record (in which case, such information shall be specifically referenced in the request).

(d) A hearing request not received by the Department within 20 calendar days after the date of the Department decision being appealed will be denied by the Department.

(e) If the applicant or interested party fails to include all the information required by (c) above, the Department may deny the hearing request.

(f) Following receipt of a complete request for a hearing pursuant to (c) above, the Department may attempt to informally settle the

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dispute by conducting such proceedings, meetings and conferences as deemed appropriate.

(g) If the Department determines that the matter is a contested case, the Department will file the request for an administrative hearing with the Office of Administrative Law. Such hearings will be conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules N.J.A.C. 1:1. In making such determination, the Department will evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

7:26A-3.14 Transfer of a general or limited approval to operate a recycling center or mobile recycling center

(a) A general or limited approval to operate a recycling center or mobile recycling center shall not be transferred directly to a new owner or operator without the Department's prior approval.

1. Any transfer of an approval must be pre-approved by the Department, and a written request for permission to allow such transfer must be received by the Department at least 60 days in advance of the proposed transfer of ownership or operational control of a recycling center. The request for approval shall include the following:

- i. The name, address and social security number of all prospective new owners or operators;
- ii. A written certification by the proposed transferee that the terms and conditions contained in the general or limited approval will be met by the proposed transferee; and
- iii. A written agreement between the current owner or operator of the recycling center or mobile recycling center and the proposed new owner or operator containing a specific future date for transfer of ownership or operational control.

2. A new owner or operator may commence operations at the recycling center only after the existing approval has been revoked and a new approval is issued to the new owner or operator pursuant to N.J.A.C. 7:26A-3.5 or 3.7.

3. The owner or operator of record of the approved recycling center or mobile recycling center remains liable for ensuring compliance with all conditions of the approval unless and until the existing approval is revoked and a new approval is issued to the new owner or operator pursuant to N.J.A.C. 7:26A-3.5 or 3.7.

4. Compliance with the transfer requirements set forth in this subsection shall not relieve the owner or operator of record of the approved recycling center or mobile recycling center from the separate responsibility of providing notice of such transfer pursuant to the requirements of any other statutory or regulatory provision.

(b) For the purposes of this section, the transfer of a controlling interest in the stock or assets of a recycling center holding a general or limited approval from the Department shall constitute the transfer of a general or limited approval pursuant to (a) above.

7:26A-3.15 Filing requirements for existing recycling centers and mobile recycling centers which receive, store, process or transfer non-traditional recyclable material

(a) Within 120 days of the effective date of this subchapter, all owners or operators of recycling centers or mobile recycling centers operating for the receipt, storage, processing or transfer of non-traditional recyclable materials that received written approval from the Department for the receipt, storage, processing or transfer of non-traditional recyclable materials prior to the effective date of this subchapter shall comply with all information submittal and fee submittal requirements of this chapter, as well as all rules of this chapter.

(b) Any recycling center or mobile recycling center that must file information seeking approval for the receipt, storage, processing or transfer of non-traditional recyclable materials pursuant to (a) above may continue to operate pursuant to the approval issued by the Department prior to the effective date of this subchapter until such time as the Department has made a determination regarding its

application for a general approval to operate a recycling center or mobile recycling center for the receipt, storage, processing or transfer of non-traditional recyclable materials pursuant to the procedures of this subchapter.

(c) No recycling center or mobile recycling center operating for the receipt, storage, processing or transfer of non-traditional recyclable materials, and for which written Departmental approval was issued prior to the effective date of this subchapter may modify its operation from that which it represented in the information submitted to the Department and for which Departmental approval to operate was based unless such modification is approved by the Department in accordance with this subchapter.

7:26A-3.16 Record keeping and annual report; confidentiality of records

(a) All recycling centers or mobile recycling centers holding a general or limited approval shall maintain daily records of all materials received, stored, processed or transferred. Said records shall indicated, at a minimum:

1. A daily record of the amounts of each recyclable material by type which are received, stored, processed or transferred each day, expressed in tons or in cubic yards. Those operators specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons;

2. A listing of each recyclable material received at the recycling center by municipality of origin and by the amount per municipality;

3. The name, address and telephone number of the end-markets for all recyclable materials transported from the recycling center, including the amounts, in tons or cubic yards, transported to each end-market. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons; and

4. The amount of residue disposed of, expressed in tons or cubic yards, including the name and New Jersey Department of Environmental Protection solid waste registration number of the solid waste collector/hauler contracted to provide the haulage/disposal service. Those persons specifying the amount of residue in cubic yards shall also indicate the conversion ratio of the residue from cubic yards to tons.

(b) All recycling centers and mobile recycling centers holding a general or limited approval shall retain the information required pursuant to N.J.A.C. 7:26A-3.2(a)22vi for three calendar years following the calendar year for which reporting is required pursuant to (c) below.

(c) All recycling centers or mobile recycling centers operating pursuant to a general approval shall submit the information required pursuant to (a) above to the New Jersey Department of Environmental Protection, Office of Recycling, on or before July 1 of each year, for the previous calendar year. As a condition of approval to operate a recycling center or mobile recycling center for the receipt, storage, processing or transfer of non-traditional recyclable materials the Department may require the filing of the information required in (a) above at more frequent intervals which shall be specified in the general approval to operate a recycling center or mobile recycling center issued by the Department.

(d) All recycling centers or mobile recycling centers operating pursuant to a general approval shall certify in writing to the Department that all residue generated at the recycling center has been disposed of in accordance with the solid waste management rules at N.J.A.C. 7:26. The certification shall be submitted annually as part of the annual report required pursuant to (c) above.

(e) All information submitted to the Department pursuant to this chapter shall be handled in accordance with the requirements of the Public Records law, N.J.S.A. 47:1-1 et seq. The Department will hold confidential all end-market information submitted pursuant to N.J.A.C. 7:26A-3.2(a)7, 3.7(e)5, 3.16(a)3, and 4.2(a)4 where specified as confidential by the applicant and where there are no health or safety concerns which require the release of the information.

7:26A-3.17 Clean fill approval requirements

(a) Solid waste materials such as rock, soil, gravel, concrete, glass and/or ceramic products may be used as clean fill where the following conditions are met:

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1. The materials are source separated at the point of generation and are maintained free of putrescible matter and other wastes including, but not limited to, wood, fiberboard, insulation, asbestos, paper, metal, aluminum piping and vegetative waste.

2. The materials are used only for the grading of land and the preparation of building sites at construction projects, for road sub-grade at road construction sites; and

3. The materials meet the specifications of all applicable building codes, highway construction codes and other industry standards for fill materials not derived from waste materials.

(b) Prior to engaging in an activity which involves the utilization of solid waste as clean fill, the following information shall be submitted to the Department:

1. A description of the origin of the waste material including address;

2. A description of the former use of the material;

3. A listing of the type and quantity of material;

4. A description of processing activities required to convert the solid waste material into clean fill, that is, crushing, grinding, cleaning, etc.;

5. The address of fill site including lot, block, and property owner;

6. The dimensions of the area to be filled with recycled clean fill;

7. A description of planned land use for area being filled;

8. A schedule of project activities; and

9. A written statement from the property owner which certifies that he or she is fully aware of the proposed clean fill activities and has no objection to the use of this property for said purposes.

(c) The information required pursuant to (b) above shall be submitted to:

The New Jersey Department of Environmental Protection
Division of Solid Waste Management
Bureau of Landfill Engineering
CN 414
Ewing, New Jersey 08628

(d) Upon receiving the information described in (b) above, and determining that the proposed clean fill activity is in compliance with N.J.A.C. 7:26A-3.18 and all other applicable laws and regulations, the Department will issue a letter to the applicant which approves of the clean fill activity.

SUBCHAPTER 4. OPERATIONAL STANDARDS AND GENERAL RULES FOR RECYCLING CENTERS WHICH RECEIVE, STORE, PROCESS OR TRANSFER TRADITIONAL AND NON-TRADITIONAL RECYCLABLE MATERIAL

7:26A-4.1 Operational standards

(a) All owners or operators of recycling centers or mobile recycling centers which receive, store, process or transfer traditional and/or non-traditional recyclable material shall comply with the following operational standards:

1. All recyclable materials received, stored, processed or transferred shall be only those which have been separated at the point of generation from other waste materials or separated at a permitted solid waste facility authorized to separate recyclable materials from the incoming waste stream and shall consist of metal, glass, paper, or plastic containers, and corrugated and other cardboard or non-traditional recyclable materials approved pursuant to the requirements of N.J.A.C. 7:26A-3;

2. Residue shall not be stored on-site for a period exceeding that which is prescribed by a county or local health and safety ordinance. In no case shall residue be stored on-site for a period in excess of six months;

3. All residue shall be removed from the recycling center site in accordance with the Department's interdistrict and intradistrict solid waste flow rules, N.J.A.C. 7:26-6;

4. All residue shall be stored separately from recyclable material and in "roll-off" containers or similar containers appropriate for the amount of residue stored. These containers shall be dedicated for the exclusive deposition of residue generated at the recycling center;

5. No recyclable materials shall be received, stored, processed or transferred which are contained in plastic bags unless evidence of an end-market for the plastic bags has been demonstrated to the Department.

6. At no time shall any hazardous waste, as defined in N.J.A.C. 7:26, be received, stored, processed or transferred at any recycling center as defined in N.J.A.C. 7:26A-1;

7. At no time shall capacitors or electronic components which contain polychlorinated biphenyls (PCBs) and which are attached to, or detached from, appliances or other scrap metal be shredded, sheared or baled;

8. The operation and related activities of a recycling center shall be in conformance with all applicable Federal, State and local laws and regulations including but not limited to nuisance codes;

9. Recycling centers shall be operated in compliance with the noise control rules at N.J.A.C. 7:29;

10. Recycling centers shall be operated in such a manner that the recycling center property is maintained free of litter and debris; and

11. All recycling centers located within the Pinelands Protection Area shall be operated in a manner consistent with the goals of the comprehensive management plan developed by the Pinelands Commission pursuant to the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and shall obtain all approvals required by the Pinelands Commission.

(b) Recycling activities shall be conducted in a manner consistent with the protection of public health, safety, welfare and the environment in light of the nature, sale and location of the operation. Specifically, measures shall be taken to minimize negative impacts of the recycling activities on existing transportation patterns, ambient acoustical conditions, drainage and soils characteristics, surface and ground water quality, wetlands, applicable Federal, State or local land uses including the Pinelands and agricultural development areas, dedicated recreational or open space areas. Floodways and endangered or threatened wildlife and vegetation.

(c) No facility may display or otherwise use the term "recycling center," "mobile recycling center" or the word "recycling" as a method of identifying its purpose or operation unless said facility operates according to the requirements established in this chapter, the standards found in N.J.S.A. 13:1E-1 et seq., and the rules found in N.J.A.C. 7:26.

(d) The construction of all recycling centers shall be in conformance with the New Jersey Uniform Construction Code, N.J.S.A. 52:27D-119 et seq., and the rules promulgated pursuant thereto.

7:26A-4.2 Out-of-State transport of recyclable materials

(a) Except as noted in (g) below, the out-of-State transport of commingled source separated recyclable materials or non-traditional recyclable materials shall require the prior written approval of the Department. Persons seeking approval to transport commingled source separated recyclable materials or non-traditional recyclable materials shall submit a fee in accordance with N.J.A.C. 7:26A-2.2 and shall submit the following information to the Department:

1. A listing of the recyclable material or materials to be transported;

2. The estimated amount of each material to be transported, expressed in tons or in cubic yards. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons;

3. The municipality and county of origin of the material or materials to be transported;

4. The name, address, and telephone number of the recycling centers or end-markets where the commingled source separated recyclable materials or non-traditional recyclable materials are to be transported; and

5. A copy of the approval, permit, or similar instrument allowing receipt of the listed materials at the recycling center or end-market by the appropriate State agency of the receiving State, as applicable.

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(b) The information required by (a) above shall be submitted to:
The New Jersey Department of Environmental Protection
Division of Solid Waste Management
Office of Recycling
CN 414
Ewing, New Jersey 08628

(c) Upon a determination that the information submitted pursuant to (a) and (b) above is complete, accurate and meets the criteria for approval of this section, and that the appropriate fee has been submitted pursuant to N.J.A.C. 7:26A-2.2, the Department shall issue a letter of approval for the out-of-State transport of those recyclable materials specified in the approval for a period not to exceed one year. A copy of the letter of approval from the Department authorizing the out-of-State transport of recyclable material shall be maintained in the transporting vehicle at all times during the transportation of recyclable materials out-of-State.

(d) The approval issued pursuant to (c) above shall entitle its holder to transport those recyclable materials specified in the approval from any in-State location specified in the approval to any out-of-State recycling center, end market or manufacturer specified in the approval.

1. The holder of an approval for the out-of-State transport of recyclable materials may add or change the list of in-State locations from which it receives recyclable material for transportation out-of-State where it submits a written request of the addition or change to the Department at the address in (b) above in advance of the addition or change, and where it receives written approval of the addition or change from the Department.

2. The holder of an approval for the out-of-State transport of recyclable material shall not add or change the types of recyclable materials which are transported out-of-State or change the out-of-State recycling center, end market or manufacturer destination to which recyclable material is transported unless a new approval has been obtained pursuant to (c) above and unless a fee has been submitted pursuant to N.J.A.C. 7:26A-2.2.

(e) All persons holding an approval from the Department for the out-of-State transport of recyclable material shall prepare and submit to the Department, on or before July 1 of each year, an annual report which contains the following information for the previous calendar year:

1. The amount of each recyclable material, expressed in tons or cubic yards, collected from each in-State location, specified by municipality, authorized by the Department in its approval, as well as the date on which the recyclable materials were collected. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons; and

2. The amount of each recyclable material, expressed in tons or cubic yards, transported to each out-of-State recycling center, end market or manufacturer, and the date on which the recyclable materials were transported out-of-State. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons.

(f) Applications for renewal of approvals for the out-of-State transport of recyclable materials shall be submitted to the Department three months prior to the expiration of the current approval and shall be accompanied by the annual fee as required by N.J.A.C. 7:26A-2.2.

(g) The out-of-State transport of non-commingled source separated traditional recyclable material or commingled source separated paper grades transported directly to a manufacturer shall be exempt from the requirements of (a) above.

7:26A-4.3 Inclusion in district solid waste management plans

(a) In addition to any other requirements or conditions imposed by this chapter before operation, no recycling center, as defined in N.J.A.C. 7:26A-1.3, with the exception of those recycling centers operating pursuant to an approval granted under N.J.A.C. 7:26A-3.3 or 3.7, shall commence operations unless and until it is included in the applicable district solid waste management plan.

(b) No person shall transport or cause or permit to be transported any designated recyclable materials to an authorized solid waste facility for disposal as municipal solid waste unless the adopted

district recycling plan as approved by the Department is amended therefore. Any adopted and approved district recycling plan may be amended in accordance with the provisions of N.J.S.A. 13:1E-1 et seq. and subject to approval by the Department.

(c) Any recycling center not subject to approval by the Department pursuant to N.J.S.A. 13:1E-99.34b and N.J.A.C. 7:26A-3 shall obtain site plan approval from the governing body of the county wherein the recycling center is located prior to the commencement of operations where applicable, except that any recycling center designed and operated solely to serve the needs of the municipality wherein the recycling center is located shall be required to obtain site plan approval from the governing body of that municipality where applicable.

7:26A-4.4 Right of entry

(a) The New Jersey Department of Environmental Protection or an authorized representative shall have the right to enter and inspect any building or other portion of a recycling center or mobile recycling center, at any time. This right to inspect includes, but is not limited to:

1. Sampling any materials on site;
2. Photographing any portion of the recycling center;
3. Investigating an actual or suspected source of pollution of the environment;
4. Ascertaining compliance or non-compliance with the statutes, rules or regulations of the Department, including conditions of the recycling center approval issued by the Department; and
5. Reviewing and copying all applicable records, which shall be made available to the Department during an inspection and submitted to the Department upon request.

7:26A-4.5 Tonnage reporting requirements

(a) All operators of recycling centers shall provide a recycling tonnage report by March 1 of each year to all municipalities from which recyclable material is received in the previous calendar year. The report shall detail the amount of each source separated recyclable material, expressed in tons or cubic yards, brought to the recycling center, as well as the date on which the recyclable materials were delivered to the recycling center. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons.

(b) In those instances where manufacturers or out-of-State recycling centers will not provide recycling tonnage reports to New Jersey municipalities, the transporters of the recyclable materials shall be required to provide a recycling tonnage report by March 1 of each year to all municipalities from which recyclable material is received in the previous calendar year. The report shall detail the amount of each source separated recyclable material, expressed in tons or cubic yards, brought to the recycling center, as well as the date on which the recyclable materials were delivered to the recycling center. Those persons specifying this information in cubic yards shall also indicate the conversion ratio of the materials from cubic yards to tons.

(c) All persons operating pursuant to an exemption set forth in N.J.A.C. 7:26A-1.4 shall provide recycling tonnage reports by March 1 of each year to the applicable municipalities and to the Department for the previous calendar year.

SUBCHAPTER 5. OPERATIONAL REQUIREMENTS FOR REFRIGERANT REPROCESSING FACILITIES

7:26A-5.1 Requirements for processing discarded refrigerators and freezers

(a) No shearing, shredding, baling or other actions which could cause release of refrigerant fluid shall take place until all reasonable efforts are made by all persons engaging in the repair or processing of refrigerators and freezers prior to recycling or disposal to capture such refrigerant fluid.

(b) Capture of refrigerant fluid shall be performed in a manner such that no venting of refrigerant fluid occurs.

(c) Recaptured refrigerant fluid shall be delivered to a facility which reprocesses refrigerant fluid to specifications suitable for re-entry into commerce.

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(d) Capture of refrigerant fluid must comply with all other applicable laws, regulations and guidelines, including, but not limited to the following:

1. Safety standards of the Occupational Safety and Health Administration (OSHA), including standards for handling compressed gases at 29 C.F.R. 1910.01 and standards for air contaminants at 29 C.F.R. 1910.101;
2. Persons transporting recovered chlorofluorocarbons mixed or combined with a hazardous waste shall comply with the Department's hazardous waste rules at N.J.A.C. 7:26, particularly N.J.A.C. 7:26-7 and 7:26-8;
3. Captured refrigerant fluid shall be stored and transported in containers in accordance with the requirements at 49 C.F.R., particularly Chapter 1 and Subchapter C; and
4. Capture, storage and transport of refrigerants shall comply with Air Conditioning and Refrigerant Institute (ARI) guideline K for containers for recovered refrigerants, incorporated herein by reference.

SUBCHAPTER 6. REUSE AND TREATMENT OF SOURCE SEPARATED I.D. 27 SOILS

7:26A-6.1 Preliminary criteria for reuse and treatment of source separated I.D. 27 soils

(a) No person shall reuse or treat source separated I.D. 27 soils, as defined at N.J.A.C. 7:26A-1.3, unless the criteria of this subchapter have been met.

(b) Prior to a request for approval for the reuse or treatment of any source separated soil, the applicant shall request and receive a waste classification for the soil. The request shall be made in writing to:

The New Jersey Department of Environmental Protection
 Division of Hazardous Waste Management
 Bureau of Regulation, Classification and Technical Assistance
 CN 028—401 East State Street
 Trenton, New Jersey 08625

7:26A-6.2 Reuse of source separated I.D. 27 soils not subject to Departmental approval

(a) Any source separated soil which has been classified by the Department as I.D. 27 dry industrial waste as described at N.J.A.C. 7:26-2.13(g)lvi, and which has no contamination other than petroleum hydrocarbons, may be reused, as defined in N.J.A.C. 7:26A-1.3, in the following manner without prior Departmental approval pursuant to this subchapter:

1. Use in road construction applications, subject to meeting the specifications of established highway construction codes and other applicable industry standards;
2. Use as unconsolidated additive in asphalt production.
3. Source separated soils classified as I.D. 27 dry industrial waste by the Department that contain 5,000 parts per million (ppm) or less total petroleum hydrocarbons (TPH) and meet applicable New Jersey air pollution control rules, N.J.A.C. 7:27, may be reused, as defined in N.J.A.C. 7:26A-1.3, as an additive for cement without prior Departmental approval pursuant to this subchapter. Source separated I.D. 27 soils that contain greater than 5,000 ppm of TPH and meet applicable New Jersey air pollution control rules may be reused subject to compliance with the criteria in N.J.A.C. 7:26A-6.3 below.

7:26A-6.3 Reuse of source separated I.D. 27 soil subject to departmental approval

(a) The department shall review and approve plans for the reuse of source separated I.D. 27 soils for reuse options other than those specified in N.J.A.C. 7:26A-6.2, including all potential reuses of source separated I.D. 27 soils as fill material, for soils which contain contaminants other than petroleum hydrocarbons, or for soils which contain petroleum hydrocarbons at a level above 5,000 ppm. The Department will make its determination of the suitability of the reuse plan based upon a technical review of information submitted by the applicant which shall include the following:

1. A project or executive summary which shall include at a minimum:

- i. An identification of the site of origin of the source separated I.D. 27 soil, including a description of the use of the soil at the site of origin;
 - ii. A discussion of the reasons for excavating the soil at the site of origin;
 - iii. A description of any regulatory activity at the site of origin, including a listing of any actions undertaken by the New Jersey Department of Environmental Protection with regard to any environmental contamination of the site of origin.
 - iv. A statement as to whether the site of origin was ever abandoned prior to the current excavating activities; and
 - v. An identification of the repository site where the source separated I.D. 27 soil will be used;
2. The amount of source separated I.D. 27 soil for the reuse project and the location of the site of origin plotted on a U.S.G.S. topographic map, 7.5 minute series;
 3. A list of any contaminants contained in the source separated I.D. 27 soil and their concentrations;
 4. Copies of the analytical package (chain of custody, sampling methods, etc.) used to classify the soil, along with the waste classification letter required pursuant to N.J.A.C. 7:26A-6.1(b);
 5. A description of any treatment of the source separated I.D. 27 soil undertaken prior to its reuse;
 6. The method of reuse of the source separated I.D. 27 soil;
 7. The location, including municipality, block and lot, where the soil will be reused, plotted on a 7.5-minute U.S.G.S. Quadrangle Map;
 8. A map of the location of source separated I.D. 27 soil reuse depicting the depth to ground water. Reference shall be made to the source of information that supports or documents groundwater depth;
 9. A description of the measures to be taken during handling and transportation of the source separated I.D. 27 soil to minimize the environmental and health impacts of the reuse activity. These measures include, but are not limited to, dust control, erosion control, air pollution abatement and minimizing the risk of discharges to the environment;
 10. A discussion of the restoration activities planned for the site of origin of the source separated I.D. 27 soil;
 11. A discussion of the potential likelihood of adverse effects on health and the environment of the proposed reuse of the source separated I.D. 27 soil at the repository site;
 12. The schedule for completion of the reuse project;
 13. A description of all other contacts with the Department of Environmental Protection regarding the source separated I.D. 27 soil that is the subject of the reuse plan, (for example, underground storage tank removal, ECRA cleanup, etc.);
 14. An indication of approval by the receiving State, as applicable, where reuse of the source separated I.D. 27 soil out-of-State is planned; and
 15. Where the Department determines that additional information is needed to address public or environmental health, safety or welfare, the applicant for approval of a reuse plan shall submit the additional information requested by the Department.
- (b) The applicant for approval of a plan for the reuse of source separated I.D. 27 soils shall submit eight copies of the information required pursuant to (a) above to:
- The New Jersey Department of Environmental Protection
 Division of Water Resources
 Bureau of Ground Water Pollution Abatement
 CN 029—401 East State Street
 Trenton, New Jersey 08625
- (c) Upon a determination that the information submitted pursuant to (a) and (b) above is complete, accurate, and meets the criteria of this subchapter and all other applicable laws and regulations, the Department will issue a written approval of the reuse plan for a period of time specified in the approval.

7:26A-6.4 Treatment of source separated I.D. 27 soil

(a) No person shall treat source separated I.D. 27 soil, as defined at N.J.A.C. 7:26A-1.3, without obtaining the prior approval of the Department. The approval for the treatment of source separated I.D.

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27 soil where there is a potential discharge to the land or waters of the State will be in the form of a NJPDES permit issued pursuant to N.J.A.C. 7:14A-1 et seq. Air pollution control permits pursuant to N.J.A.C. 7:27 may also be required.

(b) No person shall treat source separated I.D. 27 soil, as defined at N.J.A.C. 7:26A-1.3, unless the treatment facility is included in an approved district solid waste management plan pursuant to N.J.S.A. 13:1E-1 et seq.

(c) Requests for approval for treatment of source separated I.D. 27 soils shall be submitted in duplicate to:

The New Jersey Department of Environmental Protection
Division of Water Resources
Bureau of Ground Water Pollution Abatement
CN 029—401 East State Street
Trenton, New Jersey 08625

(d) The transport of source separated I.D. 27 soils to facilities permitted by the Division of Water Resources to treat the material shall not be subject to the requirements of N.J.A.C. 7:26-6 as long as the facility is approved to take the material and is in compliance with the Division of Water Resources permit and the criteria in (a) and (b) above.

7:26A-6.5 Storage of source separated I.D. 27 soil

(a) Any source separated I.D. 27 soils which are intended or proposed to be reused or treated pursuant to this subchapter shall be maintained throughout the storage period until the point of soil reuse or treatment as per the following criteria:

1. Soils shall be stored on and under protective plastic sheeting made of polyethylene or an equivalent plastic sheeting which has a thickness no less than 10 mils; and

2. Soils which are being stored shall be maintained to prevent weathering or runoff of the subject soils.

(b) In no event shall soil be stored for a period in excess of six months prior to commencement of reuse.

HEALTH

(a)

DIVISION OF COMMUNITY HEALTH SERVICES

Mobile Intensive Care Programs

Administration of Medications

Proposed Amendment: N.J.A.C. 8:41-8.1

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

Authority: N.J.S.A. 26:1A-15 and 26:2K-7 et seq.

Proposal Number: PRN 1990-515.

Submit comments by October 31, 1990 to:

George Leggett, Chief Administrator
Office of Emergency Medical Services
New Jersey State Department of Health
CN 364
Trenton, NJ 08625-0364

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 8:41-8.1 revises the list of medications for use by mobile intensive care programs in New Jersey. The list has been amended by the addition of adenosine, to include the most recent advances in prehospital and emergency pharmacological agents. Adenosine is being added to the list of approved medications in light of recent advances in therapy for supraventricular tachycardias. This will enable mobile intensive care paramedics and nurses to provide treatment that has less potential side effects than the agents currently carried on the units. The addition of adenosine reflects the latest developments in the treatment of these disorders.

Social Impact

Ongoing evaluation and revision of procedures and techniques are continuous processes in health care delivery. Pharmacological therapy, under medical direction, is a vital tool which assists paramedics and

mobile intensive care nurses in managing prehospital emergencies. The proposed amendment reflects current treatments provided to patients who require prehospital advanced life support. By adding the most current pharmacological agents available, New Jersey will continue to provide its citizens with the best possible emergency care.

Economic Impact

Prehospital treatment, utilizing advanced life support techniques and procedures, is a major determinant in patient prognosis and survival rates. Appropriate and rapid prehospital interventions can prevent unnecessary hospital admissions and decrease the need for more costly in-hospital management techniques. These interventions may also decrease the patient's length of stay in the hospital, if he or she is admitted. The proposed amendment represents the most current and effective pharmacological agents (and treatment modalities) available for use in the United States.

Regulatory Flexibility Analysis

Only hospitals specially authorized by the Commissioner of Health may develop and maintain mobile intensive care units and provide advanced life support services in New Jersey. All of these institutions are large enough to fall outside the definition of "small business" contained in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amended rules do offer some internal flexibility, however. For example, because the generic names of the medications are used, the provider can decide whether a brand name drug or its generic equivalent is most appropriate. Each provider can also determine the method of acquisition and storage of medications, taking into account existing laws and local hospital policies. Therefore, the rule itself is not considered to be overly burdensome to mobile intensive care programs, or to the hospitals that operate them.

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

8:41-8.1 Approved drug list for mobile intensive care units

(a) The following is an alphabetical list of generic therapeutic agents authorized for administration by mobile intensive care paramedics:

Adenosine

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(b)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Service

Motor Fuels Use Tax Act

Proposed Repeals: N.J.A.C. 13:18-4.15 and 4.18

Proposed Amendments: N.J.A.C. 13:18-4.2, 4.3, 4.4, 4.5, 4.6, 4.9, 4.14, 4.16, 4.17 and 4.19

Authorized By: Col. Clinton L. Pagano, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 54:39A-8, 54:39A-24 and P.L. 1989, c.116 (N.J.S.A. 54:39A-10).

Proposal Number: PRN 1990-306.

Submit comments by October 31, 1990 to:

Col. Clinton L. Pagano, Director
Division of Motor Vehicles
25 South Montgomery Street
7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The proposed amendments bring the provisions of N.J.A.C. 13:18 into conformity with the Motor Fuels Use Tax Act of 1963 (Act), N.J.S.A. 54:39A-1 et seq., which was most recently amended by P.L. 1989, c.116. The proposed repeals delete those sections of the rules which are antiquated and no longer used by the Division of Motor Vehicles in the administration of the Act.

The proposed amendment of N.J.A.C. 13:18-4.2, Definitions, deletes or modifies the definitions of various terms that are inconsistent with the

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definitions set forth at N.J.S.A. 54:39A-2. The proposed amendments to N.J.A.C. 13:18-4.2, Definitions, include the following revisions:

1. The definition of "full service contract" is deleted from the rules to simplify "user" identification for tax purposes. Under existing rules, a lease agreement may designate the lessor or the lessee of motor vehicles as the "user" for tax purposes. The proposed amendment implements the Division's policy determination that lessees shall be deemed "users" for tax purposes and that parties to a lease agreement may not modify the Division's policy by contract.

2. A definition of "decal" is added to the rules to identify it as the identification marker issued by the Division pursuant to N.J.S.A. 54:39A-10 for affixation to a motor vehicle. "Decal" is a term of art used by the Division and the motor carrier industry to designate an "identification marker".

3. A definition of "identification card" is added to the rules to identify it as the document issued by the Division pursuant to N.J.S.A. 54:39A-10 to users of motor fuels.

4. The definition of "independent contractor" is also deleted from the rules to simplify "user" identification for tax purposes (see 1 above).

5. The definition of "leased vehicle" is amended to substitute "user" for "motor carrier" and to qualify a leased vehicle as one that is exclusively used, possessed and controlled by a user for a period of 30 days or more. Again, the amendment reflects the Legislature's policy determination that user identification be simplified for administrative purposes. A person having the right to exclusive use of a vehicle for a period of 30 days or more is designated as the user for purposes of the rules.

6. The definition of "leasing company" is amended to delete the words "to motor carriers".

7. The definition of "motor vehicle" is added to the rules. The definition is taken from N.J.S.A. 54:39A-2 and is included in the rules to specifically set forth those motor vehicles which are subject to taxation under the Act.

8. The definition of "operations" is amended to substitute the word "rented" for the word "leased" and to delete the reference to "leasing" company. This amendment is also reflective of the Division's policy determination to simplify user identification. Operations of motor vehicles, including substitute and temporary additional vehicles, under a long-term lease (30 days or more) denote the lessee as the user for tax purposes. Operations of motor vehicles on a short-term basis denote the rental company as the user for tax purposes.

9. The definition of "owner/operator" is amended to clearly set forth that an owner/operator is a person who owns and drives or leases and drives a vehicle that is leased to a motor carrier.

10. The definition of "rental company" is amended to specify that a "short-term basis" is a period of less than 30 days (see 8 above).

11. The definition of "rental vehicle" is amended to clarify that the term refers to a vehicle owned by a rental company and rented to the general public on an hourly, daily, trip or other short-term basis of less than 30 days.

12. The definition of "substitute vehicle" is amended to reflect the Division's policy determination to simplify user identification. A lessee who uses a substitute vehicle as a temporary replacement for a leased vehicle is denoted as the user for tax purposes.

13. A definition of "trip basis" is added to the rules to identify that term as the rental of a vehicle on a short-term lease (less than 30 days) and to specifically denote the rental company as the user for tax purposes; and

14. The definition of "user" is amended to substitute the statutory definition contained at N.J.S.A. 54:39A-2 for the present definition set forth in the rules. The definition, as amended, reflects the Legislature's simplification of user identification for regulatory purposes. The definition of "user" in N.J.S.A. 54:39A-2, prior to its amendment in 1985, specifically included lessors who provided motor fuels used in vehicles operated by lessees. Lessors having full service contracts with lessees under the former statutory definition were, therefore, required to file reports and pay the motor fuels use tax to the Division. This provision was deleted from the statutory definition of "user" in 1985 (P.L. 1985, c.7, §1) so that lessees are now deemed to be users for tax purposes.

The proposed amendment to N.J.A.C. 13:18-4.3, User registration, requires that a user provide the telephone number of its principle place of business on the registration form filed with the Division. The proposed amendment also deletes that provision which requires the submission of information as to whether the lessor or lessee provides the fuel and pays the motor fuels use tax for leased vehicles.

The proposed amendments to N.J.A.C. 13:18-4.4, Identification cards and markers, and N.J.A.C. 13:18-4.5, Permits, provide for the payment of statutory fees for markers and permits. These amendments implement P.L. 1989, c.116 which sets the decal fee at \$5.00 and the trip permit fee at \$2.50. The proposed amendments to N.J.A.C. 13:18-4.4(c) and 4.5(a) substitute discretionary language for mandatory language. Identification cards and decals may not be issued if taxes of other monies payable to the Division are outstanding at the time of application. The proposed amendments to N.J.A.C. 13:18-4.4(h) and (i) extend the time for requesting a conference on the proposed denial of an identification card and decals from 10 days to 30 days from the issuance of the Division's notice of denial. The proposed amendments to N.J.A.C. 13:18-4.4 add subsection (n) which sets forth the user's remedy if an adverse determination is made at the Division conference. A user may, within 90 days after the Division's written determination, appeal to the New Jersey Tax Court by filing a complaint with said Court. The deletion of N.J.A.C. 13:18-4.5(c) pertaining to the prepurchase of markers is being proposed by the Division. The prepurchase provision was utilized in the past by the industry to insure that motor vehicles which were added to a motor carrier's fleet during the tax year could be operated immediately. The prepurchase provision is no longer widely used in the industry as the Division's ability to issue temporary permits by means of telecommunications equipment more readily meets the industry's needs in this regard.

The proposed amendments to N.J.A.C. 13:18-4.6, 4.9, 4.16 and 4.17 contain corrections which are made so that the terminology used in those sections is consistent with the language used elsewhere in the rules.

The proposed amendments to N.J.A.C. 13:18-4.9(c) provide that an application for refund must be filed within one year following the end of the reporting quarter in which fuel was pumped into the service tanks of vehicles.

The proposed amendment to N.J.A.C. 13:18-4.14, Interest; assessments and refund recovery, provides for the payment of 1½ percent interest per month on unpaid taxes. This amendment implements P.L. 1985, c.7, §5 (N.J.S.A. 54:39A-14) which increased the interest rate owing on unpaid taxes from one percent to 1½ percent.

The repeal of N.J.A.C. 13:18-4.15, Exceptions and N.J.A.C. 13:18-4.18, Effective date for affixing cards, is being proposed as those sections are no longer utilized by the Division in the administration of the Act. The amendment to N.J.A.C. 13:18-4.19, Refunds application, deletes obsolete subsections pertaining to credit and refund procedures for foreign taxes (see P.L. 1973, c.117 and P.L. 1985, c.7, §2). The 1973 amendments deleted former subsection (b) of N.J.S.A. 54:39A-8 which allowed a refund to a motor carrier to the extent a tax of a similar nature was paid to a taxing jurisdiction outside New Jersey.

Social Impact

Since the amendments serve to clarify the applicability of the subchapter as it implements the Motor Fuels Tax Act of 1963, compliance with the Act is facilitated for those users subject to its provisions. The resulting increased clarity in the Act's application will also facilitate the Division's administration of the Act and the collection of revenues thereunder.

Economic Impact

There is an economic impact on those entities subject to the Motor Fuels Use Tax Act, N.J.S.A. 54:39A-1 et seq., in that the proposed amendments reflect the lower statutory fees for identification markers (decals) and permits (see P.L. 1989, c.116) and the higher interest rate on delinquent taxes (see P.L. 1985, c.7, §5). There is a beneficial economic impact on the Division of Motor Vehicles in that the proposed amendments facilitate the Division's administration of the Act thereby lowering administrative expenses incurred in that connection.

Regulatory Flexibility Statement

N.J.S.A. 54:30A-9 provides as follows:

"Every user shall keep records, in such form as the director reasonably may prescribe, as will enable the user to report and enable the director to determine the total number of over-the-road miles traveled by his entire fleet of motor vehicles, the total number of over-the-road miles traveled in New Jersey by said entire fleet, the total number of gallons of motor fuel used by said entire fleet and the total number of gallons of motor fuel purchased in New Jersey for said entire fleet. All such records shall be safely preserved for a period of 3 years in such manner as to insure their security and availability for inspection by the director or any authorized assistant engaged in the administration of this act. Upon

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application in writing, stating the reasons therefor, the director may in his discretion, consent to the destruction of any such records at any time within said period. The director or his authorized agents and representatives may, at any reasonable time, inspect the books and records of any user subject to the tax imposed by this act. The director shall provide by regulation for any such examination of books and records to be conducted at the office or offices of the user where such books and records are maintained."

N.J.A.C. 13:18-4.10, Records required, and 13:18-4.17, Preservation of records, implement N.J.S.A. 54:39A-9. The records required to be maintained by users of motor fuels pertain to overall mileage and fuel consumption and mileage and fuel consumption which may be attributable to operations in New Jersey. These administrative rules form the basis for accurate reporting and tax collection. The proposed amendments do not impose additional reporting requirements on entities that are subject to the Act.

Approximately 55,000 entities are presently subject to the Act. Almost all of these entities qualify as small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impose no additional recordkeeping, reporting or other compliance requirements on small businesses. Therefore, the amendments require no additional capital cost on the part of small businesses nor necessitates small businesses to engage additional professional services. The proposed amendments do not impose significant burdens on small businesses in view of the overriding State interest in the administration of the Motor Fuels Use Tax Act of 1963.

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

13:18-4.2 Definitions

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

["Full service contract" means an arrangement between a leasing company and a motor carrier under which the leasing company assumes all obligations of a "user" with respect to the vehicles provided to the motor carrier by the leasing company.]

"Decal" means an identification marker provided for under N.J.S.A. 54:39A-10.

"Identification card" means an identification card provided for under N.J.S.A. 54:39A-10.

["Independent contractor" means a person who owns—or leases—two or more vehicles which he leases with drivers to a motor carrier.]

"Leased vehicle" means a vehicle operated, but not owned, by a [motor carrier] **user** who has the right to exclusive use, possession and control of the vehicle for [any] a period of [time] **30 days or more** by virtue of a lease, contract or other arrangement.

"Leasing company" means a person engaged in the business of leasing vehicles [to motor carriers].

"Motor vehicle" means any omnibus that has seats for more than 10 passengers in addition to the driver, or road tractor, or any truck tractor, or any truck having a gross or registered weight, whichever is greater, in excess of 18,000 pounds alone or in combination with a motor-drawn vehicle.

"Operations" means, in addition to the meaning prescribed in N.J.S.A. 54:39A-2, the operations of only those vehicles for which the registered user has purchased decals during the applicable tax year but including substitute and temporary additional vehicles; **and** in the case of a [leasing or] rental company means the operations of all vehicles not [leased] **rented** to a registered user and excludes the operations of other vehicles only for such periods of time when they are used by a registered user as substitute or temporary additional vehicles.

"Owner/operator" means a person who owns [—] **and drives** or leases [—] and drives a [leased] vehicle **leased** [in service] to a motor carrier.

"Rental company" means a person engaged in the business of renting vehicles to the general public, including motor carriers, on an hourly, daily, trip or other short-term basis **of less than 30 days.**

"Rental vehicle" means a vehicle owned by a rental company and rented to the general public on an hourly, daily, trip, or other short-term basis **of less than 30 days.**

"Substitute vehicle" means a vehicle owned by a leasing or rental company and used by a [motor carrier] **registered user** as a temporary replacement for a particular leased or rented vehicle.

"Temporary additional vehicle" means a vehicle leased or rented to a registered user as a temporary addition to his normal fleet.

"Trip basis" means rental of a vehicle from a user for a period of less than 30 days. The vehicle operated on a trip lease basis is deemed to be a rental vehicle and the user is deemed to be a rental company.

"User" means [, in addition to the meanings prescribed in the Act (c. 54:39A-2); in the case of a leased vehicle, the person who provides the fuel and pays the motor fuels tax thereon used in the vehicle; in the case of a rental vehicle means the rental company] **every person, firm or corporation who or which operates or causes to be operated any motor vehicle on any highway in this State. The term shall include a rental company in the case of a rental vehicle.**

13:18-4.3 User registration

(a) Every user shall register as such, before operating vehicles in this State, on a form furnished by the Division providing the following information:

1. Full name of the user and the address **and telephone number** of his principal place of business;

2.-6. (No change.)

7. Type of operation—Leasing company; rental company; motor carrier for hire, private, exempt, contract, owner/operator, [independent contractor,] other;

8.-9. (No change.)

[10. In the case of leased vehicles, who provides the fuel and pays the motor fuels tax—lessor or lessee.]

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

13:18-4.4 Identification cards and markers

(a) Coincident with the filing of the registration form specified in these rules, and not later than one month prior to the beginning of each tax year thereafter, each user shall file an application, on a form provided by the Division, for an identification card and as many markers (decals) as he may require. The statutory fee of [\$3.00] **\$5.00** per decal shall be remitted with the application.

(b) (No change.)

(c) If the application is acceptable the Division [will] **may** issue one motor vehicle fuels user identification card to the user and as many vehicle decals for which the fees have been paid:

1. The original identification card shall be kept in the [users] **user's** principal place of business. A [photo or xerox] copy of the card shall be carried in each vehicle when it is in New Jersey.

2. (No change.)

(d) Any decal issued prior to the beginning of the applicable tax year may be displayed on the vehicle on or after March 1 [, if the vehicle had been issued a decal for the prior year and a copy of the prior year identification card is in the vehicle].

(e) When a vehicle has been sold, traded or otherwise passes from the control of the user, the decal shall be removed from the vehicle and surrendered to the Division within 48 hours. If the user discontinues business in this State the user shall surrender the identification card as well. The user to whom the identification card and decal were issued shall be liable for taxes applicable to the operations of the vehicles in this State up to the date on which the card and/or decal was surrendered. In the event the vehicle is that of an owner/operator [or an independent contractor] who fails to surrender the decal to the user before leaving his service, the user's liability will terminate upon the date he notifies the [Bureau] **Division** by mail providing the serial number of the decal and the name and address of the person having possession of same. The provisions of this subsection shall not apply when the vehicle has been stolen or hijacked and a report of such theft or hijack has been made to the appropriate law enforcement agency.

(f) The Division will replace, upon payment by the user of the [\$3.00] **\$5.00** fee, any decal which was lost, stolen or is illegible.

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(g) (No change.)

(h) A [ten day] written notice of such denial or recall shall be mailed to the user's principal place of business by ordinary mail.

(i) The user shall be afforded a [hearing in this] **conference by the Division** before the denial or recall is effective provided he has made a request by mail within **30 days of issuance of the notice** [period].

(j) The sole issue to be resolved at such [hearing] **conference** is whether or not the user in fact did fail to pay moneys due as determined by the Division or file said report. The burden of proof shall be borne by the user.

(k) The [hearer] **conference** in such cases shall be **conducted by the [Chief, Bureau of] Manager, Motor Carriers Unit** in the Division of Motor Vehicles or such of his or her subordinates as he or she may designate.

(l) Notice of the determination made at such [hearing] **conference** shall be given to the user at the close of the [hearing] **conference**. If the determination is adverse to the user the denial or recall shall be effective on the fifth day following the date of the [hearing] **conference**.

(m) (No change.)

(n) **A user who disagrees with the Division's determination to deny or recall an identification card or decal may, within 90 days after the date of the written determination, appeal to the Tax Court of New Jersey by filing a complaint with the Tax Court pursuant to the New Jersey Court Rules.**

13:18-4.5 Permits

(a) Upon request by the user and payment of the \$5.00 fee, the Division [will] **may** issue over the counter, by mail or collect telecommunication, an emergency permit authorizing the operation in this State of a vehicle pending the issuance of an identification card and/or decal. The decal will be issued at no additional charge.

(b) A user whose vehicles in the aggregate make not more than six round trips into or through this State in any 12-month period [will] **may** be issued, upon his request, an occasional operator permit for each such trip. The permit [will] **may** be issued over the counter, by mail or collect telecommunication, upon payment of the [\$5.00] **\$2.50** fee. The permit, **if issued**, [will] **shall** be valid for 96 hours.

(c) Any user who has registered with the Division may prepurchase decals in any quantity for vehicles he anticipates adding to his fleet subsequent to filing of the registration. A blank permit set consisting of one original and one carbon copy will be issued for each decal ordered. When the user adds a vehicle to his fleet he shall type in the specified information on the permit. He shall place the original in the vehicle and immediately mail the carbon copy to the Division. Upon receipt of the carbon copy, the Division will issue a decal for the vehicle. The application for such permits shall be accompanied by the fee of \$3.00 for each decal.]

13:18-4.6 Tax reports; evidence of timely filing

(a) (No change.)

(b) In the event the filing is made by personal delivery, the [Bureau's] **Division's** date received stamp shall be conclusive evidence of the filing date.

13:18-4.9 Motor Fuels tax; credit and refund

(a) Any [user-purchaser] **user** who uses fuel that was purchased in this State outside of this State may apply the fuel tax paid on said fuel as a credit against fuel use tax liability in the next succeeding quarter provided he has records proving the fuel was not used in New Jersey and that he paid the applicable fuel tax thereon.

(b) Any [user-purchaser] **user** who purchases motor fuel in bulk quantities in this State and uses a portion thereof outside of this State may be refunded the motor fuels tax which he paid on fuel not used in this State provided:

1. (No change.)

2. The records of his operations within and without this State are [maintained] **made available** in New Jersey.

3.-4. (No change.)

(c) An applicant for a refund shall file his claim on a form provided by the Division within one year following the end of the

[calendar] **reporting** quarter in which the fuel was [used] **pumped into the service tanks of the vehicles.**

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

13:18-4.14 Interest; assessments and refund recovery

(a) Interest at the rate of one **and one half** percent per month or fraction thereof shall accrue on all moneys due, whether from assessment or refund recovery, from the date on which the taxes were originally due, or when the refund was paid to the user, to the date said moneys due are paid.

(b) (No change.)

13:18-4.15 [Exceptions] (Reserved)

[(a) In recognition of the current energy crisis which has made it difficult or impossible for some motor fuels users to purchase motor fuels in bulk quantities, the rule (N.J.A.C. 13:18-4.9) that refund of motor fuels taxes paid to New Jersey on fuel used elsewhere shall be allowed only in the case of bulk fuel purchases is waived for claims applicable to the quarters ended June 30, 1973, and September 30, 1973, subject to the following conditions:

1. The claimant had established bulk fuel storage facilities in New Jersey prior to July 1, 1973, and had been purchasing motor fuel in bulk quantities prior to that date.

2. The claimant certifies to the Bureau that he has attempted without success to make bulk fuel purchases or has been able to make such purchases but in substantially reduced quantities.

3. The claimant has contracted, or otherwise made formal arrangement, with motor fuels vendors to purchase fuel at specified public service stations during the applicable tax quarters. The claimant shall submit a list of said vendors and service stations together with his claim form.]

13:18-4.16 Notice of address change

[Motor carriers] **Users** must notify the Division of any change in name and/or address within seven days following the date of such change.

13:18-4.17 Preservation of records

(a) The records required to be kept by every [motor carrier] **user** under the provisions of the Act or of this [Subchapter] **subchapter** shall be preserved for a period of three years or until audited and written permission has been given for their sooner destruction by an authorized representative of the Director.

(b) Said records shall be made available for examination by the Director's representative upon 30-day written notice, at the time said representative appears at the place where the [motor carrier] **user** has informed the Division that such records are kept.

(c) If said records are not immediately available the Division will make an [arbitrary] assessment of the [carriers] **user's** tax liability from whatever information is obtainable, or in the case of a refund claim the claim shall be disallowed.

13:18-4.18 [Effective date for affixing cards] (Reserved)

[The effective date of Section 10 of the Motor Carriers Road Tax Act of 1963, which requires identification markers to be affixed to the vehicle and/or registration cards to be carried in the vehicle, shall be June 1963.]

13:18-4.19 Refunds application

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

[(d) The application for refund shall be accompanied by a copy of each tax report, made to other taxing jurisdictions having a road tax similar to that of this State, on which is shown the amount of tax paid to said other taxing jurisdictions and for which a claim for proportionate refund is being made against New Jersey. Said copies of tax reports shall be accepted as proof of payment of the tax only if they are certified by the other taxing jurisdictions both as to authenticity and the fact that the tax has been paid.

(e) For the total amount represented by the New Jersey motor fuel tax rate currently in effect multiplied by the number of gallons on which a road tax similar to that of New Jersey was paid to other taxing jurisdictions and for which a claim is being made against New Jersey, a proportionate refund shall be reduced by the number of

gallons, and the New Jersey tax rate per gallon, of "tax free fuel" purchased in any jurisdiction.

(f) As used in this Section and, in administrative practice of the New Jersey Division of Motor Vehicles, the term "tax free fuel" shall be deemed to mean:

1. All fuel on which a fuel tax was not paid at time of purchase;
2. All fuel used outside of the jurisdiction in which purchased when said jurisdiction provides for 100 percent refund of tax paid on fuel not consumed within its borders; and
3. All fuel purchased and taxed in any jurisdiction which provides 100 per cent refund of the tax paid to it on fuel used and taxed in other jurisdictions having a road tax similar in effect to that of New Jersey.

(g) When the total amount of refund available from all jurisdictions in which fuel was purchased and taxed exceeds the amount of road tax paid to all jurisdictions having a law similar to that of New Jersey such excess shall be deducted from the amount of refund claimed against this State. In no case shall an amount of refund from New Jersey be allowed when such amount shall cause the carrier to have an amount of refund available from all jurisdictions which exceeds the total amount of road taxes paid to all jurisdictions having a law similar to that of this State.

(h) "Excess gallons" shall include all fuel not consumed within the jurisdiction in which purchased whether or not said jurisdiction has a road tax similar in effect to that of New Jersey.

(i) All carriers who intend to apply for refund as provided for by Section 8 of the Motor Carriers Road Tax Act shall keep, in addition to the records required elsewhere in this Subchapter, accurate records of:

1. Fuel purchased and over-the-road mileage traveled in each jurisdiction in which fuel was purchased; and
2. Over-the-road mileage traveled in each jurisdiction having a road tax similar to that of this State to which a tax was paid or is due and for which tax a claim for proportionate refund will be made against New Jersey. Said records shall be kept until audited by representatives of the Division of Motor Vehicles and for a minimum period of three years unless written permission for their sooner destruction is given by one of the Director's employees authorized by her to give such permission.

(j) If, after an audit of the carrier's records, it is determined that the road tax paid to another jurisdiction which tax is part of the amount for which a claim for proportionate refund is made against this State exceeds the amount lawfully due said other jurisdiction, then the excess tax paid shall be deducted from the amount of road tax paid to all taxing jurisdictions and that portion of the amount of refund claim against this State attributable to the excess tax paid to said other jurisdiction shall be disallowed.]

(a)

STATE BOARD OF DENTISTRY Notice of Comment Period Extension Announcement of Practice in a Special Area of Dentistry Reproposed Amendment: N.J.A.C. 13:30-8.4

Take notice that the State Board of Dentistry is extending the public comment period for the reproposed amendment to N.J.A.C. 13:30-8.4, published in the August 6, 1990 New Jersey Register at 22 N.J.R. 2257(a), from September 5, 1990 to October 24, 1990.

Submit comments by October 24, 1990 to:
William Gutman, Executive Director
State Board of Dentistry, Room 510
1100 Raymond Boulevard
Newark, New Jersey 07102

(b)

DIVISION OF CONSUMER AFFAIRS CHARITIES REGISTRATION AND INVESTIGATION SECTION

Charitable Fund Raising

Proposed Readoption with Amendments: N.J.A.C. 13:48

Authorized By: Robert J. Del Tufo, Attorney General of the State of New Jersey.

Authority: N.J.S.A. 45:17A-15.

Proposal Number: PRN 1990-514.

Submit comments by October 31, 1990 to:

Patricia A. Royer, Director
Division of Consumer Affairs
1100 Raymond Boulevard, Room 504
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Charities Registration and Investigation Section ("Section"), an agency of the Division of Consumer Affairs, is proposing to readopt, with some modifications, all of its currently effective rules which appear at N.J.A.C. 13:48. Pursuant to Executive Order No. 66(1978), the text of this chapter is scheduled to expire on January 21, 1991. Promulgated pursuant to the authority of N.J.S.A. 45:17A-15, the rules administer and enforce the provisions of the Charitable Fund Raising Act of 1971, N.J.S.A. 45:17A-1 et seq. As a result of these rules, the public has been protected from fraudulent fund raising activities, and responsible philanthropic activities have been fostered. The Attorney General has reviewed the rules and has determined that, with the proposed amendments described below, they are necessary and responsive to the purposes for which they were originally promulgated.

The rules proposed for readoption contain two sets of amendments.

1. Amendments required as a result of the opinion of the Honorable Dickinson R. Debevoise of Federal District Court, Newark, in *Telco Communications, Inc. v. James J. Barry, Jr., et al.*, 731 F. Supp. 670 (D.N.J. 1990).

Telco, a professional fund raiser representing police and fire fighter associations throughout the United States, prevailed in its motion to preliminarily enjoin New Jersey from enforcing two State statutes and three administrative regulations which Telco claims violate the First and Fourteenth Amendments. The following amendments have been made to Chapter 48 in order to comply with the *Telco* decision.

(a) N.J.A.C. 13:48-9.3(a), which prohibited sollicitation of persons or organizations for at least three months, has been deleted. N.J.A.C. 13:48-9.3(b), which prohibits misrepresentation, has been rewritten to exclude the prohibition against sollicitation within three months.

(b) N.J.A.C. 13:48-9.6(a) has been deleted. This subsection had required that before oral sollicitation was commenced the text of the sollicitation was to be filed with the Charities Registration Section.

(c) N.J.A.C. 13:48-9.6(b)2 through 5 have been deleted. These rules required certain disclosures in connection with telephone and other oral sollicitations. N.J.A.C. 13:48-9.6 has been redrafted to set forth constitutionally permissible disclosure requirements.

Although N.J.A.C. 13:48-9.1 was not challenged as unconstitutional in the *Telco* litigation, this section has been amended to delete the requirement that copies of publications as defined therein be filed with the Section. The Division believes the filing of a circulation statement is sufficient to protect the advertisers.

2. Amendments based upon the decision of the United States Supreme Court in *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 101 L. Ed. 2d 669 (1988).

In *Riley*, the United States Supreme Court addressed, inter alia, the issue of whether professional fund raisers must await a determination regarding their registration applications before engaging in sollicitation, while volunteer fund raisers, or those employed by a charity, are permitted to solicit immediately upon submitting an application. The *Riley* Court found the lack of a specified period of time within which "the licensor will . . . either issue a license or go to court" to be unconstitutional as a violation of the licensor's First Amendment rights. See, *Riley*, 101 L.Ed.2d at 693.

Certain revisions in N.J.A.C. 13:48 were made to further detail the manner of notification and the time periods within which the Charities Registration Section must: (a) issue a letter informing an entity or individual that registration has been accomplished or that further information is required; (b) hold an administrative hearing upon the request of an entity or individual whose registration is proposed to be cancelled; (c) make a preliminary determination as to whether a relationship is one of bona fide employment where a claim is made that none of the parties involved is a professional fund raiser or solicitor; and (d) hold an administrative hearing if requested by a person who the chief has determined to be a fund raiser and who has been directed to cease fund raising because of noncompliance with statutory registration and bonding requirements.

A brief summary of each of the subchapters follows:

Subchapter 1 sets forth the powers and responsibilities delegated to the chief by the Attorney General.

Subchapter 2 contains general provisions concerning the applicability and construction of the rules and the practice to be followed when a matter arises that is not governed by these rules. Definitions are also included here.

Under subchapter 3, the Charities Registration and Investigation Section, through the use of such forms as it deems appropriate, is to make determinations regarding registrability and bonding requirements and is to receive certain financial reports from charitable organizations and professional fund raisers. This subchapter also provides that all information submitted to the Section is to be a matter of public record unless the Director or the chief otherwise provides, and that the Section is to be the repository for all public information concerning charitable solicitation in the State.

Rules of practice for summary proceedings regarding administrative cancellation of registration are set forth in subchapter 5. Filing and other requirements are also established concerning contracts or written agreements between a professional fund raiser and/or professional solicitor and a charitable organization.

Subchapter 6 lists the factors to be considered in the chief's determination of whether paid personnel are, in fact, professional fund raisers and sets forth the responsibilities of both professional fund raisers and professional solicitors upon such determination.

Subchapter 7 establishes rules in connection with events or shows planned or run by a professional fund raiser.

Reporting requirements are set forth in subchapter 8. Rules also are established regarding appointment of accountants, reporting by chapters of organizations and filing requirements in connection with extended fund raising campaigns.

The rules in subchapter 9 concern solicitation conduct. As discussed above, amendments have been made to this subchapter based upon the *Telco* decision. As amended, this subchapter continues to clearly prohibit the use of misleading names, symbols or statements, misrepresentation and intimidation and sets forth constitutionally permissible disclosure requirements in connection with telephone or verbal solicitation.

Subchapter 10 concerns solicitation for named persons who are exempt from the registration requirements and also concerns comity exemptions between the State of New Jersey and other states.

Miscellaneous rules are set forth in subchapter 11. These rules authorize the chief to enter into reciprocal agreements with Federal, State or local authorities to standardize registration and reporting requirements; prohibit the fact of registration as constituting an approval by the State or the Attorney General; and set forth a severability provision.

Social Impact

Regulating solicitation in order to prevent fund raising abuses is an important concern in New Jersey. New Jersey is a prime candidate for solicitation because it is a densely populated state, and relatively affluent. Every year, New Jersey residents receive an increasing number of requests for donations from various cultural, health, social and other organizations. Clearly the fundraiser, solicitor, and sponsoring organization have a fiduciary relationship to the public. The substantial charitable contributions received require a prudent and vigorous monitoring of the activities of charitable organizations and professional fund raisers in order to continue to promote confidence in philanthropic ideals and contributions.

The rules proposed for re-adoption set forth what is essential to the orderly and equitable conduct of charitable activities and charitable fund raising. In so doing, the rules benefit both the citizens of the State of New Jersey and charitable organizations. Residents of this State benefit from the safeguards the rules provide against unscrupulous or otherwise unworthy organizations. Fraudulent activities siphon off substantial

dollars from support for legitimate organizations. Therefore, governmental regulation is a sound method of encouraging responsible philanthropic activities. If these rules are not re-adopted, New Jersey residents will be unprotected against fraudulent fund raising activities and legitimate charities may lose public support to unworthy organizations.

Economic Impact

Compliance with these rules causes no greater expense for professional fund raisers, professional solicitors and charitable organizations than the costs necessary to comply with the Charitable Fund Raising Act. Those costs include application and registration fees and, for professional fund raisers, the cost of a bond to be posted with the Attorney General. Charitable organizations which receive contributions in excess of \$10,000 in any fiscal year will also incur the expense involved in the preparation of a financial report; organizations receiving more than \$50,000 in any fiscal year must, in addition, obtain an opinion of an independent public accountant that the financial statement fairly represents the financial operations and position of the organization. Professional fund raisers will incur the expense involved in the preparation of a statement of income and expense to be filed with the Attorney General within 20 days after the completion of a fund raising event for which the professional fund raiser was retained, or annually in connection with extended fund raising campaigns. As operating expenses, these costs are reasonable and are significantly outweighed by the substantial benefits these rules provide to the public. Re-adoption of the chapter will have a positive economic impact on contributors because the rules will continue to assure that contributions benefit deserving organizations. It is likely that if the rules were not re-adopted the public would lose confidence in charitable fund raising activities. This would have a detrimental impact on legitimate charitable organizations and on New Jersey citizens who are the potential beneficiaries of such organizations.

Regulatory Flexibility Analysis

The rules in N.J.A.C. 13:48 apply to the approximately 3,500 charitable organizations, 70 professional fund raisers and 250 professional solicitors currently registered with the Charities Registration and Investigation Section. The Section estimates that less than half of those registered are "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Compliance requirements include the following: Any organization or individual who may be subject to the Act must complete and submit to the Section an initial registration form to determine whether the applicant is registrable or entitled to an exemption. Those determined to be registrable must complete and submit to the Section the appropriate form, registration fee and financial report and, in the case of a professional fund raiser, the required bond. In any campaign by or on behalf of a charitable organization which uses telephone or verbal solicitation, the professional fund raiser or the organization must make certain constitutionally permitted disclosures including, but not limited to, identification as paid solicitors, and the name and address of the charity.

Reporting requirements include the filing of annual financial reports by both the chapter and the parent organization of a charity and the filing of a statement of income and expenses by a professional fund raiser. The statement of income and expenses must be filed within 20 days after completion of the event or, in the case of an extended fund raising campaign, annually. In addition, certain contracts must be filed with the Section. These include all contracts between a charitable organization and a professional fund raiser and/or professional solicitor; all contracts between a charitable organization and another person to produce a fund raising event; and all contracts between a charitable organization and its paid personnel or, in the absence of such contracts, a written statement setting forth the relationship of such persons to the organization. In addition to the filing of a contract, there are other reporting requirements in connection with events or shows planned or run by a professional fund raiser or professional solicitor. If the fund raiser or solicitor wishes to state in a solicitation that tickets for an event or show will be used to send beneficiaries from an institution or organization to the event or show, they must file an affidavit with the Section stating that the institution or organization is participating in the program and that the beneficiaries will be provided with adequate supervision and transportation. Furthermore, a manifest of tickets must be presented to the charitable organization and included in the professional fund raiser's report to the Section. In connection with solicitations involving advertising or acknowledgment in publications, the registered charitable organization must file with the Section, within 10 days of the initial distribution of the publication, a statement of circulation from a recognized

circulation audit bureau or an affidavit from an officer of the charitable organization attesting to the publication's circulation. Where an exemption from registration is accorded an individual or group soliciting for a named person who is exempt, the trustees of such fund must, upon disbursement of the funds, file with the Section a statement containing certain information about the fund.

Professional services which a small business is likely to need to comply with the rules include the services of an independent public accountant to prepare an opinion with regard to a charitable organization's balance sheet. This requirement, however, applies only to charitable organizations which receive contributions in excess of \$50,000 in any fiscal year. Professional fund raisers will require the services of a surety in order to be bonded. While not necessary, the services of a circulation audit bureau may be used in lieu of an affidavit of an officer of a charitable organization in connection with solicitations involving advertising or acknowledgment in publications.

Compliance costs include registration fees, bond premiums and, if applicable, accountants' fees. All of these expenses reflect statutory requirements aimed at protecting the citizens of this State from fraudulent fund raising activities. No exemption from the rules based upon business size is possible since to provide such an exemption would undermine the protection the rules provide. Furthermore, the Division believes that none of the requirements are especially burdensome and that any inconvenience or expense involved is significantly outweighed by the necessity of halting fraudulent fund raising practices as well as by the general benefit these rules provide to the citizens of the State of New Jersey.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:48.

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

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 [in writing] **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 [shall have been] **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[-1 et seq].

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 [a copy of such publication] within 10 days of [its] the initial distribution [accompanied by] 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 Repeat solicitations; misrepresentations prohibited

(a) When a request for a charitable contribution is denied, neither the charitable organization nor any of its agents shall knowingly resolicit the person or organization denying the request until a reasonable period has elapsed. For the purpose of this section a rebuttable presumption shall exist that any period of less than three months is not reasonable.

(b) When an agent or authorized official of an organization denies a request to purchase or contribute, the charitable organization shall not knowingly contact a different official and attempt further solicitation of the organization until a reasonable period, as defined above, has elapsed, nor shall the charitable organization or any of its agents knowingly misrepresent the original denial as an agreement, approval or request for further information.]

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) In any campaign by or on behalf of a charitable organization which shall use telephone or verbal solicitation, the professional fund raiser or, if the organization has no professional fund raiser, the organization, shall first file with the C.R.S. a copy of the solicitation text to be used, certified as true and correct by an officer of the charitable organization.

(b) 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. The nature of the charitable purpose or purposes for which all or any part of the money collected will be utilized;

3. The amount, stated as a percentage of the total purchase price, or if no purchase is involved, of the total contribution, that will be given to each organization or fund, and the amount, stated as a percentage of the total purchase price or contribution, that will be utilized for each charitable purpose;

4. The nontax-exempt status of the organization or fund, if the organization or fund for which the money is being solicited does not have a charitable tax exemption under both Federal and State law;

5. Where a purchase is involved, the percentage of the total purchase price which may be deducted as a charitable contribution under Federal law.]

(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 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.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits

Routes N.J. 109 in Cape May County and N.J. 70 in Burlington County

Proposed Amendments: 16:28-1.22 and 1.30

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1990-512.

Submit comments by October 31, 1990 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish new "speed limit" zones along Routes N.J. 109 in Lower Township, Cape May County, and N.J. 70 in Medford Township, Burlington County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from the local governments in the interest of safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted surveys and traffic investigations. The investigations and surveys proved that the establishment of new "speed limit" zones along Routes N.J. 109 in Cape May County and N.J. 70 in Burlington County were warranted. The speed limit rate along Routes N.J. 109 and N.J. 70 have not been changed, but have been delineated to show the mileposts, and a new zone, zone 3a, has been added to Route 70.

The Department, therefore, proposes to amend N.J.A.C. 16:28-1.22 and 1.30, based upon the requests from the local governments, the traffic investigations and surveys. The amendments change the delineation of the zones to show the mileposts and the specific municipalities. For a portion of Route 70, from mileposts 13.41 to 14.59, the speed limit has been lowered to 40 miles per hour where it had previously been 45 and 50 miles per hour, at the request of the local officials.

Social Impact

The proposed amendments will establish new "speed limit" zones along Routes N.J. 109 in Lower Township, Cape May County and N.J. 70 in Medford Township, Burlington County for the safe and efficient flow

of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones signs where additional signs are needed. The cost factors for the procurement of signs are variable, based upon the material used, the size and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine, in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules primarily affect the motoring public and those responsible for the enforcement of the rules.

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

16:28-1.22 Route 109

(a) The rate of speed designated for the certain parts of State highway Route 109 described in this [section] subsection shall be established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic [in Lower Township, Cape May County]:

i. In Lower Township, Cape May County

[i. Zone 1: Thirty-five miles per hour between the Cape Island Creek Bridge and Third Avenue.

ii. Zone 2: Forty-Five miles per hour between Third Avenue and the intersection of Route U.S. 9 and Route 109.]

(1) Zone 1: 35 miles per hour between the City of Cape May northerly line (Cape Island Creek Bridge) and Third Avenue (northernmost intersection) (approximate mileposts 1.34 to 1.56); thence

(2) Zone 2: 45 miles per hour between Third Avenue (northernmost intersection) and Route U.S. 9 (approximate mileposts 1.56 to 3.06).

16:28-1.30 Route 70

(a) The rate of speed designated for the certain [part] parts of State Highway Route 70 described in the subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed:

1. For both directions of traffic [in Camden, Burlington, Ocean, and Monmouth Counties]:

i. (No change.)

ii. In Burlington County:

(1) (No change.)

(2) Medford Township:

[(A) 50 miles per hour between the Evesham Township-Medford Township line and Medford-Evesboro Road (County Road 618) (mileposts 11.18 to 12.34); thence

(B) Zone three: 45 miles per hour between Medford-Evesham Road (County Road 618) and Main Street (County Road 541) (mileposts 12.34 to 13.90); thence

(C) Zone four: 50 miles per hour between Main Street (County Road 541) and the Medford Township-Southampton Township line (mileposts 13.90 to 15.91);]

(A) 50 miles per hour between the Evesham Township-Medford Township line and Medford-Evesboro Road (County Road 618) (approximate mileposts 11.78 to 12.34); thence

(B) Zone 3: 45 miles per hour between Medford-Evesboro Road (County Road 618) and Jones Road-Sharp Run Plaza driveway (approximate mileposts 12.34 to 13.41); thence

(C) Zone 3a: 40 miles per hour between Jones Road-Sharp Run Plaza driveway and Haymes Creek Road (approximate mileposts 13.41 to 14.59); thence

(D) Zone 4: 50 miles per hour between Haymes Creek Road and the Medford Township-Southampton Township line (approximate mileposts 14.59 to 15.91);

(3) (No change.)

iii-iv. (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**Speed Limits****Route U.S. 206 in Sussex County****Proposed Amendment: N.J.A.C. 16:28-1.72**

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1990-506.

Submit comments by October 31, 1990 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish revised "speed limit" zones along Route U.S. 206 in Byram Township and Andover Borough, Sussex County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

As part of a review of current conditions and in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted resurveys and traffic investigations. The investigations and resurveys proved that the revisions to current "speed limit" zones along Route U.S. 206 in Byram Township and Andover Borough, Sussex County, were warranted.

The Department, therefore, proposes to amend N.J.A.C. 16:28A-1.72, based upon the resurveys and traffic investigations.

The Department is proposing to amend the speed zones, Zone 9 in Byram Township and Zone 10 in Andover Borough, changing their locations and designating them by mileposts in addition to other landmarks. Additionally, the rule has been revised to designate the direction of traffic within the respective counties by municipalities and the codification has been changed to clarify the general requirements of the rule.

The "speed limit" zones for Bedminster Township and Peapack-Gladstone Borough, Somerset County; Chester and Netcong Boroughs, Chester, Mount Olive and Roxbury Townships, Morris County and Byram Township, Stanhope and Andover Boroughs, Sussex County, were proposed at 7 N.J.R. 573(a) and adopted at 8 N.J.R. 139(e). However, they were inadvertently omitted from the Administrative Code during the recodification undertaken June 14, 1979. This omission and correction of the Code is reflected in a Notice of Administrative Correction published elsewhere in this issue of the New Jersey Register.

Social Impact

The proposed amendment will revise and establish "speed limit" zones along Route U.S. 206 in Byram Township and Andover Borough, Sussex County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. The amendment will primarily clarify the requirements imposed upon the regulated public. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of speed limit zones signs. The cost factors for the installation and procurement of signs are variable, depending upon size, materials used and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments primarily affect the motoring public and the governmental entities responsible for enforcement of the rules.

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

16:28-1.72 Route U.S. 206

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

(d) The rate of speed designated for the certain [part] parts of State highway Route U.S. 206 described in this [section] subsection shall be established and adopted as the maximum legal rate of speed [thereat.]:

1. For both directions of traffic:

i. Somerset County:

[i.] (1) Bedminster Township:

[(1)] (A) Zone 1: 50 mph (also Route U.S. 202) beginning at the Bridgewater Township-Bedminster Township line (Chambers Brook) extending into Bedminster Township to 1,120 feet north of Route I-78 overpass.

[(2)] (B) Zone 2: 40 mph (also Route U.S. 202) from 1,120 feet north of Route I-78 overpass to 1,700 feet north of Route 525 (Washington Valley Road).

[ii.] (2) Bedminster Township, Peapack-Gladstone Borough, Somerset County and Chester Township, Chester Borough, Morris County:

[(1)] (A) Zone 3: 50 mph (also part Route U.S. 202) in Bedminster Township from 1,700 feet north of Route 525 (Washington Valley Road) extending through Peapack-Gladstone Borough, Bedminster, and Chester Townships and into Chester Borough to 450 feet south of Maple Avenue.

ii. Morris County:

[iii.] (1) Chester Borough:

[(1)] (A) Zone 4: 40 mph [in Chester Borough] from 450 feet south of Maple Avenue to 1,100 feet north of Route 24 (Main Street).

[iv.] (2) Chester Borough, Chester, Mount Olive and Roxbury Townships, Morris County;

[(1)] (A) Zone 5: 50 mph in Chester Borough from 1,100 feet north of Route 24 (Main Street) extending through Chester and Mount Olive Townships and into Roxbury Township to Route I-80, Route 183 and Route U.S. 206 Interchange.

[v.] (3) Roxbury Township, Netcong Borough, and Mount Olive Township, Morris County; Stanhope Borough and Byram Township, Sussex County:

[(1)] (A) Zone 6: 55 mph (also part Route I-80) in Roxbury Township from Route I-80, Route 183, and Route U.S. 206 Interchange extending through Netcong Borough, Mount Olive Township and into Stanhope Borough and Byram Township to Route 183.

[vi.] (4) Stanhope Borough and Byram Township, Sussex County:

[(1)] (A) Zone 7: 50 mph [in Stanhope and Byram Township] from Route 183 to Acorn Street.

[vii.] (5) Byram Township:

[(i)] (A) Zone 8: 40 mph [in Byram Township] from Acorn Street to Waterloo Road-Brookwood Road; **thence**

[(2)] (B) Zone 9: 45 mph [in Byram Township from] **between Waterloo Road-Brookwood Road [to 570 feet north of High Glen Drive] and Johnson Boulevard (approximate mileposts 98.71 to 100.61); thence**

[viii.] (6) Byram Township and Andover Borough, Sussex County:

[(1)] (A) Zone 10: 50 mph [in Byram Township from 570 feet north of High Glen Drive extending into Andover Borough to] **between Johnson Boulevard and 1,260 feet south of the D. L. and W. Railroad [main line] overpass] Overpass (approximate milepost 100.61 to 102.71.**

[ix.] (7) Andover Borough:

[(1)] (A) Zone 11: 40 mph [in Andover Borough] from 1,260 feet south of the D. L. and W. Railroad (main line) overpass to Maple Avenue; **thence**

[(2)] (B) Zone 12: 30 mph [in Andover Borough] from Maple Avenue to 100 feet north of Route 517; **thence**

[(3)] (C) Zone 13: 40 mph [in Andover Borough] from 100 feet north of Route 517 to the Andover Borough-Andover Township line[.]; **thence**

(8) Andover Township:

[x.] (A) 40 mph to a point 250 feet north of the bridge over Whites Pond; **thence**

(9) Newton Town:

[xi.] (A) 50 mph to a point 2,300 feet south of the southerly corporate line of the town of Newton; thence

[xii.] (B) 45 mph to the intersection of Paterson Avenue; thence

[xiii.] (C) 35 mph to the intersection of Maple Street; thence

[xiv.] (D) 25 mph to a point 275 feet north of Clinton Street (milepost 109.32); thence

[xv.] (E) 35 mph to Township of Hampton line (approximately 2,700 feet north of Clinton Street; milepost 109.70); thence

(10) Hampton Township:

[xvi.] (A) 40 mph to 2,150 feet south of Route 94 (milepost 111.00); thence

[xvii.] (B) 50 mph to the intersection of Routes U.S. 206 and 15 and County Road 565 (milepost 113.98); thence

(11) Frankford Township:

[xviii.] (A) 45 mph to the D. L. & W. Railroad (Sussex Branch) underpass; thence

(12) Montague Township:

[xix.] (A) 50 mph to a point 1,600 feet south of the center line of Clove Road and Route U.S. 206; thence

[xx.] (B) 40 mph to the northerly end of Route U.S. 206 [in Montague Township, Sussex County], except a 25 mph School Speed Limit within the Montague Elementary School Zone during recess when children are going to or leaving school during opening or closing hours[.];

[xxi.] The legal speed limits through school zones shall be subject to the provisions of N.J.S.A. 39:4-98(a.)

(a)**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID****Speed Limits****Routes N.J. 77 in Cumberland, Salem and Gloucester Counties and N.J. 181 in Morris and Sussex Counties****Proposed Repeals and New Rules: N.J.A.C. 16:28-1.97 and 1.167**

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1990-507.

Submit comments by October 31, 1990 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed repeals and new rules will establish revised "speed limit" zones along Routes N.J. 77 in the City of Bridgeton and Upper Deerfield Township, Cumberland County, and Alloway, Upper Pittsgrove and Harrison Townships, Salem County; and N.J. 181 in Jefferson Township, Morris County, and Sparta Township, Sussex County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

As part of a review of current conditions along the highway system, in view of development and safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of revised "speed limit" zones along Routes N.J. 77 in Cumberland and Salem Counties and N.J. 181 in Morris and Sussex Counties was warranted.

The Department therefore proposes repeals and new rules at N.J.A.C. 16:28-1.97 and 1.167 based upon the traffic investigations.

Social Impact

The proposed new rules will establish revised speed limit zones along Routes N.J. 77 in the City of Bridgeton and Upper Deerfield Township, Cumberland County, and Alloway, Upper Pittsgrove and Harrison Townships, Salem County; and N.J. 181 in Jefferson Township, Morris County, and Sparta Township, Sussex County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Additionally, the new rules will depict and outline the specific locations within counties by municipalities, thus precluding confusion as to beginning and ending mileposts. The motoring public will be pleased in seeing action be taken to effect needed change.

Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the relocation and installation of "speed limit" zones signs in those instances where such is required. The costs for signs will vary, based upon numerous factors. Motorists who violate the rules will be assessed the appropriate fine, in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rules do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules primarily affect the motoring public.

Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 16:28-1.97 and 1.167.

Full text of the proposed new rules follows:

16:28-1.97 Route 77

(a) The rate of speed designated for State highway Route 77 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Cumberland County:

(1) City of Bridgeton:

(A) Zone 1: 30 miles per hour between Route N.J. 49 and American Avenue, except for 25 miles per hour when passing through the Immaculate Conception Regional School zone, (mileposts 0.76 to 1.02) while "25 MPH WHEN FLASHING" signs are operating, during recess or when children are going to or leaving school during opening or closing hours (approximate mileposts 0.00 to 1.30); thence

(B) Zone 2: 35 miles per hour between American Avenue and Logan Street (approximate mileposts 1.30 to 2.19); thence

(C) Zone 3: 45 miles per hour between Logan Street and Upper Deerfield Township southerly line (approximate mileposts 2.19 to 2.33); thence

(2) Upper Deerfield Township:

(A) Zone 1: 45 miles per hour between the City of Bridgeton northerly line and Northwest Avenue (approximate mileposts 2.33 to 3.07); thence

(B) Zone 2: 50 miles per hour between Northwest Avenue and 1,690 feet south of Deerfield Husted Station Road (County Road 540), except for 35 miles per hour when passing through the Elizabeth F. Moore School, Charles F. Seabrook School and Woodruff School zones, (mileposts 5.65 to 5.98), while "35 MPH WHEN FLASHING" signs are operating, during recess or when children are going to or leaving school, during opening or closing hours (approximate mileposts 3.07 to 7.18); thence

(C) Zone 3: 40 miles per hour between 1,690 feet south of Deerfield Husted Station Road (County Road 540) and Friesburg Road (County Road 640) and Alloway Township (Salem County) southerly line (approximate mileposts 8.05 to 9.81); thence

ii. In Salem County:

(1) Alloway Township:

(A) 50 miles per hour between the Upper Deerfield Township (Cumberland County) northerly line and the Upper Pittsgrove Township southerly line (approximate mileposts 9.81 to 9.93); thence

(2) Upper Pittsgrove Township:

(A) 50 miles per hour between the Alloway Township northerly line and the Elk Township southerly line (approximate mileposts 9.93 to 17.52); thence

- iii. In Gloucester County:
 - (1) Elk Township:
 - (A) 50 miles per hour between the Upper Pittsgrove Township (Salem County) northerly line and the Harrison Township southerly line (approximate mileposts 17.52 to 20.74); thence
 - (2) Harrison Township:
 - (A) Zone 1: 50 miles per hour between the Elk Township northerly line and center of the driveway to Walnut Glen Condominiums (approximate mileposts 20.74 to 22.18); thence
 - (B) Zone 2: 35 miles per hour between the center of the driveway to Walnut Glen Condominiums and Route N.J. 45 (approximate mileposts 22.18 to 22.55).

16:28-1.167 Route 181

(a) The rate of speed designated for State highway Route 181 described in this subsection shall be established and adopted as the maximum legal rate of speed:

- 1. For both directions of traffic:
 - i. In Morris County:
 - (1) Jefferson Township:
 - (A) Zone 1: 40 miles per hour between Espanong Road-Weldon Road and Prospect Point Road (approximate mileposts 0.00 to 1.45); thence
 - (B) Zone 2: 45 miles per hour between Prospect Point Road and Sparta Township (Sussex County) southerly line (approximate mileposts 1.45 to 1.65); thence
 - ii. In Sussex County:
 - (1) Sparta Township:
 - (A) Zone 1: 45 miles per hour between Jefferson Township (Morris County) northerly line and Blue Heron Road (Ramp to Route N.J. 15) (approximate mileposts 1.65 to 3.40); thence
 - (B) Zone 2: 40 miles per hour between Blue Heron Road and Pine Cone Lane (approximate mileposts 3.40 to 4.40); thence
 - (C) Zone 3: 30 miles per hour between Pine Cone Lane and Sparta Avenue (County Road 517) (approximate mileposts 4.40 to 5.89); thence
 - (D) Zone 4: 45 miles per hour between Sparta Avenue (County Road 517) and the driveway to Hilltop Country Day School (approximate mileposts 5.89 to 5.98); thence
 - (E) Zone 5: 50 miles per hour between the driveway to Hilltop Country Day School and Route N.J. 15 (approximate mileposts 5.98 to 7.43).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

**Miscellaneous Traffic Rules
Route I-80 Rest Areas (Eastbound and Westbound)
Proposed New Rule: N.J.A.C. 16:30-11.2**

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-208.
 Proposal Number: PRN 1990-508.

Submit comments by October 31, 1990 to:
 Charles L. Meyers
 Administrative Practice Officer
 Department of Transportation
 Bureau of Policy and Legislative Analysis
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule will establish traffic controls and parking restrictions in Rest Areas along Route I-80 (eastbound and westbound) at approximate milepost 32.2 in Roxbury Township, Morris County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon request from the local government and in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a vehicular weight designation to control the type of vehicles utilizing the rest areas, and a "no stopping or standing" and "one way street" rules to enhance the flow and control of traffic in the Rest Areas along Route I-80 at approximate milepost 32.2 in Roxbury Township, Morris County, were warranted.

The Department therefore proposes new rule N.J.A.C. 16:30-11.2, based upon the request from the local government and the traffic investigation.

Social Impact

The proposed new rule will establish control of traffic in Rest Areas along Route I-80 (eastbound and westbound) at approximate milepost 32.2 in Roxbury Township, Morris County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Approximate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of all signs required in the Rest Area. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any bookkeeping, recordkeeping or compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects the motoring public and governmental entities responsible for the enforcement of the rules.

Full text of the proposed new rule follows:

16:30-11.2 Route I-80 rest areas (eastbound and westbound) at approximate milepost 32.2

(a) Under the provisions of N.J.S.A. 39:4-208, the following provisions for the control of traffic upon the roadways of the Route I-80 rest areas at approximate milepost 32.2 are hereby adopted:

- 1. In Roxbury Township, Morris County:
 - i. Vehicles over five tons:
 - (1) The rest areas are open only to vehicles over five tons registered gross weight at approximate milepost 32.2, and when in the rest areas vehicles shall stop or stand only in designated areas and between the painted lines.
 - ii. No stopping or standing:
 - (1) No person shall stop or stand a vehicle at any time upon the roadways of the rest areas.
 - iii. One-way streets:
 - (1) All ramps and roadways within the rest areas are hereby designated as one-way streets, in a counterclockwise direction.

(b)

**DIVISION OF PROCUREMENT
Road Equipment Rental**

Proposed Repeal: N.J.A.C. 16:42

Authorized By: Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:7.
 Proposal Number: PRN 1990-504.

Submit comments by October 31, 1990 to:
 Charles L. Meyers
 Administrative Practice Officer
 Department of Transportation
 Bureau of Policy and Legislative Analysis
 1035 Parkway Avenue
 CN 600
 Trenton, New Jersey 08625

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Summary

In accordance with the "sunset" and the provision of Executive Order No. 66(1978), the Department of Transportation (NJDOT) is required to review its existing rules periodically to determine their continuing usefulness and necessity. Accordingly, NJDOT has undergone such a review of its rules contained in N.J.A.C. 16:42, Road Equipment Rental. Said rules were reviewed by the staff of the Bureau of Construction Services, Division of Procurement, which revealed that the rules should be repealed, since the terms set forth are contractual in nature between the Department and "individual lowest responsible bidder". The Treasury Department Purchase Bureau, pursuant to N.J.S.A. 52:34-7, is required to advertise for bids should the rental fee exceed \$8,000. The Department's Bureau of Equipment, Materials and Supplies, also pursuant to N.J.S.A. 52:34-7, shall solicit written quotes for rentals between \$2,500.01 and \$8,000, and telephone quotes for rentals up to \$2,500. The Department does not consider such contractual agreements as meeting the rulemaking criteria.

The chapter is summarized as follows:

N.J.A.C. 16:42-1 establishes the general provisions of the rules as to requirements, the need for negotiation and the distribution of executed agreements.

The Department therefore proposes to repeal N.J.A.C. 16:42.

Social Impact

The proposed repeal will comply with the requirements of Executive Order No. 66(1978), in that the Department has removed rules considered no longer necessary for the purpose for which they were originally promulgated. Rental agreements based upon the cost factor shall continue to be negotiated with the Department and/or the Department of Treasury Purchase Bureau.

Economic Impact

The proposed repeal will have no economic impact on the general public since it is procedural in nature and does not establish any fees. Rental agreements will continue to be negotiated agreements and awarded to the lowest responsible bidder. The Department will incur minimal direct and indirect costs for personnel in the rulemaking process.

Regulatory Flexibility Statement

The proposed repeal does not place any bookkeeping, recordkeeping or compliance requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rental of road equipment as required will continue to be accomplished via negotiated agreements between the Department, The Treasury Department Purchase Bureau and the contractor.

Full text of the chapter proposed for repeal can be found in the New Jersey Administrative Code at N.J.A.C. 16:42.

governing administrative reviews and hearing procedures, the Department maintained general rules applicable to matters under its jurisdiction to accomplish the indicated purposes.

These proposed new rules are intended to clarify that "contested cases", as well as non-contested cases at the discretion of the agency head and with the concurrence of the Director of the Office of Administrative Law, shall be transmitted to the Office of Administrative Law for initial hearing before an administrative law judge. This is in accord with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; 52:14F-1 et seq. and the Uniform Administrative Rules, N.J.A.C. 1:1.

Additionally, these proposed rules require that Division-specific informal conferences shall be conducted in accord with division-specific rules and the minimum requirements of the rules for Department level informal conferences also set forth in these proposed rules.

The rules, as they address Department level informal conferences, are intended to provide procedures applicable to appeals from agency actions, excluding employee and contract related appeals.

These appeals must relate to programs administered by the Department or Department action not assignable to a particular division. The proposed rules are not to be interpreted as supplanting division-specific rules governing hearing procedures. In situations where an aggrieved person wishes to appeal the action of one of the several divisions of the Department, appeal is to be made directly to that division. The proposed rules are supplemental to the Uniform Administrative Procedure Rules (N.J.A.C. 1:1) promulgated by the Office of Administrative Law, which has exclusive authority over the development of procedural rules for the conduct of administrative hearings (N.J.S.A. 52:14F-1 et seq.).

The title of N.J.A.C. 10:6 is proposed to be changed from "Administrative Reviews and Administrative Hearings" to "Hearings."

Social Impact

The proposed new rules will benefit the public by providing clear steps that may be taken in the interests of preserving the rights of persons wishing to appeal an administrative action taken by the Department of Human Services.

The proposed rules also set minimum standards in terms of procedural safeguards that all divisions of the Department must provide to persons wishing to appeal agency action or inaction.

Economic Impact

There is no anticipated economic impact resulting from promulgation of the proposed new rules, except insofar as clear direction may reduce expenses associated with the research regarding rights of appeal to the Department.

Regulatory Flexibility Statement

While some service providers under contract with the Department may qualify as small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the proposed new rules do not impose reporting, recordkeeping or other compliance requirements on such providers. The rules provide for the formal and informal resolution of disputes with the Department. Formal resolution through contested case proceedings is governed by the referenced statutes and rules. Resolution of Department-level disputes through informal conference may be requested, verbally or in writing, by an aggrieved person, who may participate in the conference and be accompanied by those persons set forth in proposed N.J.A.C. 10:6-1.5(e)3.

Full text of the proposal follows:

**CHAPTER 6
HEARINGS**

SUBCHAPTER 1. GENERAL PROVISIONS

10:6-1.1 Purpose and scope

(a) Formal administrative hearings are conducted after transmittal to the Office of Administrative Law by an administrative law judge in accord with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; 52:14F-1 et seq., and the Uniform Administrative Rules, N.J.A.C. 1:1.

(b) Subject to any superseding Federal or State law, this chapter sets minimum requirements for division-specific informal conferences and provides procedures for department level informal conferences. The Department level informal conferences will address non-employee and non-contract-related appeals from agency action or inaction in programs administered directly by the Department and not

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(a)

OFFICE OF LEGAL AND REGULATORY LIAISON

Hearings

Proposed New Rules: N.J.A.C. 10:6

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

Authority: N.J.S.A. 30:1-12 and 52:14B-12.

Proposal Number: PRN 1990-509.

Submit comments by October 31, 1990 to:
Barbara G. Rapkin, Esq., Director
Office of Legal and Regulatory Liaison
Department of Human Services
222 South Warren Street
CN 700
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the "sunset" provisions of Executive Order No. 66 (1978), N.J.A.C. 10:6, Administrative Hearings and Administrative Reviews, expired on February 21, 1989. While various divisions within the Department of Human Services (Department) have promulgated specific rules

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within the jurisdiction of a specific division or not readily assignable to a particular division or particular program.

10:6-1.2 Definitions

The following terms, when used in this chapter, shall have the meanings set forth below, unless the context clearly indicates otherwise:

"Agency head" means the person or body authorized by law to render final decisions in contested cases. At the division level the agency head is the Division Director; otherwise the agency head is the Commissioner.

"Commissioner" means the Commissioner of the Department of Human Services.

"Contested case" means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for any agency hearing.

"Department" means the Department of Human Services or any of its organizational components.

"Division" means one of the Department's operating divisions, to wit: the Division of Medical Assistance and Health Services (DMAHS), Division of Economic Assistance (DEA), Division of Developmental Disabilities (DDD), Division of Mental Health and Hospitals (DMH&H), Division of Youth and Family Services (DYFS), Division on the Deaf and the Hard-of-Hearing, The Commission for the Blind and Visually Impaired (CBVI) and the Office of Education (OOE).

"Uncontested case" or "noncontested case" means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contest case at N.J.S.A. 52:14B-2.

10:6-1.3 Formal administrative hearings

(a) If any dispute is required by law to be handled formally, or if a party is dissatisfied with an informal determination and the agency head determines the matter a contested case, the matter shall be transmitted to the Office of Administrative Law for hearing before an administrative law judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; 52:14F-1 et seq., and the Uniform Administrative Rules, N.J.A.C. 1:1.

(b) A case which is determined by the agency head to be a non-contested case may, at the discretion of the agency head and with the concurrence of the Director of the Office of Administrative Law, also be transmitted to the Office of Administrative Law for hearing before an administrative law judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.; 52:14F-1 et seq., and the Uniform Administrative Rules, N.J.A.C. 1:1.

10:6-1.4 Division-specific informal conferences

Division-specific informal conferences shall be conducted in accord with division-specific rules and the minimum requirements of the rules for Department level informal conferences as set forth in this chapter.

10:6-1.5 Department level informal conferences

(a) Any person aggrieved by any action or inaction of the Department may request either verbally or in writing an informal conference with Department staff to settle any dispute or seek clarification of the Department's rules or policies. Receipt of the request shall be documented and the Department shall respond in writing to any such request, stating the reasons for its determination and advising, in the case of a denial of a request for a conference, that further appeal shall be to the Appellate Division of the Superior Court.

(b) An informal conference shall include a review of pertinent facts and applicable laws, rules and/or policies, and any relevant documents in an attempt to resolve issues giving rise to the request for informal conference.

(c) Department level informal conferences shall address appeals from agency action or agency inaction in programs administered directly by the Department, and not the review or appeal of final

administrative hearing decisions of Division Directors nor the consideration of open matters which are under the jurisdiction of a division.

(d) Notice of the availability of an informal conference shall be as follows:

1. Each notice of adverse agency action where a dispute is not required by law to be handled formally shall include the offer of an informal conference.

2. Each notice of agency action containing an offer of informal conference shall specify in writing a reasonable time frame within which a petitioner may accept the offer.

(e) Participants and attendees at informal conferences shall include and be limited to the following:

1. An employee assigned to conduct the informal conference pursuant to written authorization from the agency head and who shall not have had any direct part in the decision-making regarding the disputed matter in question;

2. Any persons permitted by the employee conducting the conference who are able to provide information relevant to the subject of the conference; and

3. The petitioner may participate in the conference and may be accompanied at the conference by the following person(s):

i. An attorney or other representative;

ii. A family member;

iii. A witness or witnesses able to provide information relevant to the subject of the conference; and/or

iv. An interpreter.

(f) The Department shall memorialize the conference in a written report to be sent to the petitioner which shall include a statement of the issue, the decision and the basis for the decision, and notice that further appeal shall be to the Appellate Division of the New Jersey Superior Court.

(a)

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

Proposed Repeal and New Rules: N.J.A.C. 10:60

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

Authority: N.J.S.A. 30:4D-6b(2)(17); 30:4D-12; 30:4E; 42 CFR 440.70, 170

Agency Control Number: 90-P-14.

Proposal Number: PRN 1990-511.

Submit comments by October 31, 1990 to:

Henry W. Hardy, Esq.

Administrative Practice Officer

Division of Medical Assistance and Health Services

CN-712

Trenton, NJ 08625-0712

The agency proposal follows:

Summary

The Department proposes to repeal the current N.J.A.C. 10:60, Home Care Services Manual, and replace it with new rules. In some instances, the text represents material that has already been adopted (see 22 N.J.R. 2966(c)). In other instances, there is new material being proposed. Following the definitions listed below, this Summary will provide a synopsis of the major features in these proposed new rules. The overview will be followed by a section-by-section analysis of the proposed changes.

The term "Division" shall refer to the Division of Medical Assistance and Health Services within the State Department of Human Services.

The term "HCFA" shall refer to the Health Care Financing Administration within the federal Department of Health and Human Services.

The term "HCPCS" shall refer to the Health Care Financing Administration Common Procedure Coding System. "HCPCS" codes are used

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by providers when submitting a claim to the New Jersey Medicaid Program for reimbursement.

The term "NF" shall refer to nursing facilities, which were previously called long term care facilities.

A significant feature of the proposed new rules is the removal of prior authorization for certain services. The providers, homemaker and/or home health agencies who render services to Medicaid patients may render the service without the need to obtain Division approval, and submit the claim directly to the Fiscal Agent for processing. However, providers must still comply with all necessary Medicaid program requirements. For example, some services, like personal care assistant services, require a prescription from the attending physician with supervision by a registered professional nurse. These requirements must still be adhered to.

To insure compliance with these requirements, the Division will institute a quality assurance program to monitor provider compliance. Providers that participate in both Medicare and Medicaid are required to submit the HCFA-485 form to the Division, and providers that participate only in Medicaid are required to submit the FD-139 form to the Division. The Medicaid District Office will use these forms to randomly select patients for quality assurance review. The standards with which the providers are expected to comply are set forth in N.J.A.C. 10:60-2.4, as summarized below.

It is imperative that the providers maintain sufficient documentation pursuant to N.J.S.A. 30:4D-12. Failure to maintain the required documentation, or provide acceptable services, may result in sanctions.

It should be noted that prior authorization is still required in some instances. The hospice service provided under the AIDS Community Care Alternatives Program (ACCAP) remains a prior authorized service. Also, if a patient receiving home health services requires durable medical equipment (DME), then prior authorization is required for the DME.

The Division is adding all requirements for the waiver program to subchapter 3. The current text of N.J.A.C. 10:60-4 describes the Community Care Program for the Elderly and Disabled (CCPED). This section is being recodified to N.J.A.C. 10:60-3, specifically N.J.A.C. 10:60-3.1 through 3.6. In addition, the Division is describing the other waiver programs, which are Model Waivers I, II and III, and the AIDS Community Care Alternatives Program (ACCAP). These waived programs are granted pursuant to waivers under the Federal Social Security Act and are subject to Federal matching funds.

The Home Care Expansion Program (HCEP) rules were proposed in the February 20, 1990 issue of the New Jersey Register at 22 N.J.R. 597(a) and adopted at 22 N.J.R. 2967(a). The new rules contain two changes from the current HCEP text, which is discussed below.

The HCPCS procedure codes are being consolidated into N.J.A.C. 10:60-5.

A sectional analysis follows.

N.J.A.C. 10:60-1.1 Scope

Proposed subsections (a), (b), and (c) are the same as in the current rule. Subsection (d) has been added to indicate that Medicaid District Office (MDO) staff will periodically conduct post-payment quality assurance reviews to evaluate the appropriateness and quality of home care services provided by either a homemaker and/or home health agency. The findings from the quality assurance provider may result in an increase, reduction, or termination of services.

N.J.A.C. 10:60-1.2 Definitions

In general, most of the definitions in this section are included in the existing text of the current rule. There have been some language modifications.

The new definitions include case management, health services delivery plan, hospice agency, hospice service, preadmission screening (PAS), public health nurse, and quality assurance.

Also, the definition of speech-language pathologists was modified to conform with Federal regulations (42 CFR 440.110).

The definitions will be discussed in more detail as they relate to specific aspects of the various home care programs.

N.J.A.C. 10:60-2 Covered home care services

Generally speaking, the changes in N.J.A.C. 10:60-2.1, Home health care services, in comparison to the current rule, are minor. There were some codification changes in subsection (d) to follow an alphabetical sequence. There were some minor changes in language but the basic provisions remain the same.

The provisions of N.J.A.C. 10:60-2.2, Personal care assistant services, remain basically the same as in the current rule.

There are some changes which should be noted. The locations in which personal care assistant services can be provided now include DYFS foster care homes or Division of Developmental Disabilities (DDD) foster care homes. Personal care assistant services continue to be available in a private home, rooming home, or boarding home.

With respect to the Federal requirement that personal care assistant services be supervised by a registered professional nurse (RN), the RN must make one visit every 60 days, initiated within 48 hours of the start of the service. The 60-day requirement is a long-standing program requirement. The requirement of an RN visit within 48 hours of the start of the service is a new requirement. It should be noted that the RN may make more frequent visits if the recipient's condition warrants.

The subsection on reimbursement (N.J.A.C. 10:60-2.2(f)) has, in large measure, been transferred to N.J.A.C. 10:60-5. The HCPCS procedure codes remain the same, but the fee schedules have been deleted.

There is important language contained in N.J.A.C. 10:60-2.3(d) concerning preadmission screening (PAS). Reference is also made to the definition of PAS in N.J.A.C. 10:60-1.2. Pursuant to State law (N.J.S.A. 30:4D-17.10), any individual seeking admission to a Medicaid certified nursing facility (NF), or who resides in such an NF and may become Medicaid eligible within six months, must be screened by the MDO to determine whether the placement is appropriate. The purpose of including this State statutory requirement in the Home Care Services Manual is that if NF care is not appropriate the recipient will be referred for home health services. As part of the PAS process, the Health Services Delivery Plan (HSDP) shall be completed by the MDO staff and made part of a referral package sent to the home care provider.

The HSDP shall not be provided for those individuals who are already in the community.

N.J.A.C. 10:6-3 Home and Community Based Service Programs

The proposed new subchapter contains the waived Medicaid programs under various sections of the Social Security Act. Prior subchapter 3, Billing Procedures for Home Care Services, is being proposed as new N.J.A.C. 10:60-1.

CCPED Program (N.J.A.C. 10:60-3.1 through 3.6)

In essence, the Community Care Program for the Elderly and Disabled (CCPED) is designed to help Medicaid recipients remain in the community rather than an NF by providing seven community-based services. These services are case management, home health services, homemaker services, medical day care, social day care, transportation, and respite care. Clients receive one or more of these services, which are appropriate for their needs. The total of services for the recipient in the community reimbursed by Medicaid shall not exceed the established cost limitation for institutional care for that recipient.

The basis of reimbursement is described in the text of the rules. Additional language has been added to indicate the cost reporting procedures for home health agencies that provide CCPED services (see N.J.A.C. 10:60-3.5). Home health providers are reimbursed on a fee-for-service basis. Fees are established based upon cost reports submitted by the providers which are audited by the Division and/or its Fiscal Agent(s). Providers cannot receive reimbursement (for waived services) in excess of the fee established for non-waivered Medicaid home health services.

Homemaker agencies are reimbursed on a fee-for-service basis. They are not required to submit cost reports.

Model Waiver Programs (N.J.A.C. 10:60-3.7 through 3.11)

The Model Waiver Programs described in N.J.A.C. 10:60-3.7 are new text for this manual.

New Jersey has three Federally approved model waivers: Model Waiver I, II, and III. The waivers are subject to periodic renewal. Each program serves a limited number of recipients Statewide who meet the medical and financial eligibility requirements. The waivers serve blind or disabled children and adults, and are designed to enable persons to be cared for in the community as opposed to an NF or hospital. The Model Waiver Programs provide all Medicaid covered services, except NF. Persons in the Model Waiver Programs can require extensive services to remain in the community.

With respect to Model Waivers I and II, the basic eligibility criteria is described in N.J.A.C. 10:60-3.8. Recipients must require at least NF level of care. Their income shall exceed the SSI community standard up to the Medicaid Institutional Cap. In addition, recipients can qualify for the model waivers if they are ineligible because of SSI deeming rules.

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Recipients shall be blind or disabled adults or children. Disability shall be established by the Social Security Administration (SSA) or by the Disability Review Section within the Division.

There is no deeming of spouse or parental income or resources in determining eligibility for the Model Waiver Programs. However, with respect to resources, these can be considered in the determination of eligibility in spousal situations. Up to one-half of the total resources are protected for the use of the spouse that does not participate in the Model Waiver Program(s).

An individual recipient's resources cannot exceed the limit established under the Medicaid Only Program.

Financial eligibility is determined by the county welfare agency/board of social services.

With respect to Model Waiver III, the patient must establish financial eligibility for either categorical assistance or optional categorical assistance. Model Waiver III is particularly targeted to recipients in need of private duty nursing. It should be noted that a person who qualifies for Model Waiver III could also be eligible for Medicaid in the community.

Reimbursement for services provided under the Model Waiver Programs are described in N.J.A.C. 10:60-3.10. Providers will use the 1500 N.J. claim form when billing for case management, private duty nursing services, and personal care assistant services.

N.J.A.C. 10:60-3.10(b) is written in anticipation of UNISYS becoming the Fiscal Agent for the Division. Providers will continue to use the existing MC-3C, MC-14 claim forms until the new Fiscal Agent assumes its responsibility. Providers will be notified by newsletter when the 1500 N.J. forms are to be used.

Private duty nursing services and personal care assistant services are reimbursed on a fee-for-service basis not to exceed the cost of services established by the Medicaid program.

The Division has also established financial controls as indicated in N.J.A.C. 10:60-3.11. There is a maximum number of recipients served Statewide in each of the three programs. The maximum number of slots is set at the Federal level. In addition, the combined cost of Medicaid services shall not exceed the cost of institutionalization for the recipient.

ACCAP Program (N.J.A.C. 10:60-3.12 through 3.16)

The AIDS (Acquired Immune Deficiency Syndrome) Community Care Alternatives Program (ACCAP) is described at N.J.A.C. 10:60-3.12.

The program is Statewide with slots allocated to each county based upon the estimated number of AIDS/ARC recipients to be served. The program provides community based services to recipients with AIDS or ARC (AIDS-Related Complex).

The patient must establish eligibility for categorical assistance or optional categorical assistance in order to be considered for ACCAP. The financial eligibility criteria for Model Waiver III (discussed above) and ACCAP are the same. In addition, the patient must be diagnosed as having AIDS or ARC (AIDS Related Complex), or a child up to age five who is HIV positive. Also, the recipient must require at least NF level of care.

The deeming principles (under the optional categorically needy standards) are the same as discussed previously in the Model Waiver Programs.

Optional categorically needy recipients under the age of 65 must be determined disabled by either SSA or the Division.

Retroactive eligibility is not available to waiver recipients for those Medicaid services provided only by virtue of enrollment in the waiver program. Retroactive coverage is still available for those Medicaid services provided as part of the regular Medicaid program.

The ACCAP waived services available to recipients include case management, private duty nursing, certain narcotic and drug abuse treatments at home, personal care assistant services, medical day care, intensive supervision to children who reside in DYFS supervised foster homes, specialized group foster care home for children, and hospice care. In addition, all Medicaid services, except NF, can be provided to ACCAP recipients.

The Division has limited total program costs 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.

The Division shall make a determination based upon a projected weighted cost of hospital care.

Providers rendering ACCAP services shall submit the claim forms indicated in N.J.A.C. 10:60-3.16(b) and be reimbursed on a fee-for-service basis.

N.J.A.C. 10:60-4 Home Care Expansion Program

The Home Care Expansion Program (HCEP) was created by State legislation and is not subject to Federal funding.

The summary, social and economic impact statement and regulatory flexibility analysis that accompanied the original proposed new rules (see 22 N.J.R. 597(a)) provided an adequate explanation of HCEP, and are incorporated by reference into this proposal.

There are two changes associated with the HCEP. One appears at N.J.A.C. 10:60-4.2(c). If an applicant or spouse of an applicant for HCEP makes a voluntary assignment of real or personal property for less than adequate consideration the applicant shall be declared ineligible. The period of ineligibility may last up to 30 months. The term "voluntary assignment" is defined in the rule (see N.J.A.C. 10:60-4.2(c)1).

The other change appears at N.J.A.C. 10:60-4.1(b). The current text of the rule indicates there are approximately 600 slots available. The number is being deleted. The amended language indicates program slots are limited based upon the available appropriation and are allocated to each county.

There is a formula which enables the Division to determine eligibility using the number of months resulting from dividing the uncompensated value of the resource by the Statewide lowest semiprivate room rate for nursing home care.

The applicant can, by a preponderance of the evidence, establish that the transfer was made for reasons other than establishing eligibility for HCEP. Applicants who can establish the validity of the transfer can be eligible for HCEP.

It should be noted that this concept is similar to one contained in N.J.A.C. 10:71-4.7. However, the basis for the rule in the Medicaid Only Manual is the Federal legislation (1917(c) of the Social Security Act, codified as 42 U.S.C. 1396p). The basis of this regulatory provision is the Commissioner's statutory rule-making authority under N.J.S.A. 30:4D-7 and N.J.S.A. 30:4E-11.

N.J.A.C. 10:60-5.1 HCPCS Codes

This subchapter is new and is designed to centralize the location for HCPCS codes that currently appear in various places in the existing manual. Providers are to use the appropriate HCPCS codes when billing the Medicaid program, including the waived services.

N.J.A.C. 10:60-6 Billing Procedures

The subchapter remains the same as the current text of N.J.A.C. 10:60-3, except for the transfer of text regarding HCPCS codes at current N.J.A.C. 10:60-3.1(g) to the centralized HCPCS code subchapter, proposed as N.J.A.C. 10:60-5.1. Prior Exhibits II and IV are now Appendices G and H respectively.

Social Impact

The proposed new rules will impact on those persons who are in need of long term home care services and who wish to remain in the community and receive these services. The proposed new rules also impact upon persons who participate in the Home Care Expansion Program (HCEP), the Model Waiver programs and the AIDS Community Care Alternatives Program (ACCAP). It is anticipated that the provision of home care services will delay or avoid institutionalization for those individuals receiving home care services under these various programs.

The proposed new rules will also impact upon providers that render home care services, including Home Health Agencies and Homemaker Agencies, and upon county welfare agencies that determine eligibility for various home care programs.

The removal of prior authorization should have a positive impact on both Medicaid recipients and providers of home care services.

Neither the recipient nor the provider will need to obtain prior approval before arranging for home care services.

Providers who render the services will submit claims directly to the Medicaid Fiscal Agent.

Division staff will conduct post service reviews which evaluate the appropriateness of services. These reviews by Division staff will look at the service(s) requested, services billed, and patient satisfaction. There will be interviews with both recipients and providers as part of the evaluation process.

The proposed new rule also describes the requirements for eligibility, and available services, for the waiver programs, CCPED, Model Waiver, and ACCAP, which are Medicaid programs operated pursuant to waivers granted by HCFA.

The Home Care Expansion Program (HCEP) is a state-funded program. The proposed new rule contains a transfer of resource provision

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applicable to applicants for this program, which could postpone eligibility for services if applied.

Economic Impact

The proposed new rules carry the same economic impact as the original chapter; there are no changes in the fee schedules by which the providers are reimbursed. The home care services provided to recipients under the programs set out in the Home Care Services Manual are necessary in order to provide continued quality home care services as an alternative to institutionalization.

There is no cost to the Medicaid recipient for Medicaid services provided under the State's regular Title XIX (Medicaid) program.

With respect to the waived programs, such as CCPED, Model Waivers, and ACCAP, the Medicaid recipient is not required to contribute to the cost of their care from their available income.

Contributions may be required from recipients who are eligible for the State-funded HCEP program.

The home care services provided under Title XIX, including the waived programs, are subject to Federal matching funds.

The HCEP program is strictly State-funded.

Regulatory Flexibility Analysis

Those portions of the proposed new rules that impact on eligibility are not subject to the provisions of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because neither the recipients who apply for services nor the governmental agencies who process the applications are small businesses as defined in the Act.

There are portions of the proposed new rules that govern providers of services, which are primarily homemaker and/or home health agencies. There are approximately 250 of these agencies, most of which could be considered small businesses under the terms of the Regulatory Flexibility Act. The requirements in the proposed new rules apply equally to all providers regardless of size. Providers are required by law to maintain sufficient records to fully disclose the name of the patient being treated, dates and nature of services and additional information as may be required by regulation. In addition, providers are required to submit timely and accurate documentation to the Fiscal Agent in order to be reimbursed (see N.J.S.A. 30:4D-12). These record-keeping, reporting and compliance requirements are necessary to comply with State law cited above, and for the health, safety and general welfare of persons receiving home care services.

Providers will be responsible for providing home care services in accordance with an established plan of care prescribed by a physician. This is a long-standing program requirement. With respect to personal care assistant services, they must be supervised by a registered nurse. The requirements for a physician's prescription and nurse supervision are specified by Federal regulations (42 CFR 440.170(e)).

Providers will not need to obtain prior authorization from the Division before providing services. However, providers will need to maintain sufficient documentation as required by N.J.S.A. 30:4D-12 to withstand a clinical audit. Providers shall already be including this information as part of necessary medical record-keeping.

Those providers that are reimbursed on a cost-related basis must file cost reports in order to be reimbursed. This is a long-standing program requirement.

In order to comply with the requirements of the proposed new rules, providers would need necessary medical and accounting personnel to order the services and make acceptable records for review by the Division. However, providers should already be performing these functions.

The proposed new rules are designed to minimize the adverse impact on a small business by removing the prior authorization requirement whenever possible.

The Division believes that forms (see Appendices) utilized in the programs contained in this Manual are necessary to establish medical necessity, insure compliance with Federal criteria, and to provide adequate documentation for Medicaid reimbursement for services rendered.

Full text of the proposed new rules follows:

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:60, and, for N.J.A.C. 10:60-4, in the September 17, 1990 New Jersey Register at 22 N.J.R. 2967(a).

**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 homemaker agency (proprietary and voluntary non-profit). The manual also describes the Medicaid Home and Community-based Services Programs and the State only 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 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

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and assures delivery of coordinated services which promote maximum restoration and prevent unnecessary 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 individual problems and required care needs.

"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 Health, including requirements for Certificate of Need and licensure when applicable;
2. Is certified as a home health agency under Title XVIII (Medicare) Program; and
3. Is approved for participation as a home health agency provider by the Division of Medical Assistance and Health Services.

"Homemaker agency" means a proprietary or voluntary non-profit agency approved by the Department of Human Services, Division of Medical Assistance and Health Services to provide Personal Care Assistant Services, and homemaker services under the Community Care Program for the Elderly and Disabled (CCPED) and the Home Care Expansion Program (HCEP).

The following conditions shall be met:

1. The agency shall be accredited, initially and on an on-going basis, by either the Commission on Accreditation for Home Care Inc., or the National HomeCaring Council, a Division of the Foundation for Hospice and Homecare.

"Homemaker-home health aide" means a person who:

1. Successfully completed a training program in personal care services and is certified by the New Jersey State Department of Law and Public Safety, Board of Nursing, as a homemaker-home health aide. A copy of the certificate or other documentation issued by the New Jersey Department of Law and Public Safety, Board of Nursing is retained in the personnel file;

2. Successfully completes a minimum of 12 hours in-service education per year offered by the agency; and

3. Is supervised by a registered professional nurse of a Medicaid approved home health provider agency.

"Hospice agency" means a Medicare certified hospice approved by the Department of Human Services, Division of Medical Assistance and Health Services to provide hospice services under the AIDS Community Care Alternatives Program. (N.J.A.C. 10:60-3.13)

"Hospice service" means service provided by a Medicaid approved hospice agency to recipients enrolled in the AIDS Community Care Alternatives Program (ACCAP) who are certified by an attending physician as terminally ill, with a life expectancy of up to six months. Services are available on a daily 24-hour basis as needed within an individualized plan of care.

"Levels of care" means two levels of home health care services, acute and chronic, provided by a certified, licensed home health agency, as needed, to Medicaid recipients, upon request of the attending physician.

1. "Acute home health care" is a concentrated and/or complex professional and non-professional service on a continuing basis where there is anticipated change in condition and services required. Acute home health care services may be provided for periods up to 60 days.

2. "Chronic home health care" is either a long or short-term uncomplicated professional and non-professional care where there is

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no anticipated change in condition and services required. Chronic home health care services may be provided for periods of up to six months.

"Licensed practical nurse" means a person who is licensed by the State of New Jersey as a practical nurse, pursuant to N.J.S.A. 45:11-27 et seq., having completed formal accredited nursing education programs.

"Medicaid district office" means one of the Division's county-based offices located throughout the State which, for purposes of this manual, administers a home care quality assurance program through its case management staff via a post-payment review.

"Nutritionist" means a person who has graduated from an accredited college or university, with a major in foods or nutrition or the equivalent course work for a major in the subject area, and two years of full-time professional experience in nutrition. Successful completion of a dietetic internship or traineeship in hospital or community nutrition approved by the American Dietetic Association, or completion of a master's degree in the subject area may be substituted for the two years of full-time experience.

"Occupational therapist" means a person, who is registered by the American Occupational Therapy Association, or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association. If treatment and/or services are provided in a state other than New Jersey, the occupational therapist shall meet the practice requirements of that state including licensure, if applicable and shall also meet all applicable federal requirements.

"Performance standards" for the purpose of this manual means the criteria established by this Division in order to measure the recipient/caregiver's satisfaction with the quality, quantity and appropriateness of the services delivered.

"Personal care assistant" means a person who:

1. Successfully completed personal care services training and is certified by the New Jersey State Department of Law and Public Safety, Board of Nursing, as a homemaker-home health aide. A copy of the certificate or other documentation issued by the New Jersey Department of Law and Public Safety, Board of Nursing is retained in the personnel file;

2. Successfully completes a minimum of 12 hours in-service education per year offered by the agency; and

3. Is supervised by a registered professional nurse of a Medicaid approved homemaker/personal care assistant provider agency.

"Personal care assistant services" means health related tasks performed by a qualified individual in a recipient's home, under the supervision of a registered professional nurse, as certified by a physician in accordance with a recipient's written plan of care.

"Physical therapist" means a person who is a graduate of a program of physical therapy approved by both the Council on Medical Education of the American Medical Association and the American Physical Therapy Association or its equivalent; 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.

"Plan of care" means the individualized and documented program of health care services provided by all members of the home health or homemaker agency involved in the delivery of home care services to a recipient. The plan includes short and long-term goals for rehabilitation, restoration or maintenance made in cooperation with the recipient and/or responsible family member or interested person. Appropriate instruction of recipient, and/or the family or interested person as well as a plan for discharge are also essential components of the treatment plan. The plan shall be reviewed periodically and revised appropriately according to the observed changes in the recipient's condition.

"Preadmission screening (PAS)" means that process by which all eligible Medicaid recipients and individuals who may become Medicaid eligible within six months following admission to a Medicaid

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certified nursing facility, who are seeking admission to a Medicaid certified nursing facility receive permission screening by the Medicaid District Office to determine appropriate placement prior to admission 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 prior to the provision of services. In the context of the home care manual, prior authorization may be applied in situations of continued non-compliance with program requirements.

"Private duty nursing" means individual and continuous nursing care, as different from part-time or intermittent care, provided by licensed nurses in the home to recipients under Model Waiver III and the AIDS Community Care Alternatives Program.

"Private duty nursing agency" means a licensed home health agency, voluntary non-profit homemaker agency, private employment agency and temporary-help service agency approved to provide private 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 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, 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 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 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;

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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, 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 accompanied by a personally signed, legible prescription from the attending physician.

5. The home health agency shall provide comprehensive nursing services under the direction of a public health nurse supervisor/director as defined by the New Jersey State Department of Health. These services shall include, but not be limited to, the following:

i. Participating in the development of the plan of care with other health care team members, which includes discharge planning;

ii. Identifying the nursing needs of the recipient through an initial assessment and periodic reassessment;

iii. Planning for management of the plan of care particularly as related to the coordination of other needed health care services;

iv. Skilled observing and monitoring of the recipient's responses to care and treatment;

v. Teaching, supervising and consulting with the recipient and family/interested persons involved with his or her care in methods of meeting the nursing care needs in the home and community setting;

vi. Implementing restorative nursing care measures involving all body systems including but not limited to:

(1) Maintaining good body alignment with proper positioning of bedfast/chairfast recipients;

(2) Supervising and/or assisting with range of motion exercises;

(3) Developing the recipient's independence in all activities of daily living by teaching self-care, including ambulation within the limits of the treatment plan; and

(4) Evaluating nutritional needs including hydration and skin integrity; observing for obesity and malnutrition;

vii. Teaching and assisting the recipient with practice in the use of prosthetic and orthotic devices and durable medical equipment as ordered;

viii. Providing the recipient and the family or interested persons support in dealing with the mental, emotional, behavioral, and social aspects of illness in the home;

ix. Preparing nursing documentation including nursing assessment, nursing history, clinical nursing records and nursing progress notes; and

x. Supervising and teaching other nursing service personnel.

6. When the agency provides or arranges for dietary services, the services shall be provided by a registered dietitian or nutritionist. These services shall include but are not limited to the following:

i. Determining the priority of nutritional care needs and developing long and short-term goals to meet those needs;

ii. Evaluating the recipient's home situation, particularly the physical areas available for food storage and preparation;

iii. Evaluating the role of the family/interested persons in relation to the recipient's diet control requirements;

iv. Evaluating the recipient's nutritional needs as related to medical and socioeconomic status of the home and family resources;

v. Developing a dietary plan to meet the goals and implementing the plan of care;

vi. Instructing recipient, other home health agency personnel and family/interested persons in dietary and nutritional therapy; and

vii. Preparing clinical and dietary progress notes.

7. Personal care assistant services are described in N.J.A.C. 10:60-2.2.

8. Special therapies include physical and occupational therapy and speech-language pathology services. Special therapists/pathologists shall review the initial plan of care and any change in the plan of care with the attending physician and the professional nursing staff of the home health agency. The attending physician shall be given an evaluation of the progress of therapies provided as well as the recipient's reaction to treatment and any change in the recipient's 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.

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 non-profit 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. 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 physician;
- 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 follows:

1. Clinical records and reports shall be maintained for each recipient covering the medical, nursing, social and health related care in accordance with accepted professional standards. Such information must be readily available, as required, to representatives of the Division of Medical Assistance and Health Services or its agents.

2. Clinical records shall contain, at a minimum, an initial nursing assessment, a six-month nursing reassessment, a recipient-specific plan of care, signed and dated progress notes describing the recipient's condition and documentation of the supervision provided to the personal care assistant every 60 days, and a personal care assistant

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assignment sheet signed and dated weekly by the personal care assistant.

3. All clinical records shall be signed and dated by the registered professional nurse in accordance with accepted professional standards, and shall include documentation described above.

(f) Reimbursement for personal care assistant services is as follows:

1. Personal care assistant services shall be reimbursed on a per hour, fee-for-service basis for weekday, weekend and holiday services. Nursing assessment and reassessment visits under this program shall be reimbursed on a per visit, fee-for-service basis.

2. Personal care assistant services reimbursement rates (see N.J.A.C. 10:60-5) are all inclusive maximum allowable rates. No direct or indirect cost over and above the established rates may be considered for reimbursement. At all times the provider shall reflect its standard charge on the Health Insurance Claim Form, 1500 N.J. (Appendix E), incorporated herein by reference even though the actual payment may be different. A provider shall not charge the New Jersey Medicaid Program in excess of current charges for other payors.

3. For reimbursement purposes only, a weekend means a Saturday or Sunday; a holiday means an observed agency holiday which is also recognized as a Federal or state holiday.

4. A new provider shall be issued a Medicaid Provider ID Number by the fiscal agent. Those providers already enrolled as a provider of homemaker services in the Community Care Program for the Elderly and Disabled (see N.J.A.C. 10:60-3) shall use the same provider number issued for the Community Care Program when completing the Health Insurance Claim Form, 1500 N.J., for personal care assistant services.

10:60-2.3 Additional requirements for provision of covered services

(a) This section outlines requirements governing the provision of home care services, as set forth in (b), (c) and (d) below.

(b) Requirements for provision of home health care services are as follows:

1. To qualify for payment of home health care benefits by the New Jersey Medicaid Program, the recipient's need for services shall be certified, in writing, by the attending physician who must be licensed, to the home health agency at least once every 60 days. The certifications shall be kept in the home health agency's file for appropriate review.

2. A plan of care shall be developed by the attending physician in cooperation with agency personnel. It shall include, but not be limited to, medical, nursing, and social care information. The plan shall be re-evaluated at least every 60 days and revised as necessary. The following shall be part of the plan of care:

- i. The recipient's major and minor impairments and diagnoses;
- ii. A summary of case history, including medical, nursing, and social data;
- iii. The period covered by the plan;
- iv. The number and nature of service visits to be provided by the home health agency;
- v. Additional health related services supplied by other providers;
- 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 provided, 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 preferences 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 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 licensed physician's orders and in accordance with a plan of care.
- ii. The attending physician shall review and approve any changes in 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 every 60 days.

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 provided by the social worker shall be reviewed and any referrals that shall be made to meet the needs of the recipient shall be developed and implemented.

5. Federal 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 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.

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 who have been determined not to require nursing facility 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 compo-

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ment 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 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 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 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).

4. Social services and visits of social service professionals are necessary to resolve social or emotional problems that are or may be an impediment to the effective treatment of the individual's medical condition or rate of recovery.

i. Medical social services shall be provided as ordered by the physician and furnished by the social worker.

ii. The plan of care indicates the appropriate action taken to obtain the available community resources to assist in resolving the recipient's problems or to provide counseling services which are reasonable and necessary to treat the underlying social or emotional problems which are impeding the recipient's recovery.

iii. The services shall be responsive to the problem and the frequency of the services shall be for a prescribed length of time.

5. Nutritional services and visits of a dietitian or nutritionist shall be provided as needed to resolve nutritional problems which are or may be an impediment to the effective treatment of the recipient's medical condition or rate of recovery.

i. Nutritional services shall be provided as ordered by the physician and furnished by a dietitian or nutritionist in accordance with accepted standards of professional practice.

ii. The plan of care shall indicate the nutritional care needs and 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 of time.

v. The progress notes and care plan shall reflect significant changes or problems which require changes in the scope and timeliness of service delivery visits.

6. The services shall be provided to the satisfaction of the recipient/caregiver.

i. There shall be evidence that the recipient/caregiver has participated in the development of the plan of care.

ii. Identified problems shall be resolved between the agency and the recipient/caregiver when possible.

iii. The agency shall make appropriate referrals for unmet recipient needs.

iv. Recipient/caregiver shall be promptly informed of changes in aides and/or schedules.

v. Recipients/caregivers shall be aware of the agency name, telephone number, and contact person in the event of a problem.

7. The home health agency shall be aware of the recipient's need and shall make the appropriate arrangements for securing medical equipment, appliances and supplies.

i. The agency shall assist the recipient in obtaining equipment, appliances, and supplies when needed under Medicare and/or Medicaid guidelines.

ii. The agency shall monitor equipment, appliances and supplies to assure that all items are serviceable and used safely and effectively.

iii. The agency shall be responsible for contacting the provider for problems relating to the utilization of equipment, appliances and supplies.

8. Documentation of services as requested by the Division of Medical Assistance and Health Services shall be timely, accurate, complete and legible.

i. There shall be a current aide assignment sheet for each recipient available either in the home or at the agency, dated and signed by the nurse. The assignment shall be based on a nursing assessment of the recipient's needs and shall list the aide's duties as required in the plan or care.

ii. The agency shall document significant changes in health and/or social status, including recent hospitalization, in the progress notes and make appropriate changes in the plan of care as needed.

iii. Initial evaluations and progress notes shall be provided to the MDO upon request for all nursing services.

iv. Initial evaluations, progress notes and goals shall be provided 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 staff to the agency to review compliance with personnel, recordkeeping and service delivery requirements. (Appendix A, Home Care Agency Review form, FD-342, incorporated herein by reference). The results of these monitoring visits shall be reported to the agency, the Medicaid District Office, and when indicated, a plan of correction shall be required. Continued non-compliance with requirements shall result in such sanctions as curtailment of accepting new recipients for services, suspension or rescission of the agency's provider contract.

(b) For a hospice agency, on-site monitoring visits shall be made periodically by Division staff to the agency to review compliance with personnel, recordkeeping and service delivery requirements (Appendix B, Hospice Agency Review Summary, FD 351 form, incorporated herein by reference). The results of these monitoring visits shall be reported to the agency with a copy to the Medicaid District Office, and when indicated, a plan of correction will be required. Continued non-compliance with requirements shall result in such sanctions as

curtailment of accepting new recipients for services, suspension or rescission of the agency's provider contract.

10:60-2.6 Provisions for fair hearings

Providers and recipients can request for fair hearings as set forth in N.J.A.C. 10:49-1.16.

SUBCHAPTER 3. HOME AND COMMUNITY-BASED SERVICE PROGRAMS

10:60-3.1 Community Care Program for the Elderly and Disabled (CCPED)

(a) The Federal Omnibus Budget Reconciliation Act of 1981 (Section 2176, P.L. 97-35) encouraged the development of community-based service programs rather than institutional service programs. This law was codified as Section 1915(c) of the Social Security Act (see 42 U.S.C 1936n).

1. Under the provision of this Federal legislation, a request for a home and community-based services waiver for elderly and disabled individuals was submitted by the New Jersey Department of Human Services and approved by the United States Department of Health and Human Services. The waiver is renewable every five years and serves a limited number of recipients Statewide who must meet the medical and financial eligibility requirements.

(b) The Community Care Program for Elderly and Disabled (CCPED) is a waived program, administered by the Division of Medical Assistance and Health Services, initiated to help eligible recipients remain living in the community rather than in a nursing facility.

1. The program allows for the allocation of community care slots which are assigned Statewide in accordance with the needs of the population and the resources available to meet those needs. Each county has a designated case management site such as a county welfare agency, Office on Aging, home health agency or homemaker agency.

10:60-3.2 Eligibility requirements for CCPED

(a) Financial eligibility for CCPED is determined by the county welfare agency/board of social services which serves the county where an individual resides. The standards used for income eligibility are set forth in N.J.A.C. 10:71-5.6(c)4, Table B, entitled "Variations in Living Arrangements." Both the Supplemental Security Income (SSI) community standard and the Medicaid institutional standard appear in this table. The actual amounts, recomputed periodically based upon the cost-of-living increase, are subject to change each time a cost-of-living increase occurs.

1. Recipients financially eligible for Medicaid services under the community eligibility standards are not covered under CCPED. CCPED also does not serve recipients who are eligible under the Medically Needy Program.

(b) Program eligibility criteria are as follows:

1. An applicant 65 years or older shall be eligible for Medicare benefits or have other medical insurance which includes physician coverage and hospitalization.

2. An applicant under 65 shall be determined disabled by the Social Security Administration (SSA) and be eligible for Medicare benefits 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 Blind or Disabled Children and Adults (Model Waivers) are renewable Federal waiver programs funded under Title XIX (Medicaid). The waivers, prepared by the Division of Medical Assistance and Health Services in response to the Omnibus Budget Reconciliation Act of 1981, Section 176, Public Law 97-35, encourage the development of community-based services. The purpose of these programs is to help eligible recipients remain in the community, or return to the community, rather than be cared for in a nursing facility or hospital setting.

(b) New Jersey has three approved, Federally renewable Model Waivers: Model Waiver I, Model Waiver II and Model Waiver III. Each program serves a limited number of recipients Statewide who meet the medical and financial eligibility requirements.

(c) The Division of Medical Assistance and Health Services administers the overall programs. Additionally, it has the responsibility for assessing a recipient's need for care and for determining which recipient will be served by the program.

10:60-3.8 Eligibility requirements for Model Waivers

(a) Program eligibility criteria for Model Waivers are as follows:

1. Recipients shall be in need of institutional care and meet, at a minimum, the nursing facility level of care criteria. Model Waiver III requires the need for private duty nursing services.

2. For all Model Waivers, a recipient's total income shall exceed the SSI community standard up to the institutional cap or be ineligible in the community because of SSI deeming rules. Model Waiver III, however, may also serve recipients who are eligible for Medicaid in the community.

3. Recipients shall be blind or disabled children and adults. All recipients who have not been determined disabled by the Social Security Administration (SSA) must be determined disabled by the Division of Medical Assistance and Health Services, Disability Review Section, using the same SSA criteria.

4. Recipients who are financially Medicaid eligible under the community eligibility standards are not eligible for Model Waiver I and II. Model Waiver III, however, may serve these recipients, except for those recipients served under the Medically Needy Program.

5. There is no deeming of spousal income or parental income or resources in the determination of eligibility. 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.

6. A recipient's resources cannot exceed the resource limit established for recipients eligible under the Medicaid Only Program. Financial eligibility is established by the county welfare agency/board of social services located in the recipient's county of residence.

7. In order for an applicant to be enrolled in the program, a waiver slot must be available.

(b) Retroactive eligibility is not available to waiver recipients for those Medicaid services provided only by virtue of enrollment in the waiver programs.

(c) A Medicaid Eligibility Identification (MEI) card (FD-73/178) shall be issued to the Model Waiver recipient by the county welfare agency/board of social services for the recipient applying for Model Waiver I or II and also for the recipient applying for Model Waiver III who is not categorically eligible for Medicaid in the community. The county welfare agency/board of social services may issue a temporary MEI card.

1. A Model Waiver III recipient who is categorically eligible for Medicaid shall continue to receive a MEI Card in the same manner as before his or her participation. The Medicaid District Office may 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 under the New Jersey Medicaid Program as described in N.J.A.C. 10:49 are available under the Model Waiver programs from approved Medicaid providers.

(b) Additional waived services are as follows:

1. Case management: A process in which a professional nurse or social worker 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 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 waived 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;

(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;

(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)

(a) The AIDS 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 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 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 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 individual 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 eligibility 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 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 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 of 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 ELDERLY AND DISABLED (CCPED) AND HOME CARE EXPANSION PROGRAM (HCEP)

HCPCS CODE	DESCRIPTION
Z1240	Case Management, per recipient, per month
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)
Z1200	Homemaker, hourly, weekday

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- 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 HCEP only.

- Z1202 Initial Comprehensive Needs Assessment (HCEP 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
- Z1821 Personal Care Assistant Service, Per 1/2 Hour/Weekday/Individual
- Z1822 Personal Care Assistant Service, Per Hour/Weekend/Holiday/Individual
- Z1823 Personal Care Assistant Service, Per 1/2 Hour/Weekend/Holiday/Individual
- Z1824 Personal Care Assistant Service, Per Hour/Weekday/Group
- Z1825 Personal Care Assistant Service, Per 1/2 Hour/Weekday/Group
- Z1826 Personal Care Assistant Service, Per Hour/Weekend/Holiday/Group
- Z1827 Personal Care Assistant Service, Per 1/2 Hour/Weekend/Holiday/Group
- Z1828 Initial Nursing Assessment Visit
- Z1829 Nursing Reassessment Visit
- Z1830 Methadone Treatment at Home
- Z1831 Urinalysis for Drug Addiction at Home
- Z1832 Psychotherapy, Full Session at Home
- Z1833 Psychotherapy, Half Session at Home
- Z1834 Family Therapy at Home
- Z1835 Family Conference at Home
- Z1850 Intensive Supervision for Children with AIDS in Foster Care Homes, per recipient, per month
- Z1851 Specialized Group Foster Home Care for Children, daily

- Z1852 Intensive Supervision for Children with ARC in Foster Care Homes, per recipient, per month
- Z1853 Intensive Supervision for HIV-positive Children in Foster Care Homes, per recipient, per month
- Z1860 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. 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, 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 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.

(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. 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. 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.

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Interested Persons see Inside Front Cover

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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 claims 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 of the provider.

(b) Requests for approval must be submitted to the appropriate 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.

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

APPENDIX A

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		YES	NO	N/A
1. Referral Source	___	___	___	1. Application	___	___	___
2. Diagnosis	___	___	___	2. Evidence of Interview	___	___	___
3. Physician's Orders a. Renewal Orders	___	___	___	3. References	___	___	___
4. Initial Assessment	___	___	___	4. Certification or License	___	___	___
5. Reassessment	___	___	___	5. Probationary Evaluation	___	___	___
6. Plans of Care	___	___	___	6. Annual Evaluation	___	___	___
7. Progress Notes	___	___	___	7. Attendance at Inservice	___	___	___
8. Medication Administration Record	___	___	___	8. Physical Exam	___	___	___
9. Supervisory Visits	___	___	___	9. RN/LPN Performance Evaluation	___	___	___
10. Signature on Service Report	___	___	___				
11. Signature on Plan of Care	___	___	___				
12. Continuity of Personnel	___	___	___				
13. Appropriate Follow-up	___	___	___				

FD-342 (2/90)

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		Yes	No
1. Referral Source	___	___		1. Application	___	___
2. Diagnosis	___	___		2. Evidence of Interview	___	___
3. Physician Order	___	___		3. References	___	___
a. Renewal Order	___	___	___	4. License	___	___
4. Initial Assessment	___	___		5. Qualification Available	___	___
5. Reassessment	___	___	___	6. Physical exam	___	___
6. Plan of Care	___	___		7. Performance Evaluation	___	___
7. Progress Notes	___	___				
8. Hospice Consent	___	___				
a. Revocation Consent	___	___	___			
9. Appropriate Referral	___	___				



PLEASE TYPE OR PRINT

**State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services
REQUEST FOR HOME CARE AUTHORIZATION OR REAUTHORIZATION**

APPENDIX C

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 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)						
	16. Name of Last Hospitalization or Long Term Care Facility			Date Admitted	Date Discharged		
MEDICAL, NURSING AND SOCIAL INFORMATION	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 () Amputation () None () Allergy () Wheelchair bound () Other () Colostomy () Underactive/Regressed () Stairs () Other (specify) () Assistive devices (explain): () Anxious () Behavior problem () Regular () Special (specify) Diet						
20. Social Information: Patient seems motivated to utilize Home Health () Yes () No Patient's home is equipped for his/her care () Yes () No Family or friends available, willing and appropriate to assist () 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	Home Health Aide	Physical Therapy	Speech-Language Pathology	Occupational Therapy	Medical Social Services	
	Medical Supplies	Other (identify)	Initial Evaluation, R.N.	Reassessment Visit, RN	Homemaker	Private Duty Nursing	
	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: _____						

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. 2938-0357

HOME HEALTH CERTIFICATION AND PLAN OF TREATMENT

1 Patient's MI 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			
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					18 B Activities Permitted					
1 <input type="checkbox"/> Ambulation		5 <input type="checkbox"/> Personal		9 <input type="checkbox"/> Legally Blind		1 <input type="checkbox"/> Grooming		6 <input type="checkbox"/> Personal Weight Bearing		A <input type="checkbox"/> Wheelchair
2 <input type="checkbox"/> Bowel/Bladder (Incontinence)		6 <input type="checkbox"/> Endurance		A <input type="checkbox"/> Disabled with Minimal Assistance		2 <input type="checkbox"/> Bathing SHP		7 <input type="checkbox"/> Independence At Home		B <input type="checkbox"/> Walker
3 <input type="checkbox"/> Convulsions		7 <input type="checkbox"/> Ambulation		B <input type="checkbox"/> Other (Specify)		3 <input type="checkbox"/> Up As Tolerated		8 <input type="checkbox"/> Clothes		C <input type="checkbox"/> No Restraints
4 <input type="checkbox"/> Hearing		8 <input type="checkbox"/> Speech				4 <input type="checkbox"/> Transfer Bed/Chair		9 <input type="checkbox"/> Care		D <input type="checkbox"/> Other (Specify)
						5 <input type="checkbox"/> Exercise Prescribed				
19 Mental Status:		1 <input type="checkbox"/> Oriented		3 <input type="checkbox"/> Forgetful		5 <input type="checkbox"/> Disoriented		7 <input type="checkbox"/> Agitated		
		2 <input type="checkbox"/> Confused		4 <input type="checkbox"/> Depressed		6 <input type="checkbox"/> Lethargic		8 <input type="checkbox"/> Other		
20 Prognosis:		1 <input type="checkbox"/> Fair		2 <input type="checkbox"/> Guarded		3 <input type="checkbox"/> Fair		4 <input type="checkbox"/> Good		5 <input type="checkbox"/> 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

HUMAN SERVICES

PROPOSALS

HOME CARE AGENCY REVIEW

-2-

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)			5. PATIENT'S SEX MALE <input type="checkbox"/> FEMALE <input type="checkbox"/>			6. PATIENT'S MEDICARE/CHAMPUS NO. (Include any letters)				
Telephone No.			7. PATIENT'S RELATIONSHIP TO INSURED SELF <input type="checkbox"/> SPOUSE <input type="checkbox"/> CHILD <input type="checkbox"/> OTHER <input type="checkbox"/>			8. PATIENT'S MEDICAID I.D. NO. PATIENT'S PROGRAM NO.				
9. OTHER HEALTH INSURANCE COVERAGE— YES <input type="checkbox"/> NO <input type="checkbox"/> Enter Name of Policyholder and Plan Name and Address and Policy Number			10. WAS CONDITION RELATED TO: A. PATIENT'S EMPLOYMENT YES <input type="checkbox"/> NO <input type="checkbox"/> B. ACCIDENTAL INJURY AUTO <input type="checkbox"/> OTHER <input type="checkbox"/>			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 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			MEDICARE, CHAMPUS & MEDICAID (Read back before signing.) Relationship: Check if other than patient <input type="checkbox"/> Authorized Rep. <input type="checkbox"/> Relative <input type="checkbox"/> Other			13. I Authorize Payment of Medical Benefits to Undersigned Physician or Supplier for Service Described Below.				
SIGNED _____			DATE _____			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 <input type="checkbox"/> NO <input type="checkbox"/>		16a. IF AN EMERGENCY CHECK HERE <input type="checkbox"/>		
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 <input type="checkbox"/> NO <input type="checkbox"/> 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.						23B. WAS THIS SERVICE PERFORMED AS A RESULT OF AN EPSDT PROGRAM REFERRAL? YES <input type="checkbox"/> NO <input type="checkbox"/> 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)		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 _____ <input type="checkbox"/> MD <input type="checkbox"/> DO <input type="checkbox"/> DPM <input type="checkbox"/> OD <input type="checkbox"/> DC <input type="checkbox"/> PhD DATE _____			26. ACCEPT ASSIGNMENT YES <input type="checkbox"/> NO <input type="checkbox"/> (Medicare and CHAMPUS Only See Back)			27. TOTAL CHARGE		28. AMOUNT PAID	29. BALANCE DUE	
32. PATIENT'S ACCOUNT NO.			30. PROVIDER SOCIAL SECURITY/I.D. NO.		31. PHYSICIAN'S OR SUPPLIER'S NAME, ADDRESS & ZIP CODE					
33. EMPLOYER I.D. NO.										
34. REMARKS:						TELEPHONE NO.				

* PLACE OF SERVICE AND TYPE OF SERVICE (T.O.S.) CODES ON THE BACK

HUMAN SERVICES

PROPOSALS

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 sub-

mitted. 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.

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 services to be considered as 'incident' to a physician's professional service, 1) they must be rendered under the physician's

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.

For example, it may be necessary to disclose information about the benefits you have used to a hospital or doctor.

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.

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.

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.

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.

plete; 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.

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 com-

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.

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

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

HUMAN SERVICES

PROPOSALS

APPENDIX F

APPROVED OMB NO. 0938-0279

1		2		3 PATIENT CONTROL NUMBER				4 TYPE OF BILL
5 BC/BS PROV NO		6 FEDERAL TAX NO		7 MEDICARE NO		8 MEDICAID NO		9
10 PATIENT'S LAST NAME		FIRST NAME		INITIAL	11 PATIENT'S ADDRESS			CITY
STATE		ZIP		12 BIRTH DATE	13 SEX	14 MS	15 DATE	ADMISSION
16 HR	17 TYPE	18 SRC	19 A.H	20 D.H	21 STAT	22 STATEMENT COVERS PERIOD		23 COV D
24 N-C D	25 C-I-B	26 L-R D	27	28	29	30	31	32
33	34	35	36	37	38	39	40	41
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537	538	539	540	541	542	543	544	545
546	547	548	549	550	551	552	553	554
555	556	557	558	559	560	561	562	563
564	565	566	567	568	569	570	571	572
573	574	575	576	577	578	579	580	581
582	583	584	585	586	587	588	589	590
591	592	593	594	595	596	597	598	599
600	601	602	603	604	605	606	607	608
609	610	611	612	613	614	615	616	617
618	619	620	621	622	623	624	625	626
627	628	629	630	631	632	633	634	635
636	637	638	639	640	641	642	643	644
645	646	647	648	649	650	651	652	653
654	655	656	657	658	659	660	661	662
663	664	665	666	667	668	669	670	671
672	673	674	675	676	677	678	679	680
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690	691	692	693	694	695	696	697	698
699	700	701	702	703	704	705	706	707
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744	745	746	747	748	749	750	751	752
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762	763	764	765	766	767	768	769	770
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825	826	827	828	829	830	831	832	833
834	835	836	837	838	839	840	841	842
843	844	845	846	847	848	849	850	851
852	853	854	855	856	857	858	859	860
861	862	863	864	865	866	867	868	869
870	871	872	873	874	875	876	877	878
879	880	881	882	883	884	885	886	887
888	889	890	891	892	893	894	895	896
897	898	899	900	901	902	903	904	905
906	907	908	909	910	911	912	913	914
915	916	917	918	919	920	921	922	923
924	925	926	927	928	929	930	931	932
933	934	935	936	937	938	939	940	941
942	943	944	945	946	947	9		

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 sanatorium 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 name, exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form.

Item 2: Case Last Name: Copy the Case last name and first name, exactly as they appear on the Medicaid Eligibility Identification Card/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 known, enter the year. If birthdate is unavailable, submit claim without birthdate.

Item 5: Start Care Date: Use six digits to indicate the date when approved home health care was initiated (for example, 02/01/81).

Item 6: Claim From Date: Use six digits to indicate the date of the first service for which you are billing on this claim (for example, 02/20/81).

Item 7: Claim Thru Date: Use six digits to indicate the date of the last service for which you are billing on this claim (for example, 03/25/81).

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.

PROPOSALS

Interested Persons see Inside Front Cover

HUMAN SERVICES

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 7. 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 codes are listed in N.J.A.C. 10:60-3.1(g) and also in your approval letter.

13C: Nature of Illness or Injury Requiring Services: Enter diagnosis. If diagnosis code is available from the International Classification of Diseases, ICD-9-CM, enter that code.

13D: Fully describe surgical or medical procedures and other services or supplies furnished for each date listed: Describe procedure or service.

13E: Check if Family Planning: Personal Care Assistant Service providers are to utilize this item to indicate the place where the service was provided. Applicable codes are:

2—Patient's Home;

4—Boarding Home;

9—Other (Rooming House).

13F—Charge: Enter your standard charge for the appropriate service.

Item 14: Referring Practitioner's Name: Leave blank.

Item 15: Attending Practitioner's Name: Enter provider number.

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 Certification carefully. The provider must sign the MC-14 before the claim can be considered for payment. Indicate the billing date which is the date the claim is mailed.

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Sale and Distribution of Plants and Plant Material Rose Plants

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

Proposed: July 16, 1990 at 22 N.J.R. 2069(a).

Adopted: September 10, 1990, by Arthur R. Brown, Jr.,
Secretary, Department of Agriculture; and State Board of
Agriculture.

Filed: September 10, 1990 as R.1990 d.494, **without change**.

Authority: N.J.S.A. 4:7-1 et seq.

Effective Date: October 1, 1990.

Expiration Date: October 1, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: Two written comments were received. Both comments supported the rose rule. One commenter requested that the Department contact the certifying state urging compliance.

RESPONSE: Each state regulatory official has received a written copy of the proposed rules. In addition, the rose rules were discussed at the National Plant Board annual meeting in Lincoln, Nebraska on August 16, 1990 in the presence of state regulatory officials.

Full text of the adoption follows.

SUBCHAPTER 2. ROSE PLANTS

2:19-2.1 Purpose

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

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

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

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

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

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

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

(b) Anyone offering rose plants for sale in New Jersey must have on file in their establishment, and available for public inspection

upon request, a copy of the official certificate or statement issued by the proper state official in the state of origin for each shipment of plants, certifying that the plants were inspected during the growing season at a time when symptoms would be apparent and found visibly free of plant viruses.

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

2:19-2.5 Effective date of growing season certificates

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

(b)

DIVISION OF PLANT INDUSTRY

Quarantines

White Pine Blister Rust

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

Proposed: July 16, 1990 at 22 N.J.R. 2070(a).

Adopted: September 5, 1990, by Arthur R. Brown, Jr., Secretary,
Department of Agriculture; and State Board of Agriculture.

Filed: September 10, 1990 as R.1990 d.495, **without change**.

Authority: N.J.S.A. 4:7-1 et seq.

Effective Date: October 1, 1990.

Expiration Date: October 1, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

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

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

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

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

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

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

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

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

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

COMMUNITY AFFAIRS**(a)****DIVISION OF HOUSING AND DEVELOPMENT****Uniform Construction Code****Dedication of Revenue for Code Enforcement****Adopted Amendment: N.J.A.C. 5:23-4.17**

Proposed: June 18, 1990 at 22 N.J.R. 1871(a).

Adopted: August 22, 1990 by Melvin R. Primas, Jr.,
Commissioner, Department of Community Affairs.Filed: September 5, 1990 as R.1990 d.489, 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: October 1, 1990.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from the New Jersey Association of Plumbing-Heating-Cooling Contractors, Inc. (NJAPHCC) and from the New Jersey Builders Association (NJBA).

COMMENT: The NJAPHCC expressed its opposition to any change allowing municipalities to put construction code revenues into their general funds instead of dedicating them for code enforcement purposes.

RESPONSE: The Department pointed out that this amendment allows the use of a dedicated budget as an alternative to dedication by rider, but that the funds are dedicated in either case.

COMMENT: The NJBA inferred from the proposed amendment, particularly from the deletion of N.J.A.C. 5:23-4.17(c)1, that it would not be permissible for municipalities to accumulate code enforcement revenue to be used for code enforcement in future years.

RESPONSE: This was certainly not the Department's intent. The only reason for the proposed deletion was to remove what appeared to be repetitive language, since the remainder of subsection (c) makes it very clear that these funds can only be used to pay the costs of code enforcement. However, in order to preclude any future misunderstandings, the Department has decided to retain language that will make this explicit.

Full text of the proposal follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

5:23-4.17 Municipal enforcing agency fees

(a) (No change.)

(b) Report:

1. On or before February 10th of each year, the construction official shall, with the advice of the subcode officials and in consultation with the municipal finance officer, prepare and submit to the governing body a report detailing the receipts and expenditures of the enforcing agency and indicating his recommendations for a fee schedule, based on the operating expense of the agency. The report shall be structured in accordance with (c) below and with such guidelines as shall be issued from time to time by the Commissioner so as to accurately portray true enforcing agency expenses in general and for structures of different use groups. This report shall serve as the basis for the ordinance to be enacted by the municipality, as it may deem appropriate, establishing the fee schedule.

2. A copy of the construction official's report recommending a fee schedule and setting forth enforcing agency revenues and expenses shall be filed with the Department when prepared and a copy of the ordinance, together with the fee schedule, shall be filed with the Department when enacted or amended.

3. The appropriation and expenditure of construction code fee revenues generated from the fee schedule established pursuant to (b)1 above shall be audited annually by an independent auditor acceptable to the Department and a copy of the auditor's report shall be provided to the Department when it is issued to the municipality. Submission of a copy of the annual municipal audit required to be submitted to the Division of Local Government Services at the time that it is required to be submitted to that Division shall constitute

compliance with this requirement provided, however, that the annual municipal audit tests and contains an opinion that all expenditures of construction code fees have been made for purposes herein permitted.

(c) Costs: The fee schedule shall be calculated to reasonably cover the municipal costs of enforcing the regulations.

1. It is the purpose and intent of this subsection to facilitate the accumulation by municipalities of the funds necessary to offset future construction code enforcement expenses, to ensure that construction code revenue is used only for construction code enforcement purposes, and to provide a means of making such revenue readily available for such purposes from year to year.

[1.]**2. All fees collected pursuant to the fee schedule established in accordance with (b)1 above shall be appropriated in accordance with the requirements of the Uniform Construction Code Act and the Local Budget Law to be applied solely to meet the municipal costs of enforcing the regulations, which costs shall be defined as including only the following:

i. Salaries and employee benefits for licensed code enforcement officials and inspectors and clerical personnel assigned to the enforcing agency, in an amount proportionate to the time spent in performing work for the enforcing agency provided, however, that detailed time records are kept where employees divide their time between Uniform Construction Code and Non-Uniform Construction Code duties;

ii. Cost of motor vehicles in an amount proportionate to their use by or for the enforcing agency. Payments for this purpose may be in the form of mileage reimbursement paid to employees for use of their own motor vehicles, cost of purchase of motor vehicles by the municipality for the exclusive use of the enforcing agency (which cost may not be amortized), depreciation and operating expenses of motor vehicles made available to the enforcing agency by another municipal agency, and cost of rental of motor vehicles for use by the enforcing agency;

iii. Direct costs in support of the agency such as equipment, supplies, furniture, office equipment maintenance, standardized forms, printing, and safety equipment that are supplied directly to the enforcing agency for its sole use;

iv. Professional expenses of enforcing agency personnel that are directly related to the enforcement of the regulations, including publications, membership dues, license fees, and authorized travel to conferences, meetings and seminars;

v. Fees for services performed under contract by private on-site inspection agencies;

vi. Documented charges for legal services required in connection with construction code enforcement litigation;

vii. Fees for the annual audit of the dedicated fund by an independent auditor; and

viii. Subject to the limitations set forth in ***[(c)2]* *(c)3*** below, indirect, overhead, and other expenses of the municipality in support of the enforcing agency, including:

(1) Legislative and Executive expenses;

(2) Administration, including personnel, payroll, and general training services provided to the agency in common with all other municipal offices;

(3) Central services shared jointly with other municipal offices, such as telephone, reproduction, centralized computer services, etc.;

(4) Insurance except for group insurance premiums included under employer fringe benefits;

(5) General building maintenance expenses;

(6) Finance, including bookkeeping, purchasing, and auditing;

(7) Office space expenses, including rent or interest and debt service on municipal capital facilities; and

(8) Such other expenses as may be properly allocable to construction code enforcement.

[2.]**3. Indirect and overhead expenses charged to the construction code fee revenues shall not exceed 12 percent of all other costs of the enforcing agency unless the indirect and overhead expenses of the municipality exceed 12 percent of the entire municipal budget, in which case indirect and overhead expense may be charged to construction code fee revenues in proportion to the general municipal

COMMUNITY AFFAIRS

ADOPTIONS

overhead and expense ratio. A detailed written justification for any charge for indirect and overhead expenses in excess of 12 percent shall be prepared and made available for inspection both by the Department and by the public.

*[3.]**4.* This subsection shall not be construed as precluding the use of money from the general fund of the municipality to pay costs of code enforcement when the construction code fee revenues generated from the fee schedule established pursuant to (b)1 above are insufficient for that purpose or when necessary to compensate the enforcing agency for work done without fee pursuant to statute or ordinance.

(d) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Code Interpretations; Seismic Zones

Adopted New Rule: N.J.A.C. 5:23-9.4

Proposed: February 20, 1990 at 22 N.J.R. 592(a).

Adopted: September 4, 1990 by Melvin R. Primas, Jr.,
Commissioner, Department of Community Affairs.

Filed: September 6, 1990 as R.1990 d.490, **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: October 1, 1990.

Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

Comments were received from the New Jersey Builders Association (NJBA), the New Jersey Chapter of the American Society of Plumbing Engineers (ASPE) and the National Fire Sprinkler Association, Inc. (NFA).

COMMENT: NJBA recommended deletion of subsections (b), (c), (d) and (e) of the proposed rule on the grounds that they were unnecessarily confusing and limiting the interpretation to the delineation of the zones and the interpolation of A_v values for the various counties.

RESPONSE: This has been done, for the reasons set forth by the commenter. The application of the rule has been clarified through the addition of new subsection (c).

COMMENT: The New Jersey ASPE Chapter expressed opposition to the rule on the grounds that it "lacks direction" and would lead to variable enforcement due to different interpretations by different inspectors who might be unable to read the plans properly.

RESPONSE: The Department points out that the requirements for different seismic zones are already in the building subcode and that the purpose of this rule is to provide uniform standards for applying these requirements in different counties, thereby countering the very variability the ASPE fears.

COMMENT: NFSA requests a delay in implementation of the interpretation to allow time for training both officials and persons involved in construction.

RESPONSE: The Department agrees that it is necessary to familiarize officials and industry representatives with the seismic requirements. However, these requirements are already part of the code and holding up on the implementation of this interpretation will merely prolong the uncertainty as to what standards are to be used. This would not, in the Department's judgment, be beneficial.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

5:23-9.4 *[Earthquake]* *Seismic* Zones

(a) *[The State of New Jersey shall be divided into two Seismic Zones.]* *Based on the building subcode (BOCA National Building Code), the State of New Jersey is divided into two seismic zones roughly dividing the State along a northeast-southwest diagonal and thereby creating a northern and a southern region.*

1. Seismic Zone *[I]* *1* shall consist of and include the counties of Monmouth, Ocean, Burlington, Camden, Gloucester, Salem, Cumberland, Atlantic and Cape May.

2. Seismic Zone *[II]* *2* shall consist of and include the counties of Sussex, Warren, Morris, Passaic, Bergen, Hudson, Essex, Union, Somerset, Hunterdon, Mercer and Middlesex.

*[(b) Seismic design requirements shall be met in all occupancies in Seismic Zone II to comply with Section 1113.0 of the 1989 Supplement to the BOCA National Building Code/87. All occupancies in the Seismic Zone I having an importance Factor I in Table 1113.1 of less than 1.5 shall meet only such requirements as are set forth in Sections 1113.4.3, 1113.11.1 and 1113.11.2 of the 1989 Supplement of the BOCA National Building Code/87.]

(c) High-rise buildings as defined in Section 602.1 shall meet all the special seismic requirements of 602.14 for both Seismic Zone I and Seismic Zone II. This section requires that the life safety systems in high-rise buildings must be designed not only for the horizontal force factor, Cp=0.3 as specified in Table 1113.10, but also for the effect of structural drift, as noted in Note C of Table 1113.10 and Section 1113.14. Special consideration shall be given to relative movements at separation joints.

(d) All buildings designated as essential facilities in Table 1113.1 shall also be designed for both the horizontal force factor and structural drift as noted in (c) above for both Seismic Zone I and Seismic Zone II.

(e) All other buildings located in Seismic Zone II must have any machinery and equipment housed in the structure designed for the horizontal force factor, except as otherwise provided in Note f of Table 1113.10, which allows certain listed installations, otherwise required to be restrained, to be exempt from seismic restraint.

(f) Calculation of seismic forces shall be in accordance with formula $V=2.5A_vIKCSW$, as required by the 1989 Supplement of the BOCA National Building Code/87, Section 1113.4. A_v values shall be assigned by county as follows: (and as represented on the map following this subsection)]*

[(b) The Department, for reasons of administrative convenience and in order to avoid non-uniform interpolation, has established the following county-wide designations of seismic zones and effective peak velocity-related acceleration (A_v) to enable design professionals to determine easily what requirements shall be met in each municipality.

1. Seismic Zone *[I]* *1*:

- i. Monmouth: .095;
- ii. Burlington and Ocean: .080;
- iii. Camden: .075;
- iv. Gloucester: .070;
- v. Salem and Atlantic: .060;
- vi. Cumberland and Cape May: .050.

2. Seismic Zone *[II]* *2*:

- i. Sussex: .125;
- ii. Warren, Morris, Passaic and Bergen: .120;
- iii. Essex: .115;
- iv. Hunterdon, Somerset, Union and Hudson: .110;
- v. Mercer and Middlesex: .105.

[(c) The zone requirements established in (a) above shall apply both to the mechanical design and to the building structural system. The A_v values established in (b) above shall be utilized when calculating lateral seismic forces for structural design.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Notice of Administrative Correction

Hazardous Waste Criteria, Identification and Listing
Exclusions

Adopted Amendment: N.J.A.C. 7:26-8.2

Take notice that the Office of Administrative Law has discovered an error in the text of the adopted amendment to N.J.A.C. 7:26-8.2(a)24

published in the September 4, 1990 New Jersey Register at 22 N.J.R. 2826(a).

The rule text published in the Register lists paragraphs (a)22 and 23 as "(Reserved.)," and codifies the adopted new paragraph as (a)24. Paragraphs (a)22 and 23 should have been listed as "(No change.)," as they were adopted prior to the paragraph appearing as N.J.A.C. 7:26-8.2(a)24 (see 21 N.J.R. 3705(a); 22 N.J.R. 1362(a)). In addition, paragraph (a)24 now appearing in the New Jersey Administrative Code was also adopted prior to paragraph (a)24 in the adoption (see 21 N.J.R. 1047(a); 22 N.J.R. 1565(a)), and should have been noted as "(No change.)." Because the adoption was filed with the Office of Administrative Law "without change" in the proposed text, that text was erroneously reproduced verbatim as proposed. The correct adopted text will appear in the September 17, 1990 update to the Code.

HEALTH

(a)

DRUG UTILIZATION REVIEW COUNCIL

Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: April 16, 1990 at 22 N.J.R. 1214(b).
 Adopted: August 30, 1990 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
 Filed: August 31, 1990 as R.1990 d.487, with portions of the proposal not adopted but still pending.
 Authority: N.J.S.A. 24:6E-6(b).
 Effective Date: October 1, 1990.
 Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:
 No comments were received concerning the products adopted herein.

The following products and their manufacturers were adopted:

Isoetharine inhalation 0.25%	Dey
Metaproterenol inhal. 0.4, 0.6%	Dey

The following products were not adopted but are still pending:

Acetylcysteine solution 10%, 20%	Hollister-Stier
Albuterol tabs 2, 4 mg	Mylan
Atenolol tabs 50, 100 mg	Cord
Cephalexin for susp. 125/5 ml	Squibb
Clemastine fumarate syrup 0.5 mg/5 ml	Copley
Erythromycin topical soln 2%	PharmBasics
Fenoprofen tabs 600 mg	Mutual
Griseofulvin ultramicro. tabs 165, 330 mg	Sidmak
Isoetharine inhalation 0.08, 0.17, 1%	Dey
Isoproterenol inhalation 0.5%	Dey
Lorazepam tabs 0.5, 1, 2 mg	Mutual
Metaproterenol inhal. 5%	Dey
Methyldopa/HCTZ tabs 250/15, 250/25	Lederle
Nifedipine caps 20 mg	Cord
Potassium Cl ER tabs 8 mEq	Mylan, Upsher-Smith
Racipinephrine inhalation 2.25%	Dey
Sodium polystyrene sulfonate powder	PharmBasics
Sulindac tabs 150, 200 mg	Lederle, Mylan
Theophylline soln 80 mg/15 ml	Ferndale
Triamterene/HCTZ caps 50/25	Cord
Triamterene/HCTZ tabs 37.5/25	Cord
Valproic acid syrup 250 mg/5 ml	Copley

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 22 N.J.R. 2162(b).

CORRECTIONS

(b)

THE COMMISSIONER

Social Services

Volunteers In Parole Program (V.I.P.P.)

Adopted New Rules: N.J.A.C. 10A:17-3

Proposed: July 2, 1990 at 22 N.J.R. 1981(a).
 Adopted: August 30, 1990 by William H. Fauver, Commissioner, Department of Corrections.
 Filed: September 5, 1990 as R.1990 d.488, without change.
 Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
 Effective Date: October 1, 1990;
 Operative Date: October 15, 1990.
 Expiration Date: December 15, 1991.

Summary of Public Comments and Agency Responses:
 No comments received.

Full text of the adoption follows.

SUBCHAPTER 3. VOLUNTEERS IN PAROLE PROGRAM (V.I.P.P.)

10A:17-3.1 Definition of volunteer

"Volunteer" means a person who provides services which supplement the functions and activities of employees of the Bureau of Parole, New Jersey Department of Corrections, without remuneration.

10A:17-3.2 Eligibility for services provided

All offenders being released from New Jersey State correctional facilities shall be eligible for consideration to receive services from a community volunteer.

10A:17-3.3 Volunteer service assignments

(a) Volunteers shall be assigned to duties in accordance with their interests and capabilities. The volunteer's assignments may include, but are not limited to work performed as:

1. A casework aide;
2. A parole officer aide;
3. A professional aide;
4. An administrative aide;
5. A clerical aide; and
6. A student intern.

10A:17-3.4 Volunteers in Parole Program (V.I.P.P.) Supervisor

(a) The Volunteers in Parole Program (V.I.P.P.) Supervisor, serving under the Chief, Bureau of Parole, New Jersey Department of Corrections, shall be responsible for the administration of the V.I.P.P. The V.I.P.P. Supervisor shall:

1. Develop and disseminate the policies and procedures of V.I.P.P.;
2. Monitor and evaluate V.I.P.P. activities; and
3. Submit monthly and annual reports on V.I.P.P. activities to the Chief, Bureau of Parole.

10A:17-3.5 District Volunteers in Parole Program (V.I.P.P.) Coordinator

(a) The District Parole Supervisor shall designate a District V.I.P.P. Coordinator who shall be responsible for the coordination and supervision of V.I.P.P. activities within the District Office. The District V.I.P.P. Coordinator shall:

1. Recruit volunteers;
2. Assist in the orientation and training of volunteers;
3. Coordinate the interviewing, screening and approval of volunteers;
4. Assign volunteers to appropriate activities and/or services;
5. Coordinate and monitor the supervision of volunteers; and
6. Prepare monthly and annual reports of V.I.P.P. activities.

CORRECTIONS**ADOPTIONS****10A:17-3.6 Recruiting volunteers**

(a) Volunteers may be recruited by the V.I.P.P. Supervisor, the District V.I.P.P. Coordinator, or other interested individuals.

(b) Efforts shall be made to recruit volunteers from all cultural and socioeconomic segments of the community.

(c) When recruiting volunteers, emphasis shall be placed on the service to be provided and the qualifications of the prospective volunteer including:

1. Motivation;
2. Interest;
3. Background;
4. Training; and/or

5. Other qualifications which make the prospective volunteer the appropriate person to provide a needed service.

(d) Assistance in recruiting volunteers may be provided by the Coordinator of Volunteer Services, New Jersey Department of Corrections.

10A:17-3.7 Eligibility for service as a volunteer

(a) A volunteer shall be at least 18 years of age.

(b) A former inmate may serve as a volunteer if his or her application is approved by the District Parole Supervisor and the Chief, Bureau of Parole.

(c) A disabled person may serve as a volunteer if his or her disability does not interfere with this person's ability to provide a service.

(d) No application to serve as a volunteer shall be denied on the basis of sex, race, religion or national origin.

10A:17-3.8 Volunteer application

(a) Any person desiring to serve as a volunteer may obtain from the District Volunteers in Parole Program (V.I.P.P.) Coordinator the following forms:

1. 450-I VOLUNTEER APPLICATION;
2. SBI-212 REQUEST FOR CRIMINAL HISTORY RECORD INFORMATION;
3. 608.5 V.I.P.P. VOLUNTEER RULES AND RESPONSIBILITIES; and
4. 608.6 GENERAL WAIVER.

(b) The applicant shall complete and sign the forms in (a) above and return such forms to the District V.I.P.P. Coordinator, who shall schedule fingerprinting.

(c) All volunteers shall be fingerprinted.

(d) A copy of all applications shall be submitted by the District V.I.P.P. Coordinator to the Bureau of Parole V.I.P.P. Supervisor and to the Coordinator of Volunteer Services, New Jersey Department of Corrections.

(e) Applicants offering volunteer services in specialized fields requiring licensure or certification shall submit current and valid credentials for verification, along with the application.

10A:17-3.9 Screening process

(a) Applicants shall be evaluated on the basis of:

1. Information entered on Form 450-I VOLUNTEER APPLICATION;
2. Information provided at the interview; and
3. Information provided by Form SBI-212 REQUEST FOR CRIMINAL HISTORY RECORD INFORMATION.

(b) The District Volunteers in Parole Program (V.I.P.P.) Coordinator shall verify all pertinent information and approve or reject applicants after a thorough review has been made of the qualifications of the applicants and the needs of the District.

(c) The District V.I.P.P. Coordinator shall notify all applicants, in writing, of whether they have been approved or disapproved for participation in the V.I.P.P.

10A:17-3.10 Volunteer responsibilities

(a) All volunteers shall agree to abide by the following rules:

1. Volunteer services shall be provided on a strictly volunteer basis, for which no money, gifts or compensation may be accepted;
2. The volunteer shall attend his or her assigned duties as scheduled by the District Volunteers in Parole (V.I.P.P.) Coordinator;

3. The volunteer shall not discuss Bureau of Parole business with unauthorized persons, and shall maintain confidentiality of information in accordance with N.J.A.C. 10A:22;

4. The volunteer shall not exchange gifts, money, personal services or other favors with any parolee or with any parolee's family or relative;

5. The volunteer shall notify the District V.I.P.P. Coordinator of possible violation of parole rules by a parolee;

6. The volunteer shall not engage in any volunteer activity while under the influence of alcohol or illicit drugs;

7. The volunteer shall not indulge in undue familiarity with parolees;

8. The volunteer shall not remove any case materials from the Bureau of Parole office;

9. The volunteer shall notify the District V.I.P.P. Coordinator if the volunteer desires to visit any State or county correctional facility; and

10. The volunteer shall notify the District V.I.P.P. Coordinator of any condition or event which will affect or prevent the volunteer from continued participation in the Volunteer in Parole Program (V.I.P.P.).

10A:17-3.11 Volunteer handbook

(a) The Bureau of Parole shall develop and publish a Volunteers in Parole Program Handbook which shall bear the date of publication on the cover or front page.

(b) The Volunteers in Parole Handbook shall include, but is not limited to:

1. An introduction which summarizes the history, goals and objectives of the Department of Corrections and the Bureau of Parole;
2. A summary of Bureau of Parole policies and procedures;
3. The responsibilities of volunteers (see N.J.A.C. 10A:17-3.10);
4. A summary of volunteer services and activities; (see N.J.A.C. 10A:17-3.3); and

5. An explanation of the volunteer performance evaluation (see N.J.A.C. 10A:17-3.14).

(c) Prior to publishing or republishing the Volunteer in Parole Program Handbook, the final draft shall be submitted to the Coordinator of Volunteer Services, New Jersey Department of Corrections, for review and written approval.

(d) When the approved Volunteers in Parole Program Handbook has been published, the Bureau of Parole shall provide a copy to the Coordinator of Volunteer Services, New Jersey Department of Corrections, and the Assistant Commissioner, Division of Policy and Planning, to be maintained on file.

(e) Each volunteer shall receive a copy of the Volunteers in Parole Program Handbook prior to assignment to an activity or service.

(f) The contents of the Volunteers in Parole Program Handbook shall be updated every two years.

10A:17-3.12 Orientation and training of volunteers

(a) Each District Office shall provide orientation and training sessions to all volunteers prior to assignment to an activity or service. Orientation and training sessions shall include, but not be limited to:

1. The rules of the Department of Corrections;
2. The rules of the Bureau of Parole;
3. The philosophy, goals, resources and programs of the Bureau of Parole;
4. The duties and responsibilities of volunteers; and
5. The appropriate exercise of authority by volunteers.

10A:17-3.13 Supervision of volunteers

The supervision of volunteers shall be provided by the District Office supervising staff members to whom the volunteers have been assigned.

10A:17-3.14 Performance evaluation

(a) The District Volunteers in Parole Program (V.I.P.P.) Coordinator, along with the volunteer's immediate supervisor, shall evaluate the performance of the volunteer after a trial period of four months, using Form 608.7 VOLUNTEER PERFORMANCE EVALUATION.

ADOPTIONS

(b) A performance evaluation shall include, but not be limited to, the following criteria:

1. Attitude toward work;
2. Relationship with co-workers and staff;
3. Relationship with parolee; and
4. Reliability.

(c) If the evaluation is unsatisfactory, a conference shall be scheduled with the volunteer, the District V.I.P.P. Coordinator, the immediate supervisor and any other appropriate staff member(s).

(d) Following the conference, the District V.I.P.P. Coordinator shall recommend to the District Parole Supervisor the retention or termination of the volunteer.

(e) The performance evaluation of a student intern shall be submitted according to the requirements of the educational institution attended by the student.

(f) A final evaluation using Form 608.7 VOLUNTEER PERFORMANCE EVALUATION shall be completed on all volunteers.

10A:17-3.15 Recognition of volunteers

The Bureau of Parole may schedule an annual event to acknowledge the contribution of volunteers.

10A:17-3.16 Curtailing, suspending or discontinuing the services of a volunteer

(a) The District Parole Supervisor may curtail, suspend or discontinue the services of a volunteer for reasons which include, but are not limited to:

1. Any breach of confidentiality (see N.J.A.C. 10A:22, Records);
2. An arrest of the volunteer;
3. A physical or emotional illness;
4. The inability to cooperate with staff;
5. Irregular attendance; or
6. Violation of the rules of the Volunteer in Parole Program (V.I.P.P.) as established in this chapter.

10A:17-3.17 Reporting responsibilities

The District Volunteers in Parole Program (V.I.P.P.) Coordinator shall submit quarterly reports to the V.I.P.P. Supervisor which shall include a list of all applicants who have been approved or rejected.

10A:17-3.18 Forms

(a) Form 450-I VOLUNTEER APPLICATION related to the Volunteers in Parole Program (V.I.P.P.) shall be reproduced by each District Parole Office from an original that is available by contacting the Standards Development Unit or the Bureau of Parole, New Jersey Department of Corrections.

(b) The following forms related to the Volunteers in Parole Program (V.I.P.P.) shall be obtained from the Bureau of Parole, New Jersey Department of Corrections:

1. 608.5 V.I.P.P. VOLUNTEER RULES AND RESPONSIBILITIES;
2. 608.6 GENERAL WAIVER; and
3. 608.7 VOLUNTEER PERFORMANCE EVALUATION.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CRIMINAL JUSTICE POLICE TRAINING COMMISSION

Certification of Physical Conditioning Instructors

Adopted Amendment: N.J.A.C. 13:1-4.6

Proposed: May 21, 1990 at 22 N.J.R. 1435(a).

Adopted: August 1, 1990 by the Police Training Commission,
Robert T. Winter, Chairman and Director, Division of
Criminal Justice.

Filed: August 28, 1990 as R.1990 d.477, **without change**.

Authority: N.J.S.A. 52:17B-71(h).

Effective Date: October 1, 1990.

Expiration Date: July 5, 1993.

LAW AND PUBLIC SAFETY

Summary of Public Comments and Agency Responses: No comments received.

Full text of the adoption follows.

13:1-4.6 Certification requirements for instructors of certain subjects

(a) Applicants who seek certification to instruct in certain subjects must be certified as an instructor and also comply with the following requirements:

1.-4. (No change.)

5. An individual seeking certification as a physical conditioning instructor at a Commission-approved school must successfully complete a Commission-approved course in physical conditioning and training instruction. The course will provide for the implementation of the Police Training Commission Physical Conditioning Training Program and include Principles of Exercise Physiology or substantially equivalent educational materials.

(b)

DIVISION OF MOTOR VEHICLES

Automatic Vehicle Identification System

Adopted New Rules: N.J.A.C. 13:20-10

Proposed: July 16, 1990 at 22 N.J.R. 2133(a).

Adopted: August 30, 1990 by Col. Clinton L. Pagano, Director,
Division of Motor Vehicles.

Filed: September 10, 1990 as R.1990 d.491, **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. 39:2-3, 39:3-43 and 39:3-74.

Effective Date: October 1, 1990.

Expiration Date: December 18, 1990.

Pursuant to N.J.A.C. 1:30-4.1(a), it is hereby certified that Col. Clinton L. Pagano, Director of the Division of Motor Vehicles, adopted N.J.A.C. 13:20-10, automatic vehicle identification system regulations, on August 30, 1990. Said adoption was 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 the applicable regulations of the Office of Administrative Law. The new rules were proposed in the New Jersey Register, July 16, 1990, 22 N.J.R. 2133(a).

The effective date of the new rules will be on publication in the New Jersey Register, and their expiration date will be December 18, 1990.

Opportunity to be heard with regard to the proposal was invited via notice published in the previously cited edition of the New Jersey Register. A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal.

Summary of Public Comments and Agency Responses:

The New Jersey Division of Motor Vehicles received two comments with regard to the proposal. One comment was submitted jointly by the Port Authority of New York and New Jersey and the New Jersey Highway Authority; the other comment was submitted by the 3M Company. The comments are available for inspection at the Office of the Director, Division of Motor Vehicles, 25 South Montgomery Street, 7th Floor, Trenton, New Jersey 08666. The comments were carefully reviewed and considered by the Division.

The comment received from the Port Authority of New York and New Jersey and the New Jersey Highway Authority touched upon several points with regard to the proposal which are summarized below, together with the Division's responses.

COMMENT: The rule should read as follows: "The proposed new rules also require the owner or operator of a motor vehicle registered in this State who participates in a testing program of an automatic vehicle identification system operated by a toll authority or agency organized under the laws of this State or any other state to have a transponder attached to inside the motor vehicle on the left most side of the windshield as viewed from inside the motor vehicle or at such other location on the motor vehicle over which the Division of Motor Vehicles currently has specific authority and which the Director deems appropriate." The rule as originally proposed would seem to include on-vehicle locations outside DMV's authority. It appears that DMV's major concern with the place-

ment of automatic vehicle identification system transponders is "prohibiting the attachment of a transponder on a motor vehicle windshield at a location which would obstruct the driver's vision", which is also indicated by the citation of N.J.S.A. 39:3-74 as statutory authority for the proposed new rules. Therefore, agencies which choose to attach automatic vehicle identification system transponders to locations which would not interfere with driver visibility through the windshield, or to other on-vehicle locations which are not currently restricted by DMV regulations, should not fall under the requirements of the proposed rule.

RESPONSE: The Division of Motor Vehicles is in basic agreement with the tenor of this comment and agrees that some clarification of the rules is appropriate. However, the Division has chosen not to utilize the text suggested by the commenter. Instead, the Division has deemed it more appropriate to add subsection (c) to N.J.A.C. 13:20-10.3 as adopted by way of clarification. The new subsection specifically clarifies that nothing in N.J.A.C. 13:20-10 prohibits the placement of an automatic vehicle identification system transponder on any portion of a motor vehicle on which its placement is not currently prohibited by New Jersey statute or regulation. The Division perceives that this clarification serves to address the concerns raised by the commenter while at the same time clarifying the Division's original intent in promulgating these rules.

COMMENT: Clarification is requested that testing programs already underway before adoption of these rules would be "grandfathered" in, that is, would not be required to receive DMV approval as long as such programs are utilizing a non-windshield location.

RESPONSE: Those automatic vehicle identification system testing programs already in existence prior to the adoption of these rules do not require "grandfathering" if they utilize a transponder placement location which is not prohibited by New Jersey statute or regulation.

COMMENT: The public comment period on the proposal should be extended unless the commenter's clarifying language is incorporated into the rules at time of adoption.

RESPONSE: The Division has incorporated clarifying language into the rules by adding N.J.A.C. 13:20-10.3(c), which it believes accommodates the commenter's concerns with regard to vehicle transponder placement location, thus obviating any need to extend the public comment period.

The comment received from the 3M Company made several suggestions with regard to the proposal which are summarized below, together with the Division's responses.

COMMENT: The reference to the "left-most side of the windshield" in N.J.A.C. 13:20-10.3(a) should be deleted, but the wording prohibiting the covering of the inspection decal should be retained.

RESPONSE: The Division does not perceive any reason to delete the language in question. It should be noted, however, that clarifying language with regard to vehicle transponder placement location has been incorporated into the rules by way of the addition of N.J.A.C. 13:20-10.3(c).

COMMENT: The rules should provide for transponder placement behind the rearview mirror on the windshield because the transponder is totally hidden from the driver's field of vision and causes no obstruction to the driver's view of the road.

RESPONSE: N.J.A.C. 13:20-10.3(a) provides in part that a transponder shall be attached to the left-most side of the windshield "or at such other location on the motor vehicle as the Director deems appropriate". If a toll authority desires to utilize transponder placement behind the rearview mirror on the windshield it may apply to the Director for permission to do so, since the rules afford the Director the latitude to determine whether such a proposed placement would be appropriate.

COMMENT: Provision should be made for transponder placement behind the driver on the side window as another viable transponder placement.

RESPONSE: As noted in the previous response, N.J.A.C. 13:20-10.3(a) specifies that a transponder shall be attached to the left-most side of the windshield "or at such other location on the motor vehicle as the Director deems appropriate". If a toll authority wishes to have the transponder placed behind the driver on the side window it may apply to the Director for permission to do so, since the rules provide the Director the discretion to determine whether such a proposed placement would be appropriate.

COMMENT: The commenter is currently conducting automatic vehicle identification system tests on the Garden State Parkway and New Jersey Turnpike. The proposal's potential limitations on transponder placement could inhibit flexibility needed to test such a system.

RESPONSE: The commenter's concerns appear to be unfounded in view of the Director's ability to determine whether transponder placement locations such as those suggested in the two previous comments are appropriate pursuant to N.J.A.C. 13:20-10.3(a), and in view of the Division's incorporation of clarifying language into the rules by way of the addition of N.J.A.C. 13:20-10.3(c).

Summary of Change Upon Adoption:

The proposal was adopted with a change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

The change consists of the addition of subsection (c) to N.J.A.C. 13:20-10.3. The new subsection provides that nothing in N.J.A.C. 13:20-10 shall prohibit the placement of an automatic vehicle identification system transponder on any portion of a motor vehicle, vehicle or motor-drawn vehicle registered in this State on which its placement is not currently prohibited by either the statutory or regulatory provisions of this State.

The above mentioned change is a result of the Division's review of the proposal prior to adoption and the Division's consideration of the two comments which it received with regard to the proposal. The Division regards the addition of N.J.A.C. 13:20-10.3(c) as simply a clarification of its original intent in promulgating the rules in question. The change merely clarifies that nothing in the new rules prohibits an automatic vehicle identification system transponder from being placed on any portion of a motor vehicle on which its placement is not currently prohibited by New Jersey statute or regulation.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 10. AUTOMATIC VEHICLE IDENTIFICATION SYSTEM

13:20-10.1 Definitions

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

"Automatic vehicle identification system" means a toll collection system comprised of an interrogation/receiver unit and a remote transponder affixed to a vehicle, motor vehicle or motor-drawn vehicle.

"Motor-drawn vehicle" includes trailers, semitrailers, or any other type of vehicle drawn by a motor-driven vehicle.

"Motor vehicle" includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles.

"Person" includes natural persons, firms, copartnerships, associations, and corporations, including a toll authority or agency organized under the laws of this State or any other state.

"Transponder" means a receiver/transmitter which automatically receives radio or light signals from an interrogation/receiver and emits a reply pulse to the interrogation/receiver.

"Vehicle" means every device in, upon or by which a person or property is or may be transported upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks or motorized bicycles.

13:20-10.2 Application

(a) A person may apply to the Director to obtain approval of an automatic vehicle identification system for use on a vehicle, motor vehicle or motor-drawn vehicle registered in this State. The person shall provide the Director with sufficient information regarding the size, dimensions, composition, operation and proposed use of the automatic vehicle identification system as the Director may require, to enable the Director to determine whether the device is safe for use on a vehicle, motor vehicle or motor-drawn vehicle registered in this State. The Director may require the applicant to provide test results from an independent laboratory.

(b) The Director reserves the right to require an applicant to furnish, without charge, a reasonable number of properly identified samples for examination or to provide such demonstration as may be required.

(c) The Director reserves the right to require such additional proof as may be needed to make his determination.

ADOPTIONS

LAW AND PUBLIC SAFETY

13:20-10.3 Placement

(a) Each owner or operator of a motor vehicle registered in this State who participates in a testing program of an automatic vehicle identification system operated by a toll authority or agency organized under the laws of this State or any other State shall have a transponder attached to inside the motor vehicle on the left most side of the windshield as viewed from inside the motor vehicle or at such other location on the motor vehicle as the Director deems appropriate. The transponder shall not cover the inspection decal and shall be located in a position on the windshield that will not unduly restrict the vision of the driver. No more than one transponder shall be attached to the windshield of a motor vehicle pursuant to this subchapter.

(b) The placement of an automatic vehicle identification system on vehicles or motor-drawn vehicles registered in this State shall be determined by the Director based upon the size and configuration of the vehicle or motor-drawn vehicle.

(c) Nothing in this subchapter shall prohibit the placement of an automatic vehicle identification system transponder on any portion of a motor vehicle, vehicle or motor-drawn vehicle registered in this State on which its placement is not currently prohibited by either the statutory or regulatory provisions of this State.

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF OPTOMETRISTS
Rules of the New Jersey State Board of Optometrists
Readoption with Amendment: N.J.A.C. 13:38**

Proposed: June 18, 1990 at 22 N.J.R. 1866(a).
Adopted: August 22, 1990 by the Board of Optometrists, Edward Campbell, O.D., President.
Filed: August 27, 1990 as R.1990 d.476, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 45:12-4.
Effective Date: August 27, 1990, Readoption; October 1, 1990, Amendment.
Expiration Date: August 27, 1995.

The Board of Optometrists afforded all interested parties an opportunity to comment on the proposed readoption of N.J.A.C. 13:38. The official comment period ended on July 18, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on June 18, 1990 at 22 N.J.R. 1866(a). Announcements were also forwarded to the Star-Ledger, the Trenton Times, the New Jersey Optometric Association, the Society of Dispensing Opticians of New Jersey, and Pamela Mandel, Esq.

A full record of this opportunity to be heard can be inspected by contacting the Board of Optometrists, Room 501, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

No comments regarding the proposed readoption were received during the official 30-day comment period.

Summary of Change Upon Adoption:

The Board is making one technical change: The deletion of N.J.A.C. 13:38-4.1, which states that the uniform penalty letter form appears in N.J.A.C. 13:27-5.1. That reference is incorrect, and the Board has been advised that the provision is not necessary in any case.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:38.

Full text of the amendment follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

SUBCHAPTER 4. *[FORMS]* *(RESERVED)*

***[13:38-4.1 Uniform penalty letter
This form letter appears in N.J.A.C. 13:27-5.1.]***

(b)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF PHARMACY
Restriction on Sale of Schedule V
Over-the-Counter Controlled Substances**

Adopted New Rule: N.J.A.C. 13:39-6.9

Proposed: May 7, 1990 at 22 N.J.R. 1329(a).
Adopted: July 11, 1990, by the State Board of Pharmacy, Melvin Mack, R.P., President.
Filed: August 28, 1990 as R.1990 d.478, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:14-26.2.

Effective Date: October 1, 1990.

Expiration Date: June 19, 1994.

The Board of Pharmacy afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:39-6.9, relating to restrictions on sale of Schedule V over-the-counter controlled substances. The official comment period ended on June 6, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on May 7, 1990 at 22 N.J.R. 1329(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the New Jersey Department of Health, the New Jersey Pharmaceutical Association, the New Jersey Society of Hospital Pharmacists, Rite-Aid Corporation, Wakefern Food Corporation, Supermarkets General Corporation, and a number of pharmacists and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Pharmacy, Room 325, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

The Board of Pharmacy received four comments on the proposed new rule. These comments were from the New Jersey Pharmaceutical Association, the Chief of the Office of Drug Control of the Department of Health, and two registered pharmacists. A summary of the comments received and the Board's responses follows:

COMMENT: The Chief of the Office of Drug Control of the New Jersey Department of Health suggested that N.J.A.C. 13:39-6.9(b)3 be amended to include reference to the specific Department of Health regulation requiring maintenance of the Schedule V Record Book and to add information required to appear in the Record Book.

RESPONSE: The Board believes the inclusion of the citation and the precise Record Book requirements will be helpful to its licensees and has therefore amended N.J.A.C. 13:39-6.9(b)3 accordingly.

COMMENT: Two registered pharmacists suggested that, rather than subjecting pharmacists to new regulations which are cumbersome and place many judgment decisions on the pharmacist, the Board make Schedule V over-the-counter substances prescription items.

RESPONSE: The rule does not require pharmacists to make any new judgment decisions but rather put existing Board policy into rule form to provide licensees with better notice of the standard of professional judgment and care that attends the sale of a Schedule V over-the-counter controlled substance. The rule in fact sets forth what the Board has always expected of the prudent practicing pharmacist. Furthermore, the Board believes that making these substances prescription items would have an adverse impact on the consumer. The consumer not only would experience the delay involved in making an appointment with a physician and the physical problem of going to the physician's office, but also would incur the expense of the visit and the prescription. The Board is of the opinion that this action is not warranted in connection with the use of Schedule V substances and that the rule as adopted will ensure that proper dispensing procedures are followed.

COMMENT: The New Jersey Pharmaceutical Association commented that numerous pharmacists who reviewed the proposed rule found it confusing. First, they questioned whether an individual's request for a Schedule V substance within five, six or seven days of a prior sale was to be considered a first request, even though it occurred so soon after the lapse of the initial two-to-four-day period, or whether it was to be considered a second request. Second, they were unsure why the Board was asking them to determine how many people were using the substance during the two-to-four-day period. Finally, they were unsure about

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whether the Board differentiated between the various Schedule V substances when used by different members of a household, although purchased by one particular member.

RESPONSE: The Board stresses that its intent in regulating Schedule V dispensing procedures is to set an overall limit of five requests in a 12-month period before the licensee is required to obtain oral or written confirmation from the purchaser's physician. The two-to-four-day period between requests was intended to provide licensees with a guideline but was not intended to substitute for the licensee's own judgment. As the rule clearly states, any doubts regarding the propriety of a sale should be resolved against making the sale. In addition, if several people are using a substance, a subsequent request within a short period of time may be reasonable. Finally, the rule does not differentiate between the various classes of therapeutic agents when six dispensings are attributable to one purchaser. In that instance, the Board feels that communication with the purchaser's physician is warranted and not overburdensome.

COMMENT: The New Jersey Pharmaceutical Association expressed its concern about the economic impact of the proposed rule, stating its opinion that in a busy pharmacy during the winter cold season a full-time person may be required to accomplish the 12-month Record Book review which is required each time a sale is made.

RESPONSE: The Board disagrees with this comment. In the opinion of the Board, whose membership includes several practicing pharmacists, Record Book review is not difficult and would take, at most, five minutes for each request. Even during the winter cold season, compliance with this rule would not require additional pharmacy personnel. In any event, the higher cost of these Schedule V substances should cover any nominal expense incurred in reviewing and making entries in the Record Book.

Summary of Changes upon Adoption:

In response to a comment from the Department of Health, N.J.A.C. 13:39-6.9(b)3 has been amended for clarification purposes, to include reference to the Department of Health regulation which requires pharmacists to maintain the Schedule V Record Book and to add information which must appear in the Record Book pursuant to that regulation.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

13:39-6.9 Restriction on sale of Schedule V over-the-counter controlled substances

(a) It shall be considered unprofessional conduct for a pharmacist to dispense a Schedule V over-the-counter controlled substance when:

1. The pharmacist, in his or her professional judgment, knows or reasonably should know that the requested substance will be used for unauthorized or illicit consumption or distribution; or
2. The pharmacist, in his or her professional judgment, knows or reasonably should know that the person requesting the substance previously used it for unauthorized or illicit consumption or distribution.

(b) The standard of professional judgment and care that attends the sale of a Schedule V over-the-counter controlled substance shall conform to the following:

1. All pharmacists shall comply with N.J.A.C. 8:65-7.19, which requires that the sale of specified controlled substances be limited in quantity during any 48-hour period, that the purchaser be at least 18 years of age, and that the pharmacist obtain suitable identification (including proof of age where appropriate) from every purchaser not known to the pharmacist.
2. In all instances, any doubts regarding the propriety of a sale of a Schedule V substance shall be resolved against making the sale.
3. The pharmacist shall enter every sale of a Schedule V substance in the Over-the-Counter Schedule V Record Book ***pursuant to N.J.A.C. 8:65-7.19***. The information to be recorded shall include the purchaser's first and last name, street address, city and state*, **the name and quantity of the Schedule V substance sold, the date of each sale, and the name or initials of the pharmacist making the sale***.
4. Upon an individual's second request for a Schedule V substance within a short period of time (two to four days), the pharmacist shall determine, through direct communication with the purchaser, whether the substance is being used correctly. In that regard, the pharmacist shall ascertain how many people are using the substance and whether the condition which the substance is being used to treat is improving.

5. Upon an individual's third request for a Schedule V substance within a short period of time relative to the number of persons using it (two to four days subsequent to the second purchase), the pharmacist shall advise the purchaser of the substance's abuse potential and shall caution the purchaser to consult a physician if the condition for which the substance is being used does not improve.

6. Upon an individual's fourth request for a Schedule V substance within a short period of time (two to four days subsequent to the third purchase), the pharmacist shall determine, through direct communication with the purchaser, how many people are using the substance, whether continued use will be therapeutic, whether the purchaser is treating a condition which requires a physician's consultation, whether the purchaser is exhibiting signs of drug abuse and whether the purchaser is making similar requests of other local pharmacies.

7. If a pharmacist determines that an individual's request for a Schedule V substance within a short period of time (two to four days) subsequent to his or her fourth purchase is warranted, the pharmacist shall document in the Over-the-Counter Schedule V Record Book the justification for such sale. In addition, the pharmacist shall recommend that the purchaser consult with a physician for medical evaluation due to the substance's abuse potential as well as the potential hazard presented by the substance's continued use.

8. If any Schedule V substance is dispensed to one individual more than five times within any 12-month period, the pharmacist shall obtain oral or written confirmation from the purchaser's physician as to the continued need for the substance and shall document such confirmation in the Over-the-Counter Schedule V Record Book.

(a)

NEW JERSEY RACING COMMISSION

**Thoroughbred Rules
Administering Medication to Respiratory Bleeders
Adopted Amendment: N.J.A.C. 13:70-14A.9**

Proposed: June 4, 1990 at 22 N.J.R. 1716(b).

Adopted: August 23, 1990, by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.
Filed: August 31, 1990 as R.1990 d.485, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: October 1, 1990;
Operative Date: January 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.9 Administering medication to respiratory bleeders

(a) (No change.)

(b) All horses that are placed on the veterinarian's list shall be required to be treated by a licensed practicing veterinarian in the stall assigned to that horse on the grounds of the Racing Association or in the receiving barn. During this period the horse shall be under the care and custody of a groom or caretaker appointed by the trainer. Furosemide, a diuretic medication that is intended to control respiratory bleeding, shall be administered by a licensed practicing veterinarian and shall be limited to an intravenous dose of 0.25 milligrams (mg) per pound of body weight (0.50 mg per kilogram) or 250 milligrams (five cubic centimeters (cc)) in a 1,000 pound horse at least four hours prior to race time. Said practicing veterinarian shall make daily reports of all said treatments and file said reports with the State Veterinarian each day.

(c) Post-race urine and blood samples may be taken by or under the supervision of the State Veterinarian from all horses treated with furosemide to control respiratory bleeding pursuant to the requirements set forth above. In the event a post-race analysis of a blood sample reveals that the concentration of furosemide exceeds a level of 50 nanograms per milliliter of plasma (50 ng/ml), the trainer and/

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or the practicing veterinarian shall be liable to the penalties as set forth in (e) below.

(d) (No change.)

(e) Should the stewards determine that any person or persons have violated (c) above, they shall punish the offending party as follows:

1. A trainer and/or veterinarian shall receive a warning for the first time a horse in his or her care shall show a test result in excess of 50 nanograms per milliliter of plasma.

2. A trainer and/or veterinarian shall receive a fine not to exceed \$500.00 for a second time the same horse shows a test result in excess of 50 nanograms per milliliter of plasma.

3. Should the same horse show a test result in excess of 50 nanograms per milliliter of plasma for a third time the trainer and/or veterinarian shall be suspended, fined or both.

4. Repeated violations of (c) above by a trainer and/or veterinarian for any horse under their care may subject said trainer and/or veterinarian to fine and/or suspension regardless of whether or not the same horse is involved.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules

Administering Medication to Respiratory Bleeders

Adopted Amendment: N.J.A.C. 13:71-23.8

Proposed: June 4, 1990 at 22 N.J.R. 1718(a).

Adopted: August 23, 1990 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Filed: August 31, 1990 as R.1990 d.486, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: October 1, 1990;

Operative Date: January 1, 1991.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

13:71-23.8 Administering medication to respiratory bleeders

(a) (No change.)

(b) All horses that are placed on the veterinarian's list shall be required to be treated by a licensed practicing veterinarian in the stall assigned to that horse on the grounds of the Racing Association or in the receiving barn. During this period the horse shall be under the care and custody of a groom or caretaker appointed by the trainer. Furosemide, a diuretic medication that is intended to control respiratory bleeding, shall be administered by a licensed practicing veterinarian and shall be limited to an intravenous dose of 0.25 milligrams (mg) per pound of body weight (0.50 mg per kilogram) or 250 milligrams (five cubic centimeters (cc)) in a 1,000 pound horse at least four hours prior to race time. Said practicing veterinarian shall make daily reports of all said treatments and file said reports with the State Veterinarian each day.

(c) Post-race urine and blood samples may be taken by or under the supervision of the State Veterinarian from all horses treated with Lasix® (furosemide) to control respiratory bleeding pursuant to the requirements set forth above. In the event a post-race analysis of a blood sample reveals that the concentration of furosemide exceeds a level of 50 nanograms per milliliter of plasma (50 ng/ml) the trainer and/or the practicing veterinarian shall be liable to the penalties as set forth in (e) below.

(d) (No change.)

(e) Should the stewards determine that any person or persons have violated (c) above, they shall punish the offending party as follows:

1. A trainer and/or veterinarian shall receive a warning for the first time a horse in his or her care shall show a test result in excess of 50 nanograms per milliliter of plasma.

2. A trainer and/or veterinarian shall receive a fine not to exceed \$500.00 for a second time the same horse shows a test result in excess of 50 nanograms per milliliter of plasma.

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3. Should the same horse show a test result in excess of 50 nanograms per milliliter of plasma for a third time, the trainer and/or veterinarian shall be suspended, fined or both.

4. Repeated violations of (c) above by a trainer and/or veterinarian for any horse under their care may subject said trainer and/or veterinarian to fine and/or suspension, regardless of whether or not the same horse is involved.

TRANSPORTATION

(b)

DIVISION OF SUPPORT SERVICES BUREAU OF RECORDS AND SERVICES

Records Management

Adopted New Rules: N.J.A.C. 16:1

Proposed: August 6, 1990 at 22 N.J.R. 2243(a).

Adopted: September 6, 1990, by Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Filed: September 10, 1990 as R.1990 d.496, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-27, and 47A-1 et seq.

Effective Date: October 1, 1990.

Expiration Date: October 1, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the new rules can be found in the New Jersey Administrative Code at N.J.A.C. 16:1.

Full text of the amendments to the expired rules adopted as new follows.

16:1-2.2 Requirements; accessibility and sale of public records

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

(c) The records listed below shall not be deemed NJDOT public records but may be made available for inspection, examination, and copying only by an individual who demonstrates to the satisfaction of the Custodian of Records, Director, Division of Support Services, in conjunction with the manager, regional engineer or higher level having custody of such records, that the citizen has a legitimate beneficial interest in such record or the protection of his property rights or the protection of any interest the citizen may have in any matter affecting the citizen to which said record is relevant. Availability may be limited to that part of the record which is particularly relevant to the citizen. Such records include all those which are made, maintained or kept on file by the NJDOT relating to:

1.-14. (No change.)

(d)-(i) (No change.)

16:1-2.3 Procedure for obtaining NJDOT public records

(a) A private citizen, in person or in writing, may obtain a NJDOT public record directly from a manager, regional engineer, or higher level upon conferring with the Custodian of Records, Director, Division of Services.

(b) A private citizen who does not know where a particular NJDOT public record may be obtained should contact, in person or in writing, the:

Official Custodian of Records
Division of Support Services
New Jersey Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
Attn: Manager, Bureau of Records and Services

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(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Speed Limits
Routes N.J. 159 in Morris and Essex Counties, and
N.J. 183 in Morris and Sussex Counties**

Adopted Amendment: N.J.A.C. 16:28-1.8 and 1.27

Proposed: August 6, 1990 at 22 N.J.R. 2244(a).
Adopted: September 6, 1990, by John F. Dunn, Jr., Director,
Division of Traffic Engineering and Local Aid.
Filed: September 10, 1990 as R.1990 d.492, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.
Effective Date: October 1, 1990.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.8 Route 159

(a) The rate of speed designated for the certain parts of State highway Route 159 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Montville Township, Morris County:

(1) 45 miles per hour between the westernmost intersection of Route U.S. 46 and the Borough of Fairfield (Essex County) westerly line (approximate mileposts 0.00 to 0.34); thence

ii. In Fairfield Borough, Essex County:

(1) Zone 1: 45 miles per hour between the Montville Township (Morris County) easterly line and Brook Street (Co. Rd. 614S) (approximate mileposts 0.34 to 0.58); thence

(2) Zone 2: 40 miles per hour between Brook Street (Co. Rd. 614S) and the easternmost intersection of Route U.S. 46 (approximate mileposts 0.58 to 1.35).

16:28-1.27 Route 183

(a) The rate of speed designated for the certain parts of State highway Route 183 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Morris County:

(1) Roxbury Township:

(A) 50 miles per hour between Route N.J. 183 intersection with northbound Route U.S. 206 at milepost 95.23 intersection with Route I-80 southbound ramps and Netcong Borough southerly line (approximate mileposts 0.00 to 0.25); thence

(2) Netcong Borough:

(A) Zone 1: 50 miles per hour between Roxbury Township northerly line and the center of Route U.S. 46 (approximate mileposts 0.25 to 0.45); thence

(B) Zone 2: 30 miles per hour between the center of Route U.S. 46 and Stanhope Borough southerly line (approximate mileposts 0.45 to 0.94).

ii. In Sussex County:

(1) Stanhope Borough:

(A) Zone 1: 30 miles per hour between Netcong Borough northerly line and Brooklyn Road (approximate mileposts 0.94 to 1.14); thence
(B) Zone 2: 40 miles per hour between Brooklyn Road and Route N.J. 183 intersection with southbound Route N.J. 183 at Dell Road (approximate mileposts 1.14 to 1.85).

2. For northbound direction of traffic:

i. In Sussex County:

(1) Stanhope Borough:

(A) 40 miles per hour between Route N.J. 183 intersection with southbound Route N.J. 183 at Dell Road and northernmost inter-

section with northbound Route U.S. 206 at milepost 98.02 (approximate mileposts 1.85 to 2.12).

3. For southbound direction of traffic:

i. In Morris County:

(1) Roxbury Township:

(A) 50 miles per hour between Route N.J. 183 southernmost intersection with Route U.S. 206 and Route N.J. 183 intersection with Route I-80 southbound ramp (approximate mileposts Route U.S. 206, 95.03 to 95.23).

ii. In Sussex County:

(1) Stanhope Borough:

(A) 40 miles per hour between the intersection with southbound Route U.S. 206 at milepost 97.92 and intersection with northbound Route N.J. 183 at Dell Road (approximate mileposts Route U.S. 206, 97.92 to Route N.J. 183, 1.85).

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

**Notice of Administrative Correction
Speed Limits**

Route U.S. 206 in Somerset, Morris and Sussex Counties

N.J.A.C. 16:28-1.72

Take notice that the Department of Transportation has discovered an error in the New Jersey Administrative Code at N.J.A.C. 16:28-1.72. That rule, as a compendium of speed limits on U.S. Route 206, was created effective June 14, 1979, through the recodification and combination of all or parts of then-current N.J.A.C. 16:28-1.24, 1.26, 1.40, 1.76, 1.82, 1.124 and 1.125 (see 11 N.J.R. 410(a)). However, the recodification of N.J.A.C. 16:28-1.26 (see 7 N.J.R. 573(a) and 8 N.J.R. 139(e)) as part of N.J.A.C. 16:28-1.72(d) was erroneously omitted from the Code in the publication of the revised N.J.A.C. 16:28-1.72. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

16:28-1.72 Route U.S. 206

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

(d) The rate of speed designated for the certain part of State highway Route U.S. 206 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

[i. 40 mph from the bridge over a creek located approximately 1,260 feet south of the D.L. & W. Railroad (Main Line) underpass, at Andover Borough, to the intersection of Maple Avenue; thence

ii. 30 mph to a point 100 feet north of County Road 517; thence]

i. Bedminster Township:

(1) Zone 1: 50 mph (also Route U.S. 202) beginning at the Bridgewater Township-Bedminster Township line (Chambers Brook) extending into Bedminster Township to 1,120 feet north of Route I-78 overpass;

(2) Zone 2: 40 mph (also Route U.S. 202) in Bedminster Township from 1,120 feet north of Route I-78 overpass to 1,700 feet north of Route 525 (Washington Valley Road).

ii. Bedminster Township, Peapack-Gladstone Borough, Chester Township, Chester Borough:

(1) Zone 3: 50 mph (also part Route U.S. 202) in Bedminster Township from 1,700 feet north of Route 525 (Washington Valley Road) extending through Peapack-Gladstone Borough, Bedminster, Chester Townships and into Chester Borough to 450 feet south of Maple Avenue.

iii. Chester Borough:

(1) Zone 4: 40 mph in Chester Borough from 450 feet south of Maple Avenue to 1,100 feet north of Route 24 (Main Street).

iv. Chester Borough, Chester, Mount Olive and Roxbury Townships:

(1) Zone 5: 50 mph in Chester Borough from 1,100 feet north of Route 24 (Main Street) extending through Chester and Mount Olive

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Townships and into Roxbury Township to Route I-80, Route 183 and Route U.S. 206 Interchange.

v. Roxbury Township, Netcong Borough, Mount Olive Township, Stanhope Borough and Byram Township:

(1) Zone 6: 55 mph (also part Route I-80) in Roxbury Township from Route I-80, Route 183 and Route U.S. 206 Interchange extending through Netcong Borough, Mount Olive Township and into Stanhope Borough and Byram Township to Route 183.

vi. Stanhope Borough and Byram Township:

(1) Zone 7: 50 mph in Stanhope Borough and Byram Township from Route 183 to Acorn Street.

vii. Byram Township:

(1) Zone 8: 40 mph in Byram Township from Acorn Street to Waterloo Road-Brookwood Road;

(2) Zone 9: 45 mph in Byram Township from Waterloo Road-Brookwood Road to 570 feet north of High Glen Drive.

viii. Byram Township and Andover Borough:

(1) Zone 10: 50 mph in Byram Township from 570 feet north of High Glen Drive extending into Andover Borough to 1,260 feet south of the D.L. and W. Railroad (main line) overpass.

ix. Andover Borough:

(1) Zone 11: 40 mph in Andover Borough from 1,260 feet south of D.L. and W. Railroad (main line) overpass to Maple Avenue;

(2) Zone 12: 30 mph in Andover Borough from Maple Avenue to 100 feet north of Route 517;

(3) Zone 13: 40 mph in Andover Borough from 100 feet north of Route 517 to the Andover Borough-Andover Township line.

Recodify existing iii.-xiv. as x.-xxi. (No change in text.)

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

Speed Limits

Routes N.J. 31 in Hunterdon County and N.J. 47 in Cape May County

Adopted Amendments: N.J.A.C. 16:28-1.106 and 1.132

Proposed: August 6, 1990 at 22 N.J.R. 2245(a).

Adopted: September 6, 1990 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: September 10, 1990 as R.1990 d.493, without change.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Effective Date: October 1, 1990.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.106 Route 31

(a) The rate of speed designated for State highway Route 31 described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:

1. (No change.)

2. Hunterdon County:

i.-ii. (No change.)

iii. Raritan Township:

(1) Zone 6a: 55 mph between Toad Lane (East Amwell Township line-southerly Raritan Township line) and the driveway to Exxon Products (approximate mileposts 17.83 to 20.50); thence

(2) Zone 7: 50 mph between the driveway to Exxon Products and Raritan Street (approximate mileposts 20.50 to 21.50); thence

(3) Zone 7a: 45 mph between Raritan Street and the Borough of Flemington southerly line (approximate mileposts 21.50 to 21.61).

iv. Flemington Borough:

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(1) Zone 8: 45 mph between the Raritan Township line and the Route U.S. 202-Route N.J. 31-Route N.J. 12 traffic circle (approximate mileposts 21.61 to 21.95); thence

(2) Zone 9: 40 mph between the Route U.S. 202-Route N.J. 31-Route N.J. 12 traffic circle and Raritan Township line (mileposts 21.95 to 22.28); thence

(3) Forty-five mph between the Flemington Borough-Raritan Township line (mileposts 22.28 to 22.4); thence

v. Raritan Township:

(1) Forty-five mph between the Flemington Borough-Raritan Township line and 50 feet south of Highland Avenue (mileposts 22.4 to 22.8); thence

(2) Zone 9a: 40 mph between the Flemington Borough northerly line and the Raritan Township southerly line (approximate mileposts 22.88 to 22.97); thence

vi. Raritan Township and Flemington Borough:

(1) Zone 10: 40 mph between the Raritan Township northerly line and the Raritan Township southerly line (approximate mileposts 22.97 to 23.13); thence

vii. Raritan Township:

(1) Zone 11: 40 mph between the dual municipal lines of Flemington Borough and Raritan Township and Minneakonig Road (approximate mileposts 23.13 to 23.85); thence

(2) Zone 11a: 45 mph between Minneakonig Road and Bartels Corner-Sand Hill Road (Co. Rd. 612) (approximate mileposts 23.85 to 24.40); thence

(3) Zone 12: 50 mph between Bartels Corner-Sand Hill Road (Co. Rd. 612) and the Readington Township southerly line (South Branch Raritan River) (approximate mileposts 24.40 to 25.45); thence

viii.-xiv. (No change.)

3. (No change.)

16:28-1.132 Route N.J. 47

(a) The rate of speed designated for the certain part of State highway Route 47 described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:

1. In Cape May County:

i. City of Wildwood:

(1) 35 mph between Susquehanna Avenue and Lower Township-Wildwood City line (southernmost end of the bridge over the Grassy Sound Channel) (approximate mileposts 0.66 to 0.90); thence

ii. Lower Township:

(1) Zone 1: 40 mph between the Wildwood City-Lower Township line (southernmost end of the bridge over the Grassy Sound Channel), and Shawcrest Road (approximate mileposts 0.90 to 1.15); thence

(2) Zone 2: 50 mph between Shawcrest Road and the Middle Township-Lower Township line (approximate mileposts 1.15 to 1.55); thence

iii. Middle Township:

(1) Zone 1: 50 mph between the Lower Township-Middle Township line and 700 feet south of the center at the northbound roadway of the Garden State Parkway overpass (approximate mileposts 1.55 to 2.96); thence

(2) Zone 2: 40 mph between 700 feet south of the center of the northbound roadway of the Garden State Parkway overpass and Route U.S. 9 (approximate mileposts 2.96 to 3.76); thence

(3) Zone 3: 35 mph between Route U.S. 9 and Co. Road 626 (Railroad Avenue) (approximate mileposts 3.76 to 4.07); thence

(4) Zone 4: 40 mph between Co. Road 626 (Railroad Avenue) and Hawthorne Drive (approximate mileposts 4.07 to 4.46); thence

(5) Zone 5: 45 mph between Hawthorne Drive and 1000 feet north of Fishing Creek (approximate mileposts 4.46 to 5.47); thence

(6) Zone 6: 50 mph between 1000 feet north of Fishing Creek and 1000 feet south of Burleigh Avenue (approximate mileposts 5.47 to 6.43); thence

(7) Zone 7: 40 mph between 1000 feet south of Burleigh Avenue and 1000 feet north of Burleigh Avenue (approximate mileposts 6.43 to 6.83); thence

TRANSPORTATION

(8) Zone 8: 45 mph between 1000 feet south of Burleigh Avenue and 1,700 feet north of Burleigh Avenue (approximate mileposts 6.83 to 7.0); thence

(9) Zone 9: 50 mph between 1,700 feet north of Burleigh Avenue and the Dennis Township-Middle Township line (approximate mileposts 7.0 to 15.96); thence

iv. Dennis Township:

(1) 50 mph between the Middle Township-Dennis Township line and the Dennis Township-Maurice River Township line (Cape May County-Cumberland County line) (approximate mileposts 15.96 to 24.45).

2.-4. (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

**Notice of Administrative Correction
Restricted Stopping and Standing
Route N.J. 77 in Cumberland County**

Adopted Amendment: N.J.A.C. 16:28A-1.41

Take notice that the Office of Administrative Law has discovered an error in the text of the proposed amendment to N.J.A.C. 16:28A-1.41 published in the July 2, 1990 New Jersey Register at 22 N.J.R. 1990(a). The notice of proposal filed by the Department of Transportation with the Office of Administrative Law (see PRN 1990-340) reflected that N.J.A.C. 16:28A-1.41(a)1 was proposed for deletion and replacement with a new paragraph, and that paragraphs (a)2 through 5 were not changed. The proposal Summary states that "no stopping and standing zones" were proposed to be established on Route 77 in the City of Bridgeton, which is the municipality addressed in N.J.A.C. 16:28A-1.41(a)1.

Through an error in the preparation of the notice of proposal for publication in the New Jersey Register, the text of N.J.A.C. 16:28A-1.41(a)2 through 5 appeared erroneously in brackets to signify proposed deletion. That the Department of Transportation intended no such change is indicated by both the proposal Summary and the notation of paragraphs (a)2 through 5 as "(No change.)" in the proposed text.

The adoption of the proposed amendment to N.J.A.C. 16:28A-1.41 was published in the September 17, 1990 New Jersey Register at 22 N.J.R. 3028(a), and is correct as reproduced therein, with a new paragraph (a)1 and paragraphs (a)2 through 5 noted as "(No change.)"

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7 to correct any confusion that may have arisen due to the error in the text of the proposed amendment.

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

**State Health Benefits Program
Full-Time Employees**

Adopted Amendment: N.J.A.C. 17:9-4.2

Proposed: June 18, 1990 at 22 N.J.R. 1903(a).

Adopted: August 23, 1990 by the State Health Benefits

Commission, Patricia A. Chiacchio, Acting Secretary.

Filed: August 30, 1990 as R.1990 d.480, **without change.**

Authority: N.J.S.A. 52:14-17.27.

Effective Date: October 1, 1990.

Expiration Date: October 3, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

ADOPTIONS

17:9-4.2 State: full-time defined

(a) For purposes of State coverage, "full-time" shall mean:

1. through 6. (No change.)

7. Deputy attorneys general in the Office of the Attorney General and the Divisions of Criminal Justice, Gaming and Law in the Department of Law and Public Safety, who are participating in a pilot program of part-time employment for deputy attorneys general conducted by the Department and are paid for a minimum of 20 hours per week, notwithstanding the provisions of N.J.A.C. 17:9-4.4, until June 30, 1992.

(c)

DIVISION OF PENSIONS

**State Health Benefits Program
Retirement**

Adopted New Rule: N.J.A.C. 17:9-6.7

Proposed: June 18, 1990 at 22 N.J.R. 1903(b).

Adopted: August 23, 1990 by the State Health Benefits

Commission, Patricia A. Chiacchio, Acting Secretary.

Filed: August 30, 1990 as R.1990 d.481, **without change.**

Authority: N.J.S.A. 52:14-17.27.

Effective Date: October 1, 1990.

Expiration Date: October 3, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:9-6.7 Coverage for PFRS and SPRS accidental death benefit recipients

(a) For the purposes of this section, "eligible person" means the widow or widower and child, as defined in N.J.S.A. 43:16A-1, of a member of the Police and Firemen's Retirement System, to or for whom an accidental death benefit is payable under N.J.S.A. 43:16A-10, and the surviving spouse and child, as defined in N.J.S.A. 53:5A-3, of a member of the State Police Retirement System, to or for whom an accidental death benefit is payable under N.J.S.A. 53:5A-14.

(b) An eligible person may participate in the State Health Benefits Program regardless of whether the member's employer is a participating employer. The premiums for the coverage shall be paid by the State of New Jersey, as provided in P.L. 1989, c.271.

(c) Persons eligible to participate in the program under this section shall participate in the retiree group. If there is a widow or widower, or surviving spouse, eligible children shall participate as dependents of the widow or widower, or surviving spouse. If there is no widow or widower, or surviving spouse, eligible children shall participate as members of the program, and their eligibility to participate shall continue as long as they qualify as children under the laws governing the retirement system of the deceased member.

(d) An eligible person, as defined in (a) above, shall be eligible for coverage under the program as of February 1, 1990, or the effective date for an accidental death benefit under the retirement system of the deceased member, whichever is later. An eligible person shall receive a refund for premiums paid for health insurance coverage comparable to that provided under the program for the period from the date of eligibility for coverage under this section and the effective date of enrollment, but the refund shall not exceed the cost of the coverage under the program. An eligible person who is covered under Part B of the Federal Medicare program shall receive a refund for the amount paid for Part B. While an application for an accidental death benefit is pending, an eligible person enrolled in the program may continue coverage on a direct payment basis. If an accidental death benefit is granted, the eligible person shall receive a refund of the payments made.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax

Investment Companies

Adopted Amendments: N.J.A.C. 18:7-1.15 and 3.8

Proposed: June 18, 1990 at 22 N.J.R. 1904(a).

Adopted: August 28, 1990 by Benjamin J. Redmond, Acting Director, Division of Taxation.

Filed: August 30, 1990 as R.1990, d.482, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:10A-27.

Effective Date: October 1, 1990.

Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:

The Division received two comments from two interested professional associations. The comments of the first commenter and the agency responses were as follows:

COMMENT 1: N.J.A.C. 18:7-1.15(b)1 provides that making loans are not qualified investment activities. However, if a company invests in qualified investment assets and makes a loan to an affiliated entity, this should still be a qualified activity. If a company does not offer loans to the public, it is engaged in a passive activity rather than actively marketing such loans. As such, it would not be in competition with national banks. This would be especially true if a loan was made at or below the company's capital source rates. This would negate the concept of competing with national banks since there would be no objective of making a profit on such funds. Therefore, this section should be revised to reflect this exception. Likewise, Example 6 of N.J.A.C. 18:7-1.15(f) should also be revised.

RESPONSE: Whether the activity is in competition with banks is not the sole criterion for determining whether an activity is a banking and not an investment type activity. A significant question is whether the activity is generally the type of activity undertaken by the banking industry. Making loans is clearly a central function of banking.

Including loans between affiliates in the definition of qualified investment activities would contravene the clear purpose of the statute which expressly excluded banking corporations from the definition of "investment company," and which was intended to encourage the establishment of investment companies in New Jersey, not an increase in loans to affiliates.

COMMENT 2: N.J.A.C. 18:7-1.15(b)6 provides that buying, and presumably owning, tangible personal property is not a qualified investment asset. However, if the only activities performed by an investment company qualify under the regulation, then the fixed assets directly related to these activities should qualify as investment assets. For example, a desk used by investment company personnel to perform investment activities should be an investment asset.

RESPONSE: N.J.S.A. 54:10A-4(f) is clearest in its definition of what constitutes investment assets. Including other assets such as fixed assets because they are somehow related to the investing activity or used by personnel of the investment company would go far beyond the scope of the statute. It would also open the door to continued dispute over what constitutes an investment asset and which assets are directly related to investing activity.

COMMENT 3: There appears to be a contradiction in N.J.A.C. 18:7-1.15(c) and (d). Subsection (c) provides that a reduction in expense (e.g., for services performed) is included in the term "receipts" (presumably for the required calculations). However, subsection (d) excludes certain reimbursements of expenses from the required calculations. Since there may be no difference between a reduction of expense and a reimbursement of expense, this should be clarified in the regulation.

RESPONSE: "Receipts" as defined in subsection (c) are includable even if accounted for as a reduction of expense. While at first glance it appears to be a close distinction, subsection (d) makes clear that "reimbursements" are payments made for expenses of the entity making the reimbursement, not those of the taxpayer. A "reimbursement" is not related to a true expense of the taxpayer and the taxpayer would have

no right to claim the expense or its recovery on its return. A "receipt" is related to an expense of the taxpayer which may be claimed by the taxpayer on its return. The two subsections taken together therefore adequately distinguish between "receipts" and "reimbursements."

COMMENT 4: Notwithstanding Comment 1, it is unclear in Example 6 if such a company is prevented from qualifying as an investment company even if less than ten percent of its business consists of making loans (as indicated in the phrase "prohibited by the Act from qualifying for the election"). If Corporation B is prohibited from qualifying as an investment company, then the 90 percent business test would be moot.

RESPONSE: The example is simply intended to emphasize that a corporation which makes or deals in secured or unsecured loans and discounts will not be able to apply the business test to determine if it qualifies as an investment company since it is a financial business and prohibited from qualifying for the election. The example cannot be construed to suggest that if less than 10 percent of the corporation's business consists of making loans it might be allowed to qualify since the last clause states that it is prohibited by the Act from qualifying for the election.

The comments of the second association were as follows:

COMMENT 1: The commenter supported the comments of the first professional association.

RESPONSE: The commenter was advised of the Division's responses to the first professional association.

COMMENT 2: Proposed N.J.A.C. 18:7-1.15(b)3 excludes from qualified investment activities an investment in a general partnership. If the activities and assets of the general partnership would otherwise qualify as "qualified investment assets" and "qualified investment activities," our committee believes that a pass-through of those attributes is appropriate for determining investment company status.

RESPONSE: The statute itself enumerates qualified investment assets and excludes general partnership interests from the definition. As stated in the proposal, the status of general partner is not considered as consistent with a qualified investment activity. A general partnership interest and most joint ventures will generally carry with them a substantial say in the management of the enterprise. Furthermore, it may be noted that Division research has shown that general partnership interests are not ordinarily considered to be "securities" under applicable securities laws. Sales of such interests, therefore, would not be considered to be sales of "securities" for purposes of the present rule. Including general partnership interests would therefore appear to contradict the language and intent of the statute.

COMMENT 3: The statute and the prior regulations provide, in essence, that cash on deposit shall be considered to be a qualified asset. Since this appears to have been inadvertently omitted in the proposed rules, we recommend that it be included.

RESPONSE: The Division agrees that since the statute specifies that a corporation will not be considered an investment company unless it has 90 percent or more of its gross assets invested in qualified assets or cash on deposit, cash is the equivalent of a qualified asset. The proposal eliminates a portion of the existing regulation which merely repeated verbatim the relevant statutory clause on this point. No change is made, however, to N.J.A.C. 18:7-1.15(c) and examples, redesignated (f), which includes cash on deposit in the three-part business test to determine investment company status. The Division will change the proposed amendment on adoption to make it clear that cash on deposit is included in the statutory formula for determination of investment company status.

Summary of Changes Upon Adoption:

The Division shifted the location of the final sentence in 18:7-1.15(b) to make clear that it applies to all eight items in (b).

The Division added a reference to cash on deposit among qualified investment assets in response to a commenter's suggestion.

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks *thus*; deletions from the proposal shown in brackets with asterisks *[thus]*).

18:7-1.15 Investment company; definition

(a) "Investment company" means any corporation:

1. Whose business for the period covered by its return consisted to the extent of at least 90 percent of "qualified investment activities" which are: investing or reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights, and other securities or the holding thereof after investing or reinvesting therein for its own account. As used in this rule, "qualified investment assets" are stocks, bonds,

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notes, mortgages, debentures, patents, patent rights, and other securities ***and cash on deposit***;

2. Which had for the period covered by the return 90 percent or more of its average gross assets in New Jersey, at cost, invested in "qualified investment assets" referred to in (a)1 above;

3. Which meets the numerical tests in (f) below;

4. Which is not a banking corporation as defined by the act;

5. Which is not a financial business corporation as defined by the act; and

6. Which is not a merchant or dealer in stocks, bonds, or other securities, and which is regularly engaged in buying and selling such securities to customers.

(b) "Qualified investment assets" are measured by the taxpayer's assets as reported for book purposes at cost on a separate legal entity basis for balance sheet purposes. "Qualified investment activities" are measured by gross receipts and expenses as reported for Federal income tax purposes, and by adding thereto, Federal, state, municipal, and other obligations included in determining New Jersey entire net income, but not otherwise included in Federal taxable income. "Qualified investment activities" and "qualified investment assets" do not include the following specific assets or activities*. **The receipts, direct and indirect expenses and assets connected with the following will not be included in the numerator of any test***:

1. The making and/or negotiating of loans. These activities are generally considered as either banking and/or financial business activities;

2. The renting or leasing of real or tangible personal property. These activities are generally considered financial business activities or other than investment activities;

3. The investment in general partnerships since the status of a general partner is not considered as consistent with a qualified investment activity and investments in general partnerships are not statutorily enumerated assets;

4. The direct day to day management of operations of affiliated corporations or the actual providing of services, directly or as an intermediary, for the benefit of affiliated corporations;

5. The buying and/or selling of stocks, bonds, notes, and other securities for the corporation's customers;

6. The buying and/or selling of real or tangible personal property whether it is classified as inventory, as operating assets, or as capital assets;

7. The direct investment in collectibles, including but not limited to stamps, pottery, cars, gold coins; or

8. The direct investment in trademarks or similar assets. ***[The receipts, direct and indirect expenses and assets connected with the above will not be included in the numerator of any test.]***

(c) "Receipts" include, but are not limited to, the gross payments received from others (affiliated or not) regardless of whether the receipt is accounted for as an item of income or reduction in expense:

1. For services performed;

2. For the sale or transfer of assets;

3. For income recognized from the liquidation of liabilities; and

4. From the investment or reinvestment of capital in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities, includible in computing entire net income.

(d) "Reimbursements" received are payments having no element of profit in a transaction or element of covering indirect costs, and are received from others for expenses made on their behalf and are the true expenses of the entity making the reimbursement; hence, neither the expense nor its recovery should appear on the taxpayer's income statement for Federal purposes. Where taxpayer's accounting method displays such items on its income statement, such items will be removed from any calculations required under the regulations for the taxpayer receiving the reimbursement and included on the reimbursing company's return.

(e) A corporation electing to file as an investment company shall make its election on a timely filed original return or on a timely filed amended return, and shall substantiate its claim in accordance with the tests enumerated in this rule. Where the taxpayer does not clearly document its claim to investment company status through attached riders, the claim will be denied. An election made on an amended return shall be filed in accordance with the periods shown in N.J.A.C. 18:7-13.8(a) to be eligible for any refund claimed. An election to file as an investment company, once made, may only be revoked by the taxpayer within two years of the filing of the original return. The election to file as an investment company is a taxpayer election and may not be initiated by the Division of Taxation or granted by the Division outside the time frame presented above.

(f) (No change in text.)

Example No. 1
Corporation A

Adjusted Income Test:

Sch. A—6 Other Interest	\$56,205	Sch. A—11 Total Income	\$65,152
Sch. A—29 Interest on Exempt Securities	31,385	Sch. A—29 Interest on Exempt Securities	31,385
Total Investment Income	<u>\$87,590</u>	Sch. D—Selling Price \$71,000 Less Gain—\$8,947	62,053
Sch. A—9(a) Capital gain (*)	8,947		
Total Income	<u>\$96,537</u>	Total Income—Adjusted	<u>\$158,590</u>

(*)From sale of non-investment type assets.

Ratio of Investment Income (\$87,590) to Total Income Adjusted (\$158,590) equals 55%

Unadjusted Income Test:

Sch. A—6 Other Interest	\$56,205	Sch. A—6 Other Interest	\$56,205
Sch. A—29 Interest on Exempt Securities	31,385	Sch. A—9(a) Capital Gain	8,947
Total Investment Income	\$87,590	Sch. A—29 Interest on Exempt Securities	31,385
Sch. A—9(a) Capital Gain (*)	8,947		
Total Income	\$96,537	Total Income—Unadjusted	<u>\$96,537</u>

(*)From sale of non-investment type assets.

Ratio of Investment Income (\$87,590) to Total Income Unadjusted (\$96,537) equals 91%

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Deduction Test:			
Sch. A—13 Salaries	\$24,000	Sch. A—13 Salaries	\$24,000
Sch. A—17 Tax (Investment related)	1,000	Sch. A—17 Taxes	1,000
Total related to Investments	<u>\$25,000</u>	Sch. A—27 Total Deductions	<u>\$25,000</u>
Sch. A—17 Taxes (Real Estate)	1,200		
Sch. A-27 Total Deductions	<u>\$26,200</u>		

Ratio of Investment Related Deductions (\$25,000) to Total Deductions (\$26,200) equals 95%

Assets Test—CBT-100 Schedule B (restated at cost)	
Cash	\$21,558
Bonds, Notes & Mortgages	123,821
N.J. State & Local Governmental Obligations	27,140
All Other Governmental Obligations	1,067,874
Total Intangible Personal Property	<u>\$1,240,393</u>
Land	5,000*
Buildings	30,000*
Machinery & Equipment	17,000*
Total Real and Tangible Personal Property	<u>\$52,000</u>
Total Assets	\$1,292,393

(*)Sold during accounting period

Ratio of Total Intangible Assets to Total Assets equals 96%

Corporation A does not qualify since it did not meet the adjusted Income Test.

Example No. 2
Corporation B

Adjusted Income Test:			
Sch. A6 Other Interest	\$82,722	Sch. A6 Other Interest	\$82,722
Total Income from Investments	<u>\$82,722</u>	Sch. A—11 Total Income—Adjusted	<u>\$82,722</u>
Ratio of Investment Income to Total Income—Adjusted equals 100%			

Unadjusted Income Test:			
Sch. A6 Other Interest	\$82,722	Sch. A6 Other Interest	\$82,722
Total Income from Investments	<u>\$82,722</u>	Sch. A—11 Total Income—Unadjusted	<u>\$82,722</u>
Ratio of Investment Income to Total Income—Unadjusted equals 100%			

Deductions Test:			
Sch. A—17 Taxes	\$1,709		
Sch. A—18 Interest Expense	37		
Total Investment related deductions	<u>\$1,746</u>	Sch. A—27 Total Deductions	\$1,746
Ratio of Investment Related Deductions equals 100%			

Assets Test: CBT-100 Schedule B (restated at cost)	
Cash	\$26,482
Bonds, Notes & Mortgages	365,444
All Other Governmental Obligations	499,254
Total Investment Type Assets	\$891,180
Total Real and Tangible Personal Property	—0—
Total Assets	\$891,180

Ratio of Investment Type Assets to Total Assets equals 100%

Corporation B qualifies as an investment company since it met each test.

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**Example No. 3
Corporation C**

Adjusted Income Test:

Sch. A—5 Interest on Gov't Obligations	\$9,000	Sch. A—11 Total Income	\$32,000
Sch. A—6 Other Interest	\$5,000	Sch. A—2 Cost of Goods Sold	\$1,000
Sch. A—8 Gross Royalties	8,000	Sch. A—9(a) Sales Price \$10,000 Gain 2,000 equals	(Basis)8,000*
Sch. A—9(a) Capital Gain	2,000	Sch. A—29 Interest on Other Obligations	500
Sch. A—29 Interest on Other Obligations	500	Total Income—Adjusted	\$41,500
Total Income from Investments	<u>\$24,500</u>		
Add: Basis of Asset Sold	8,000*		
Gross Investment Income	<u>\$32,500</u>		

*Investment type asset

Ratio of Gross Investment Income to Total Income—Adjusted equals 78%

Unadjusted Income Test:

Sch. A—11 Total Income	\$32,000	Sch. A—11 Total Income	\$32,000
Sch. A—3 Gross Profit	(1,000)*	Sch. A—29 Interest on Other Obligations	\$500
Sch. A—7 Gross Rents	(6,000)*		
Sch. A—29 Interest on Other Obligations	500	Total Income—Unadjusted	<u>\$32,500</u>
Total Income—from Investments	<u>\$25,500</u>		

(*)Non-investment income

Ratio of Investment Income to Total Income—Unadjusted equals 78%

Deduction Test:

Sch. A—12 Compensation of Officers	\$2,000	Sch. A—12 Compensation of Officers	\$2,000
Sch. A—13 Salaries & Wages	10,000	Sch. A—13 Salaries & Wages	10,000
Sch. A—17 Tax	10,000	Sch. A—17 Taxes	12,000*
		Sch. A—21 Depreciation	1,100
Total Investment Related Deductions	<u>\$22,000</u>	Sch. A—27 Total Deductions	<u>\$25,100</u>

*Includes \$2,000 real estate tax

Ratio of Investment Related Deductions to Total Deductions equals 88%

Assets Test: (CBT-100 Schedule B (restated at cost))

Cash	\$5,000		
Bonds, Notes & Mortgages	50,000		
NJ State & Local Gov't Obligations	10,000		
All Other Gov't Obligations	100,000		
Patents & Copyrights	1,000		
Total Investment Type Assets	<u>\$166,000</u>		
Land	50,000		
Bldgs. & Improvements	200,000		
Total Real and Tangible Personal Property	<u>\$250,000</u>	(non investment type assets)	
Total Assets	<u>\$416,000</u>		

Ratio of Investment Type Assets to Total Assets equals 40%

Corporation C does not qualify as an investment company since it did not meet all tests.

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Example No. 4
Corporation D

Adjusted Income Test:			
Sch. A—4 Dividends	\$14,000		
Sch. A—5 Interest on Gov't Obligations	12,000		
Sch. A—6 Other Interest	11,000		
Sch. A—8 Gross Royalties	<u>11,000</u>	Sch. A—11 Total Income	\$48,000
Sch. A—11 Total Income	\$48,000	Deduct: Capital loss per Federal Sch. D	(10,050)*
Add: Sales price of assets sold	<u>50,000</u>	Add: Basis of capital asset sold	<u>60,050*</u>
Total Investment Income	\$98,000	Total Income—Adjusted	\$98,000

(*Investment type asset sold at a loss
Ratio of Investment Income to Total Income—Adjusted equals 100%

Unadjusted Income Test:			
Total Income from investments	\$48,000	Sch. A—11 Total Income Unadjusted	\$48,000

Ratio of Total Investment Income to Total Income—Unadjusted equals 100%

Deductions Test:			
Total Investment Related Deductions	\$30,250	Investment Related Deductions	\$30,250
		Sch. A—17 Real Estate Tax	675
		Sch. A—21 Depreciation	<u>120</u>
		Sch. A—27 Total Deductions	\$31,045

Ratio of Investment Related Deductions to Total Deductions equals 97%

Assets Test: CBT-100 Schedule B (restated at cost)	
Cash	\$11,000
Accounts & Notes Receivable	12,000
Corporate Stocks	30,000
Bonds, Mortgages & Notes	30,000
NJ State & Local Gov't Obligations	15,000
Patents & copyrights	20,000
All Other Intangible Personalty	<u>\$60,000</u>
Total Investment Type Assets	\$178,000
Land	<u>\$15,000</u>
Furniture & Equipment	1,200
Total Real and Tangible Property	<u>\$16,200</u>
Total Assets	\$194,200

Ratio of Investment Type Assets to Total Assets equals 92%
Corporation D qualifies as an investment company since it met each test.

Example No. 5: Corporation A negotiates and discounts loans as opposed to merely investing in notes that were negotiated by others. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights and other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business for purposes of the Act.

Example No. 6: Corporation B makes or deals in secured or unsecured loans and discounts. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights or other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business prohibited by the Act from qualifying for the election.

Example No. 7: Corporation C rents or leases property in transactions that approximate secured loans. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights or other securities for its own account" since this is considered a financial business activity.

Example No. 8: Corporation D provides and charges Corporation O and other affiliates for general and administrative services it performs on behalf of Corporation O and the affiliates. The charges cover the cost, which includes a percentage of Corporation D's wages, depreciation expense, as well as other direct and indirect expenses incurred by Corporation D to provide these services. Corporation D must include such receipts in the denominator, but not the numerator, in calculating the tests provided under the rule. The charges made to O go beyond actual reimbursements and, while considered receipts, are not considered receipts from qualified investment activities within the meaning of the rule. Where such inclusion causes the percentage to drop below the 90 percent requirement, the corporation will be denied its claim to investment company status.

18:7-3.8 Investment company; tax assessed and payable

(a) The tax assessed to and payable by an investment company, entitled and electing to report as such, is the sum of:

1. A tax measured by 25 percent of its entire net worth multiplied by the following tax rates:
Recodify 1. through 4. as i. through iv. (No change in text.)
2. A tax measured by 25 percent of its entire net income at the rate provided by law.
3. (No change in text.)

OTHER AGENCIES

(a)

NEW JERSEY HIGHWAY AUTHORITY GARDEN STATE PARKWAY

Definitions

Adopted Amendment: N.J.A.C. 19:8-1.1

Proposed: July 16, 1990 at 22 N.J.R. 2128(a).

Adopted: August 29, 1990 by the New Jersey Highway Authority,
George P. Zilocchi, Acting Executive Director (with approval
of the Board of Commissioners).

Filed: August 29, 1990 as R.1990 d.479, **without change.**

Authority: N.J.S.A. 27:12B-5(j), N.J.S.A. 27:12B-17(b), N.J.S.A.
27:12B-20.

Effective Date: October 1, 1990.

Expiration Date: July 5, 1993.

Summary of Public Comments and Agency Responses:

No public comments were received subsequent to the publication date
of the Proposal, July 16, 1990. Letters were received, however, prior to
that date, all from Mr. Darryl R. Dworkin, Secretary Treasurer, D.N.V.,
Inc., Route 35, Shrewsbury, New Jersey.

Mr. Dworkin's letters do not address the amendment to the regulations
to be adopted, that is, permitting panel vans and pickup trucks, regardless
of number of wheels, the use of the Garden State Parkway. The position
expressed by Mr. Dworkin in his letters is that other trucks, that is, cargo
vans and step vans, should also be authorized to use the Garden State
Parkway north of 105 to the Garden State Parkway's intersection with
the Turnpike.

The responses to Mr. Dworkin advised him that the amendment con-
sidered here did not address his concern and was directed solely at
permitting panel vans and pickup trucks, regardless of number of wheels,
full use of the Garden State Parkway pursuant to the Authority's enabling
legislation.

Full text of the adoption follows.

19:8-1.1 Definitions

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

...
"Car" means a passenger motor vehicle, including station wagons,
hearses, funeral flower and funeral service vehicles for which issuance
of passenger car plates is authorized, taxicabs, motorcycles, two-axle,
four-tire campers, school buses and panel vans, pickup trucks and
similar vehicles having a gross weight not exceeding 6,999 pounds.
...

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF PARKS AND FORESTRY

Notice of Availability of Grants

Open Lands Management Program

Take notice that in compliance with P.L. 1987, c.7, section 1 (N.J.S.A. 52:14-34.4), the Department of Environmental Protection hereby announces the availability of the following State grant funds:

Name of Program: Open Lands Management Program. Authority: Open Lands Management Act, P.L. 1983, c.560 (N.J.S.A. 13:1B-15.133 et seq.), and Open Lands Management rules, N.J.A.C. 7:2-12.

Purpose: The purpose of the Open Lands Management Program is to provide financial assistance and in-kind services for the development and maintenance of privately owned land for public recreational purposes. If an application for funding is approved, the landowner and the State sign an agreement known as an access covenant, which guarantees public access for a specified period of time, for specified recreational purposes, to a specific parcel of private land.

Amount of money in the program: The Department anticipates that \$73,000 will be available for funding Open Lands Management projects in Fiscal Year 1991, which ends on June 30, 1991.

Individuals or organizations who may apply for funding under this program: Any person, including, but not necessarily limited to, individuals, corporations, clubs, associations and non-profit organizations, who owns real property in fee simple, may apply for financial assistance under this program.

Qualifications needed by an applicant to be considered for the program: To be eligible for financial assistance under this program, the applicant must meet the following criteria:

1. The applicant must have a fee simple interest in real property; the property must include open space which is not dominated by man-made structures; and the property must be free of any known public health hazards.

2. The applicant must specify a project to be funded. Eligible projects include: installing fences, providing parking areas, installing and building boat or canoe launch areas, planting trees and shrubs for screening, installing litter and trash cans, and constructing and maintaining trails. Liability insurance, legal filing fees and costs of repairing damage due to vandalism may also be considered.

3. The applicant must make the eligible real property available to the public for passive recreational activities. Such activities may include: trail use, water related activities, and other outdoor recreational use.

Procedure for potential applicants: Grants awarded under the Open Lands Management Program are governed by the Open Lands Management rules at N.J.A.C. 7:2-12.

Address of the division, office or official receiving the application: Applications for Open Lands Management grants may be requested from:

Celeste Tracy
Open Lands Management Program
Office of Natural Lands Management
Division of Parks and Forestry
New Jersey Department of Environmental Protection
CN 404
Trenton, New Jersey 08625-0404
(609) 984-1339

Deadline by which applications must be submitted: Applications for funding during Fiscal Year 1991 must be submitted by March 1, 1991.

Date by which applicant shall be notified of preliminary approval or disapproval: Within 30 days of receipt, the Department shall evaluate applications for funding under this program and either disapprove or grant preliminary approval of the application.

(b)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Notice of Withdrawal of Petition for Rulemaking concerning Operational Requirements for Hazardous Waste Landfills

N.J.A.C. 7:26-10.8(e)7

Petitioner: PPG Industries, Inc.

Authority: N.J.S.A. 13:1E-6(a); 52:14B-4(f).

Take notice that on January 24, 1990, the Department of Environmental Protection ("Department") received a petition from PPG Industries, Inc. ("petitioner") requesting an amendment to N.J.A.C. 7:26-10.8(e)7, concerning operational requirements for hazardous waste landfills.

Public notice of the receipt of this petition was filed with the Office of Administrative Law and subsequently published in the New Jersey Register on March 5, 1990 at 22 N.J.R. 862(b). Public notice of the Department's determination to deliberate this matter was filed with the Office of Administrative Law and published in the New Jersey Register on March 19, 1990 at 22 N.J.R. 995(a).

In a letter to the Department dated July 25, 1990, the petitioner withdrew its petition for rulemaking. The petition was withdrawn without prejudice as a condition to an Administrative Consent Order between the Department and the petitioner.

A copy of this notice will be filed with the Office of Administrative Law and mailed to the petitioner.

(c)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Receipt of Petition to Amend the Definition of Volatile Organic Compounds to Exclude Four Halogenated Chlorofluorocarbons

N.J.A.C. 7:27-16.1

Petitioner: Alliance for Responsible CFC policy.

Take notice that on August 17, 1990, the Department of Environmental Protection (Department) received a petition for rulemaking concerning the amendment of the definition of volatile organic compound at N.J.A.C. 7:27-16.1 to exclude four halogenated chlorofluorocarbons.

The petitioner requests that the Department (1) exclude from the category of volatile organic compounds dichlorotrifluoroethane (HCFC-123), tetrafluoroethane (HFC-134a), dichlorofluoroethane (HCFC-141b), and chlorodifluoroethane (HCFC-142b) and (2) amend the definition of volatile organic compound at N.J.A.C. 7:27-16.1 to exempt all organic compounds determined by the EPA to be negligibly reactive and appropriate to be exempt from regulation from State implementation plans to attain the national air quality standards for ozone.

This petition will be considered by the Department in accordance with the provisions of N.J.A.C. 7:1-1.2. The Department shall subsequently mail to the petitioner and file with the Office of Administrative Law a notice of action on the petition for publication in the New Jersey Register.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Lower Delaware Water Quality Management Plan Public Notice

Take notice that on July 25, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Lower Delaware Water Quality Management Plan was adopted by the Department. This amendment will transfer an 8 acre parcel of land bounded by Route 55, Wheaton Avenue, Doris Avenue and the Boulevard from the Landis Sewerage Authority service area in the City of Vineland to the City of Millville Sewer Utility service area.

HUMAN SERVICES

(a)

DEVELOPMENTAL DISABILITY COUNCIL

Notice of Availability of Grants

Charity Racing Days for the Developmentally Disabled Program

Take notice that in compliance with N.J.S.A. 52:14-34.4 et seq. (P.L. 1987, c.7), the New Jersey Developmental Disabilities Council hereby announces the availability of the following grant program:

Name of Program: Charity Racing Days for the Developmentally Disabled Program, P.L. 1977, c.200.

Purpose: To distribute funds received by the New Jersey Racing Commission to nonprofit organizations in New Jersey which expend funds for direct services in full-time programs to individuals who are developmentally disabled.

Amount of Monies in Program: The amount of monies available is based on money collected on designated racing days by the New Jersey Racing Commission in compliance with N.J.S.A. 5:5-44.2, and distributed proportionally among eligible organizations on the basis of an incidence and service formula as defined in N.J.A.C. 10:141.

Organizations which may apply for funding under this program: Agencies which may apply for Charity Racing Days monies must be nonprofit organizations located in New Jersey and expend funds for direct services in full time programs to residents who are developmentally disabled. Agencies must be affiliated with a national organization of the same type and purpose.

Qualifications needed by an applicant to be considered for the program: An eligible organization shall be a full time service provider to individuals who are developmentally disabled which expends funds for direct services and has its main purpose either:

1. The provision of services; or
2. The raising of funds on behalf of a single other organization whose sole purpose is the provision of eligible services.

All funds raised shall be contributed to the provision of eligible services (except minimal costs for administration and fund raising).

At least 75 percent of the recipients of eligible services provided by the organization must be developmentally disabled.

Procedure for eligible organizations to apply: Application can be requested from:

Susan Richmond
Acting Executive Director
NJ Developmental Disabilities Council
CN-700
Trenton, NJ 08625
(609) 292-3745

Address for applications to be submitted: Same as F above.

Deadline by which applications must be submitted: Completed applications must be submitted by October 31, 1990.

Date by which application shall be notified of approval or disapproval: Applicants shall receive notice of approval or disapproval within 60 days after deadline.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CONSUMER AFFAIRS

Notice of Receipt of Petition for Rulemaking Prescription Drug Pricing

N.J.A.C. 13:45A

Petitioner: New Jersey Pharmaceutical Association.

Authority: N.J.S.A. 24:6E-2; N.J.S.A. 45:14-12(g).

Take notice that on August 21, 1990, petitioner filed a petition with the Director of the Division of Consumer Affairs, requesting promulgation of a rule to prohibit predatory pricing of prescription drugs by pharmacies. The petition stated that such a rule is needed to meet "the problem of predatory, below-cost pricing of prescription drugs, which is harmful to smaller competitors and, in the long run, harmful to the

delivery of necessary pharmacy services in the various communities throughout the state." Petitioner submitted the following suggested text:

"Sales below cost prohibited"

It shall be unlawful and a violation of these regulations for any pharmacy to directly or indirectly be a party to, or assist, in any transaction to sell or offer to sell prescription drug products within the State of New Jersey, at less than the cost thereof as hereinafter defined; but nothing in this section shall prohibit bulk, distress or business-closing sales if prior notice of such sale has been filed with the Director of the Division of Consumer Affairs.

Cost defined

The term 'cost' as used herein shall include, but not be limited to the basic cost of the prescription drug; the cost of any added ingredients; and all other costs associated with the business of the pharmacy and its parent corporation, and subsidiaries, if any, for example, but not limited to, the cost of material, labor, salaries of executives and officers, the cost of receiving, manufacturing, storing and distributing the product sold: rent, fees, taxes, insurances, advertising, advertising allowances, gifts, free service and all other costs as may be incurred, allocated proportionately to each unit of product sold in accordance with generally accepted cost accounting principles.

Certain costs to be averaged

In computing cost as used herein, all costs of doing business with the exception of the actual cost of the prescription drug shall be based on average costs for the pharmacy and its parent corporation and subsidiaries, if any, in question during the previous 12 months, adjusted to appropriately reflect any significant changes in costs or operation in the averaging period or such shorter time as the licensee may have been in business. Any selling price based on special discounts or allowances may only apply to that quantity of goods actually acquired at that special discount, and any advertisement or special inducement must be for only such a time period reasonably expected to exhaust such product acquired at that special discount."

The petition will be considered by the Director of the Division of Consumer Affairs in accordance with the provisions of N.J.S.A. 52:14B-4(f).

(c)

DIVISION OF HIGHWAY TRAFFIC SAFETY

Notice of Grant Availability to State and Local Governments for Projects Implementing Highway Traffic Safety Programs

Take notice that the State and Community Highway Safety Grant Project was established under the Federal Highway Safety Act of 1966, 23 U.S.C. 402. The Act requires each state to have a highway safety program approved by the Secretary of Transportation designed to reduce deaths, injuries and property damage resulting from traffic accidents.

The Governor is responsible for the administration of the State's Highway Safety Program through the New Jersey Division of Highway Traffic Safety in accordance with N.J.S.A. 52:17B. The Division of Highway Traffic Safety prepares a Highway Safety Plan, which identifies the State's traffic safety problems and describes the programs and projects to address those problems, and coordinates the funding for local and State projects. Activities under the 402 program area are centered predominantly on efforts to control the drinking driver, increase traffic law enforcement, improve the quality of emergency medical services through additional training of State and local personnel, and improve the collection and analysis of traffic accident data.

Approximately \$2,900,000 will be available on a Statewide basis to units of government to address the seven Federal priority areas, which are: Alcohol in Relation to Highway Safety, Police Traffic Safety Services, Occupant Protection, Emergency Medical Services, Traffic Records, Motorcycle Safety, and Roadway Safety.

Federal law requires that 40 percent of the funds be expended through grants to local governments. This notice solicits applications from government units that are interested in developing and implementing projects under this program.

A copy of the Highway Safety Plan and the Application for Highway Safety Project Grants are available by writing to: New Jersey Division of Highway Traffic Safety, CN-048, Trenton, New Jersey 08625 or telephone (609) 588-3750.

Grant applications will be accepted throughout the 1990-91 fiscal year. The Division contemplates that application decisions will be rendered within 30 days of receipt.

TREASURY-GENERAL

(a)

OFFICE OF THE STATE TREASURER

Notice of Acceptance of Applications from Charitable Fund-Raising Organizations for the Public Employees' Charitable Fund Raising Campaign and Campaign Steering Committee

Take notice that Douglas C. Berman, Treasurer, State of New Jersey, pursuant to the Public Employees' Charitable Fund-Raising Act, P.L. 1985, c.140 (see N.J.A.C. 17:28-3.2(b)1), announces that the Department of the Treasury will be accepting applications via the Division of Consumer Affairs until December 1, 1990 from the charitable fund-raising organizations wishing to participate in the State Employees' Charitable Fund-Raising Campaign for 1991-1992.

For the purposes of this notice, "Charitable Fund-Raising Organization" shall mean a voluntary not-for-profit organization which receives and distributes voluntary charitable contributions. A charitable fund-raising organization shall be eligible to participate on the Steering Committee and in the 1991-1992 Campaign if it meets the following requirements:

- a. The organization is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code;
- b. The organization qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;
- c. The organization is not a private foundation as described in Section 509 of the Internal Revenue Code;
- d. The organization is incorporated under or subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund Raising Act of 1971," P.L. 1971, c.469 (N.J.S.A. 45:17A-1 et seq.);
- e. The organization demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consist of individual contributions from citizens of the State; and
- f. The organization shall have raised at least \$60,000 and distributed that sum among at least 15 charitable agencies in each of its two fiscal years preceding its application to participate in a State campaign.

Copies of the application reproduced below may be received from the Division of Consumer Affairs, Charities Registration, or the information requested therein may be submitted along with a cover letter. **Completed applications or requests for application forms should be addressed to:**

Anne Mallett
Charities Registration
Division of Consumer Affairs
1100 Raymond Blvd. Room 518
Newark, NJ 07102

Applications can also be requested by calling (201) 648-4704

PLEASE NOTE: Those organizations that have previously qualified to participate in the campaign need only submit to the State Treasurer via Anne Mallett in the Division of Consumer Affairs Charities Registration, 1100 Raymond Blvd., Newark, NJ 07102 answers to questions 4, 11, and 12.

APPLICATION—ORGANIZATION

1. Name of organization and name under which it intends to conduct charitable fund-raising campaigns among public employees.
2. Address for organization and addresses of any organization offices within the State.
3. Place and date organization was formed.
4. Names and addresses of officers, directors, trustees and executive personnel of agency. (Attach separate copy.)
5. Has organization received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code? Yes ___ No ___ Please attach a copy of your IRS letter of determination.

6. Is organization a private foundation as defined in Section 509(a) of the Internal Revenue Code? Yes ___ No ___

7. Date on which fiscal year of organization ends. _____
8. Has organization registered as a charitable fund-raising organization pursuant to N.J.S.A. 45:17A-1 et seq.? Yes ___ No ___ If no, is organization exempt from registration requirement? Yes ___ No ___ Explanation: _____

9. Does the organization qualify for tax deductible contributions pursuant to Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code? Yes ___ No ___ Section qualified under _____. Please attach a copy of your IRS letter of determination.

10. Please attach a copy of the organization charter and all amendments thereto.

11. Please submit and certify the following financial data for each of the two fiscal years preceding this application:

- a. the amount of funds raised;
- b. what percentage of those funds consisted of individual contributions from citizens of New Jersey;
- c. names and addresses of charitable agencies to which those funds were distributed and how much to each.

12. If different than c. above, provide the names and addresses of all agencies affiliated with your organization. _____

(b)

OFFICE OF THE STATE TREASURER

Notice of Acceptance of Applications from Charitable Fund-Raising Agencies for the Public Employees' Charitable Fund-Raising Campaign

Take notice that Douglas C. Berman, Treasurer, State of New Jersey, pursuant to the Public Employees' Charitable Fund-Raising Act, P.L. 1985, c.140 (see N.J.A.C. 17:28-3.2(b)1), announces that the Department of the Treasury will be accepting applications via the Division of Consumer Affairs until December 1, 1990 from the charitable fund-raising agencies wishing to participate in the State Employees' Charitable Fund-Raising Campaign for 1991-1992.

For the purposes of this notice, "Charitable Fund-Raising Agency" shall mean a voluntary not-for-profit organization that provides health, welfare, or human care services to individuals. A charitable fund-raising agency shall be eligible to participate in the 1991-1992 Campaign if it meets the following requirements:

- a. The agency is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code;
- b. The agency qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;
- c. The agency is not a private foundation as described in Section 509 of the Internal Revenue Code;
- d. The agency is incorporated under or subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund Raising Act of 1971," P.L. 1971, c.469 (N.J.S.A. 45:17A-1 et seq.);
- e. The agency demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consist of individual contributions from citizens of the State; and
- f. The agency shall have raised at least \$15,000 from individual citizens of New Jersey in each of its two fiscal years preceding its application to participate in a State campaign.

Copies of the application reproduced below may be received from the Division of Consumer Affairs, Charities Registration, or the information requested therein may be submitted along with a cover letter. **Completed applications or requests for application forms should be addressed to:**

Anne Mallett
Charities Registration
Division of Consumer Affairs
1100 Raymond Blvd., Room 518
Newark, NJ 07102

Applications can also be requested by calling (201) 648-4704

TREASURY-GENERAL

PUBLIC NOTICES

APPLICATION—UNAFFILIATED AGENCY

1. Name of Agency and name under which it intends to conduct charitable fund-raising campaigns among employees.
2. Address for agency and addresses of any agency offices within the State.
3. Place and date agency was formed.
4. Names and addresses of officers, directors, trustees and executive personnel of agency. (Attach separate copy.)
5. Has agency received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code? Yes ___ No ___ Please attach a copy of your IRS letter of determination.
6. Is agency a private foundation as defined in Section 509(a) of the Internal Revenue Code? Yes ___ No ___
7. Date on which fiscal year of agency ends. _____
8. Has agency registered as a charitable fund-raising organization pursuant to N.J.S.A. 45:17A-1 et seq.? Yes ___ No ___ If no, is agency exempt from registration requirement?
Yes ___ No ___ Explanation:

9. Does the agency qualify for tax deductible contributions pursuant to Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code? Yes ___ No ___ Section qualified under _____. Please attach a copy of your IRS letter of determination.

10. Please attach a copy of the agency charter and all amendments thereto.

11. Please submit and certify the following financial data for each of the two fiscal years preceding this application:

- a. the amount of funds raised;
- b. what percentage of those funds consisted of individual contributions from citizens of New Jersey;

PLEASE NOTE: Those agencies that have previously qualified to participate in the campaign need only submit to the State Treasurer via Anne Mallett in the Division of Consumer Affairs Charities Registration, 1100 Raymond Blvd., Newark, NJ 07102 answers to questions 4 and 11.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the August 6, 1990 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1990 d.1 means the first rule adopted in 1990.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JULY 16, 1990

NEXT UPDATE: SUPPLEMENT AUGUST 20, 1990

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
21 N.J.R. 3043 and 3204	October 2, 1989	22 N.J.R. 1183 and 1290	April 16, 1990
21 N.J.R. 3205 and 3330	October 16, 1989	22 N.J.R. 1291 and 1408	May 7, 1990
21 N.J.R. 3331 and 3584	November 6, 1989	22 N.J.R. 1409 and 1648	May 21, 1990
21 N.J.R. 3585 and 3688	November 20, 1989	22 N.J.R. 1649 and 1806	June 4, 1990
21 N.J.R. 3689 and 3812	December 4, 1989	22 N.J.R. 1807 and 1964	June 18, 1990
21 N.J.R. 3813 and 3986	December 18, 1989	22 N.J.R. 1965 and 2062	July 2, 1990
22 N.J.R. 1 and 88	January 2, 1990	22 N.J.R. 2063 and 2202	July 16, 1990
22 N.J.R. 89 and 272	January 16, 1990	22 N.J.R. 2203 and 2386	August 6, 1990
22 N.J.R. 273 and 584	February 5, 1990	22 N.J.R. 2387 and 2622	August 20, 1990
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		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-8.2	Transmission of contested cases to the OAL	22 N.J.R. 2066(a)	R.1990 d.484	22 N.J.R. 3003(a)
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
1:1-12.5	Partial summary decisions	22 N.J.R. 3(a)	R.1990 d.368	22 N.J.R. 2262(a)
1:1-18.4	Filing of exceptions to initial decisions	22 N.J.R. 2067(a)	R.1990 d.483	22 N.J.R. 3003(b)
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)		
1:6A-4.2, 9.1	Scheduling of special education hearing	22 N.J.R. 1295(a)	R.1990 d.405	22 N.J.R. 2262(b)
1:10-8.1	Transmission of Economic Assistance cases	22 N.J.R. 2389(a)		
1:10-18.2	Filing of exceptions to initial decisions	22 N.J.R. 2067(a)	R.1990 d.483	22 N.J.R. 3003(b)
1:10B-18.2	Filing of exceptions to initial decisions	22 N.J.R. 2067(a)	R.1990 d.483	22 N.J.R. 3003(b)
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)		

Most recent update to Title 1: TRANSMITTAL 1990-3 (supplement May 21, 1990)

AGRICULTURE—TITLE 2				
2:1-2, 3	Department organization and rules of practice	22 N.J.R. 2865(a)		
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
2:19-2	Rose mosaic disease control	22 N.J.R. 2069(a)	R.1990 d.494	22 N.J.R. 3146(a)
2:20-2	White pine blister rust control	22 N.J.R. 2070(a)	R.1990 d.495	22 N.J.R. 3146(b)
2:48	Dairy industry rules	22 N.J.R. 2625(a)		
2:70-1	Classification of liming materials	22 N.J.R. 1411(a)	R.1990 d.414	22 N.J.R. 2503(a)
2:76-6.2, 6.5, 6.6, 6.9-6.12, 6.15-6.17	Farmland preservation program	22 N.J.R. 1244(a)		

Most recent update to Title 2: TRANSMITTAL 1990-6 (supplement July 16, 1990)

BANKING—TITLE 3				
3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
3:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)		
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)		
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)		
3:7	Safe and sound methods of banking	22 N.J.R. 2205(a)		
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)		
3:18-10.5	Secondary mortgage licensees	22 N.J.R. 2868(a)		
3:27	Mortgage loans by savings and loan associations	22 N.J.R. 2206(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)		
3:38-1.5	Secondary mortgage licensees	22 N.J.R. 2868(a)		
3:41	Cemetery Board rules	22 N.J.R. 2627(a)		

Most recent update to Title 3: TRANSMITTAL 1990-5 (supplement July 16, 1990)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:3-5.2, 5.5	Overtime compensation	22 N.J.R. 2627(b)		
4A:4-2.4	Promotional examinations	22 N.J.R. 2628(a)		
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4A:7-1.1	Equal employment opportunity: administrative correction	_____	_____	22 N.J.R. 2266(a)
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5:10-22.5	Hotels and multiple dwellings: ceiling height	22 N.J.R. 2207(a)		
5:14	Neighborhood Preservation Balanced Housing Program	22 N.J.R. 1700(b)		
5:15-2.1	Emergency shelters for homeless: hospitality rooms	22 N.J.R. 1969(a)	R.1990 d.459	22 N.J.R. 2964(a)
5:23-1.1, 3.1, 3.11B	Uniform Construction Code: underground storage tank systems	22 N.J.R. 2629(c)		
5:23-2.2, 2.10, 2.14, 2.15, 2.37, 3.9, 3.11, 3.11A, 4.3, 4.9, 4.10, 5.2, 5.4, 5.5, 5.6, 5.7, 5.20, 5.21, 5.22, 5.23, 5.24	Uniform Construction Code: administrative corrections	_____	_____	22 N.J.R. 2503(b)
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5:23-3.4, 3.5, 3.8A, 3.10, 3.11, 3.11A, 3.14-3.18, 3.20, 4A.8	Uniform Construction Code: subcodes	22 N.J.R. 2208(a)		
5:23-3.16	Electrical subcode: administrative correction	_____	_____	22 N.J.R. 2366(b)
5:23-4.17	Uniform Construction Code: appropriation of municipal fees	22 N.J.R. 1871(a)	R.1990 d.489	22 N.J.R. 3147(a)
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5:23-7.13, 7.18	Barrier-Free Subcode: parking spaces; platform lifts	22 N.J.R. 2869(a)		
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.4	Uniform Construction Code: earthquake zones and seismic design requirements	22 N.J.R. 592(a)	R.1990 d.490	22 N.J.R. 3148(a)
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5:24-1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.10, 1.11	Mobile home park conversion or retirement from rental market	22 N.J.R. 2214(a)		
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5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
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5:26-1.4, 2.11, 9.3, 11.1, 11.5	Planned real estate development full disclosure	22 N.J.R. 1702(a)	R.1990 d.452	22 N.J.R. 2682(b)
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5:28	State Housing Code	22 N.J.R. 1456(a)		
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)		
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:30	Local Finance Board rules	22 N.J.R. 706(b)	R.1990 d.383	22 N.J.R. 2276(b)
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)		
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5:34	Local public contracts	22 N.J.R. 724(a)		
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5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		
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5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: central air conditioning in income-qualified units	22 N.J.R. 1703(a)		
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: extension of comment period regarding central air conditioning in income-qualified units	22 N.J.R. 1975(a)		

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6:11	Teacher preparation and certification	22 N.J.R. 1873(a)		
6:20	School business services	22 N.J.R. 1246(a)	R.1990 d.393	22 N.J.R. 2345(a)
6:20-1.1, 1.2, 4.1-4.4, 4.7-4.10, 4.11	Attendance and pupil accounting	22 N.J.R. 2633(a)		
6:22	School facility planning service	22 N.J.R. 1253(a)	R.1990 d.394	22 N.J.R. 2350(a)
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6:22-5.4	School facility planning service: administrative correction	_____	_____	22 N.J.R. 2683(a)
6:24	Controversies and disputes	22 N.J.R. 2841(a)		
6:28-1.1, 1.3, 1.4, 2.1, 2.3, 2.5-2.9, 3.3-3.7, 3.9, 4.1, 4.2, 4.4-4.8, 5.1, 5.2, 6.1-6.5, 7.1, 7.4, 8.1, 8.4-8.6, 9.2, 10.1, 11.5, 11.6, 11.11, 11.12	Special education	22 N.J.R. 1412(a)	R.1990 d.450	22 N.J.R. 2683(b)
6:29-2.4, 5.2	Health services: administrative corrections	_____	_____	22 N.J.R. 2359(a)
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7:1E	Discharges of petroleum and other hazardous substances	22 N.J.R. 1651(a)	R.1990 d.398	22 N.J.R. 2284(a)
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7:7-2.3	Waterfront development: extension of comment period	22 N.J.R. 2669(a)		
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(a)	R.1990 d.446	22 N.J.R. 2753(a)
7:7E	Coastal zone management	22 N.J.R. 1188(a)	R.1990 d.413	22 N.J.R. 2542(b)
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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)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
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7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:14A-1.8	NJPDES permit program: preproposal regarding minimum discharge fees	22 N.J.R. 1652(a)		
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7:14B-1.3, 1.4, 1.6, 2.1-2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4-12, 15	Underground storage tank systems	21 N.J.R. 2242(a)	R.1990 d.443	22 N.J.R. 2758(a)
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)	R.1990 d.442	22 N.J.R. 2816(a)
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)		
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1-2.4, 2.6, 2.7, 2.10-2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App.	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-5	1990-91 Game Code	22 N.J.R. 1459(a)	R.1990 d.404	22 N.J.R. 2288(a)
7:25-6	1991-92 Fish Code	22 N.J.R. 2071(a)		
7:25-18.5	Gill netting: administrative correction			22 N.J.R. 2301(a)
7:25-18.5-18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:26	Hazardous waste management	22 N.J.R. 2882(a)		
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7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
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7:26-8.2	Hazardous waste exclusions: administrative correction			22 N.J.R. 3148(b)
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:26-10.8	Hazardous waste landfills: administrative correction			22 N.J.R. 2966(a)
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7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:28	Radiation protection	22 N.J.R. 890(a)	R.1990 d.427	22 N.J.R. 2570(a)
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-3.12	Ionizing radiation-producing machines: registration fees	22 N.J.R. 1653(a)	R.1990 d.400	22 N.J.R. 2302(a)
7:28-3.12	Ionizing radiation-producing machines: registration fees: administrative correction			22 N.J.R. 2830(a)
7:28-16	Dental radiographic installations	22 N.J.R. 894(a)		
7:28-19.12	Radiologic technologists: licensure and renewal fees	22 N.J.R. 1975(b)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:30-1.3, 3.3, 3.4, 3.5, 4.2, 5.4, 5.5, 6.4, 6.5, 6.6, 7.2, 8.3, 9.3	Pesticide Control Program: certification, registration and permit fees	22 N.J.R. 1314(a)	R.1990 d.426	22 N.J.R. 2571(a)
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
7:38	Wild and Scenic Rivers System	22 N.J.R. 1317(a)		

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8:18-1.2, 1.5, 1.6, 1.8, 1.18, App. I	Catastrophic Illness in Children Relief Fund program	22 N.J.R. 2669(b)		
8:21	Food and drugs	22 N.J.R. 2465(a)		
8:31B	Hospital rate setting	22 N.J.R. 1480(a)	R.1990 d.462	22 N.J.R. 3004(a)
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)		
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:33	Certificate of need application and review process	22 N.J.R. 1494(a)	R.1990 d.417	22 N.J.R. 2506(a)
8:33B-1	Extracorporeal shock wave lithotripsy services	22 N.J.R. 1495(a)	R.1990 d.418	22 N.J.R. 2506(b)

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8:33F-1.1, 1.2, 1.6, 1.7	Renal disease services	22 N.J.R. 2494(a)		
8:33Q-1	Organ transplantation services: certificate of need requirements	22 N.J.R. 2496(a)		
8:39-8.1, 8.2, 8.4, 9.2, 11.2, 13.1, 18.4, 19.3, 19.7, 19.8, 23.2, 24.1, 27.1, 27.5, 28.1, 28.2, 29.4, 32.1, 35.2, 37.3, 38.1, 41.3	Licensure of long-term care facilities	22 N.J.R. 1889(a)		
8:41-8.1, 8.3	Mobile intensive care units: administration of medications	22 N.J.R. 1980(a)	R.1990 d.473	22 N.J.R. 3013(a)
8:43	Licensure of residential health care facilities	22 N.J.R. 2499(a)		
8:43A	Ambulatory care facilities: licensure standards	22 N.J.R. 1496(a)	R.1990 d.416	22 N.J.R. 2507(a)
8:43A-12	Ambulatory care facilities: surgical and anesthesia services	22 N.J.R. 1496(a)		
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)	R.1990 d.421	22 N.J.R. 2703(b)
8:43G-5.4, 5.6, 5.8, 5.10, 5.17	Administrative and hospital-wide (advisory)	21 N.J.R. 2926(a)	Expired	
8:43G-19.4, 19.6, 19.9, 19.11, 19.28	Obstetrics (advisory)	21 N.J.R. 2926(a)	Expired	
8:43G-19.35-19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)	R.1990 d.422	22 N.J.R. 2705(a)
8:43G-21.3, 21.6, 21.8, 21.10, 21.12, 21.14, 21.16	Oncology (advisory)	21 N.J.R. 2926(a)	Expired	
8:43G-22.4, 22.7, 22.11, 22.18, 22.21	Pediatrics (advisory)	21 N.J.R. 2926(a)	Expired	
8:43G-24.5, 24.7, 24.14	Plant maintenance and fire and emergency preparedness (advisory)	21 N.J.R. 2926(a)	Expired	
8:43G-26.4, 26.6, 26.8, 26.10, 26.13	Psychiatry (advisory)	21 N.J.R. 2926(a)	Expired	
8:43G-29.2, 29.4, 29.7, 29.11, 29.14, 29.16, 29.18, 29.22	Physical and occupational therapy (advisory)	21 N.J.R. 2926(a)	Expired	
8:43G-30.4, 30.7, 30.10, 30.12	Renal dialysis (advisory)	21 N.J.R. 2926(a)	Expired	
8:43G-30.13-30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)	R.1990 d.423	22 N.J.R. 2708(a)
8:43G-31.4, 31.6, 31.8, 31.10, 31.13	Respiratory care (advisory)	21 N.J.R. 2926(a)	Expired	
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8:43I-1.3, 1.11	Hospital Policy Manual: inpatient obstetric units	22 N.J.R. 1891(a)	R.1990 d.463	22 N.J.R. 3014(a)
8:44-3	Local health services: limited purpose laboratories	22 N.J.R. 1323(a)		
8:51	Childhood lead poisoning	22 N.J.R. 1502(a)	R.1990 d.472	22 N.J.R. 3014(b)
8:57-1.6	Reportable communicable diseases and immunization requirements: administrative correction	_____	_____	22 N.J.R. 2709(a)
8:57-3.2	Reporting of occupational and environmental diseases and poisons: administrative correction	_____	_____	22 N.J.R. 3025(a)
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:66-1.1	Intoxicated Driving Program	22 N.J.R. 1024(a)	R.1990 d.453	22 N.J.R. 2710(a)
8:66-1.1	Intoxicated Driving Program: reopening of comment period	22 N.J.R. 1655(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 214(c), 1136(b), 1597(a))	21 N.J.R. 3292(a)	R.1990 d.349	22 N.J.R. 2164(a)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b))	22 N.J.R. 596(a)	R.1990 d.348	22 N.J.R. 2163(a)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b))	22 N.J.R. 1214(b)	R.1990 d.487	22 N.J.R. 3149(a)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products	22 N.J.R. 2501(a)		

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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)		
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9:6-3.7, 3.9, 7	State college promotional and tenure policies; institutional plan	22 N.J.R. 1216(a)	R.1990 d.375	22 N.J.R. 2303(a)
9:6-7.4	State Colleges: elements of institutional plan	22 N.J.R. 2255(a)		
9:7-3.2	Tuition Aid Grant Program: 1990-91 award table	22 N.J.R. 1318(a)	R.1990 d.386	22 N.J.R. 2305(a)
9:8	Disbursement of funds for technical and engineering facilities and equipment	22 N.J.R. 2256(a)		
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	22 N.J.R. 1659(a)		
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10:31-1.4, 2.1, 2.3, 8.1	Screening and Screening Outreach Program: notice of rule invalidation	_____	_____	22 N.J.R. 2966(b)
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)	R.1990 d.430	22 N.J.R. 2710(b)
10:37	Community Mental Health Services Act rules	22 N.J.R. 2915(a)		
10:37-6.79	Community mental health programs: disclosure of client records	22 N.J.R. 2216(b)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)	R.1990 d.431	22 N.J.R. 2712(a)
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)	R.1990 d.370	22 N.J.R. 2306(a)
10:43-7.1	Determination of need for a guardian	22 N.J.R. 2671(a)		
10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)	R.1990 d.409	22 N.J.R. 3030(a)
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:47	Private licensed facilities for mentally retarded	22 N.J.R. 2915(b)		
10:49	Medicaid program administration manual	22 N.J.R. 1512(a)	R.1990 d.390	22 N.J.R. 2313(a)
10:49-6.6	Recoveries involving county welfare agencies/boards of social services	22 N.J.R. 2672(a)		
10:50-1.1, 1.3, 1.4, 1.5, 1.6, 2.6, 3.2, App. I, II	Medicaid transportation services: provider reimbursement	22 N.J.R. 1513(a)		
10:51	Pharmacy Manual	22 N.J.R. 2217(a)		
10:51-1, App. B, C, D, E	Pharmaceutical Services Manual: non-legend drugs and products	22 N.J.R. 1217(a)	R.1990 d.391	22 N.J.R. 2314(a)
10:56-3.1, 3.3, 3.4, 3.10, 3.12	Dental services HCPCS codes	22 N.J.R. 1660(b)	R.1990 d.456	22 N.J.R. 2713(a)
10:60	Home Care Services Manual	22 N.J.R. 1663(a)	R.1990 d.458	22 N.J.R. 2966(c)
10:60-4	Home Care Expansion Program	22 N.J.R. 597(a)	R.1990 d.466	22 N.J.R. 2967(a)
10:63-1.2-1.8, 1.14, 1.16, 3.3, 3.8, 3.9	Long-term care (nursing) facilities: patient care and reimbursement	22 N.J.R. 118(a)	R.1990 d.428	22 N.J.R. 2588(a)
10:69A-5.3, 6.1, 6.2, 6.10	Pharmaceutical Assistance to Aged and Disabled: eligibility and renewal	22 N.J.R. 2218(a)		
10:71-4.5-4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:71-4.7	Medicaid eligibility: transfer of resources	Emergency (expires 9-28-90)	R.1990 d.424	22 N.J.R. 2604(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)		
10:81-10.7	Refugee Resettlement Program: eligibility for assistance	22 N.J.R. 1225(a)	R.1990 d.365	22 N.J.R. 2317(a)
10:81-11.2, 11.4, 11.5, 11.7, 11.9, 11.11-11.15, 11.21	Public Assistance Manual: child support and paternity	22 N.J.R. 1664(a)		
10:81-11.9	Paternity determination services for non-AFDC clients	22 N.J.R. 1053(a)	R.1990 d.401	22 N.J.R. 2318(a)

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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)		
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)		
10:87-1.14, 4.3, 5.9, 5.10, 5.11, 6.3, 7.14, 10.2, 10.10, App. A	Food Stamp Program	22 N.J.R. 2219(a)		
10:87-5.10, 6.15, 12.1-12.7	Food Stamp Program: annual adjustments	22 N.J.R. 1670(a)	R.1990 d.437	22 N.J.R. 2715(a)
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)	R.1990 d.432	22 N.J.R. 2716(a)
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)	R.1990 d.432	22 N.J.R. 2716(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)		
10:123	Social services program for individuals and families	22 N.J.R. 1520(a)	R.1990 d.388	22 N.J.R. 2318(b)
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendance Services Program: extension of comment period	22 N.J.R. 2082(a)		
10:128	Children's group homes	22 N.J.R. 2916(a)		
10:129	Child abuse and neglect cases	22 N.J.R. 1535(a)	R.1990 d.389	22 N.J.R. 2320(a)

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CORRECTIONS—TITLE 10A

10A:2-6	Inmate reimbursement for lost, damaged or destroyed personal property	22 N.J.R. 1320(a)	R.1990 d.363	22 N.J.R. 2321(a)
10A:3-9.3	Transport of maximum custody inmates	22 N.J.R. 2223(a)		
10A:9-4.6	Consideration for minimum custody status: administrative correction			22 N.J.R. 2969(a)
10A:16-5.2, 5.5, 5.6, 5.7	Medical and health services: guardianship of an adult inmate	22 N.J.R. 1322(a)	R.1990 d.369	22 N.J.R. 2322(a)
10A:17-3	Volunteers in Parole Program	22 N.J.R. 1981(a)	R.1990 d.488	22 N.J.R. 3149(b)
10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)		
10A:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 1895(a)		
10A:32-4.2	Transfer of juvenile under State sentence: public hearing	22 N.J.R. 2224(a)		

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INSURANCE—TITLE 11

11:0	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)		
11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)		
11:1-29	Insurer's temporary certificate of authority	22 N.J.R. 2453(a)		
11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
11:2	Insurance group rules	22 N.J.R. 1673(a)		
11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
11:2-24	High-risk investments by domestic insurers	21 N.J.R. 3245(a)		
11:2-25	Insurer tie-ins	21 N.J.R. 3053(a)		
11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)		
11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)		
11:2-29	Orderly withdrawal of insurance business	21 N.J.R. 3622(a)		
11:2-29	Orderly withdrawal of insurance business: extension of comment period	22 N.J.R. 15(c)		
11:2-30	Product liability risk retention groups and purchasing groups	21 N.J.R. 3618(a)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)		
11:2-32	Custodial deposits	22 N.J.R. 2640(a)		
11:3	Automobile insurance	22 N.J.R. 1678(a)		
11:3-3.37, 14.8	Benefit determination between automobile personal injury protection and health insurance	22 N.J.R. 2642(a)		
11:3-7.2, 7.4, 7.5, 14.2, 14.5, 15.1, 15.2, 15.3, 15.5, 15.6, 15.7, 15.9	Automobile Coverage Selection Form and Buyer's Guide	22 N.J.R. 1681(a)		

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11:3-8.2-8.7, App. A and B	Nonrenewal of automobile policies	22 N.J.R. 2224(b)		
11:3-16-App.	Private passenger automobile rate filings: administrative correction	_____	_____	22 N.J.R. 2969(b)
11:3-19	Private passenger automobile insurance: standard/non-standard rating plans	22 N.J.R. 2231(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)		
11:3-20.9	Automobile insurers: excess profits carry forward	22 N.J.R. 1025(a)	R.1990 d.470	22 N.J.R. 2969(c)
11:3-29	Automobile insurance: medical fee schedules for PIP coverage	22 N.J.R. 2086(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. 2108(a)		
11:3-35	Private passenger automobile insurance: underwriting rules	22 N.J.R. 2233(a)		
11:3-36	Automobile physical damage coverage: inspection procedures prior to issuance	22 N.J.R. 2111(a)		
11:3-38	Automobile towing and storage fee schedule	22 N.J.R. 2455(a)		
11:4	Actuarial services	22 N.J.R. 1689(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. 2642(a)		
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:5-1.25	Repeal (see 11:5-6)	22 N.J.R. 1421(a)	R.1990 d.455	22 N.J.R. 2969(d)
11:5-1.28	Approved real estate schools	22 N.J.R. 777(a)	R.1990 d.378	22 N.J.R. 2323(a)
11:5-6	Real estate sales full disclosure	22 N.J.R. 1421(a)	R.1990 d.455	22 N.J.R. 2969(d)
11:10	Hospital/medical-dental services	22 N.J.R. 1691(a)	R.1990 d.384	22 N.J.R. 2326(a)
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:13-7	Commercial lines policy forms	21 N.J.R. 3057(a)		
11:13-7	Commercial lines policy forms: extension of comment period	21 N.J.R. 3422(a)		
11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)		
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)		

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12:15-1	Unemployment compensation and temporary disability insurance	22 N.J.R. 1895(b)	R.1990 d.419	22 N.J.R. 2508(a)
12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment and temporary disability insurance: 1991 rates	22 N.J.R. 3885(a)		
12:17-2.1	Unemployment insurance benefits: mail claims system	22 N.J.R. 901(a)	R.1990 d.420	22 N.J.R. 2508(b)
12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(a)		
12:35	Workfare: General Assistance Employability Program	22 N.J.R. 1430(a)	R.1990 d.396	22 N.J.R. 2326(b)
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)		
12:56	Wage and hour	22 N.J.R. 2235(a)		
12:57	Wage orders for minors	22 N.J.R. 2240(a)		
12:58	Child labor	22 N.J.R. 2241(a)		
12:196	Safe dispensing of retail gasoline	22 N.J.R. 1433(a)	R.1990 d.397	22 N.J.R. 2329(a)
12:200	Liquefied petroleum gas installations: standards of design and operations	22 N.J.R. 1984(a)	R.1990 d.436	22 N.J.R. 2744(a)
12:235-1.6	Workers' Compensation: 1991 maximum rates	22 N.J.R. 2886(a)		

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COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:31-2.3, 3.3	Loan guarantee and direct loan programs: administrative corrections	_____	_____	22 N.J.R. 2330(a)
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13:1-4.6	Physical conditioning instruction at police academies	22 N.J.R. 1435(a)	R.1990 d.477	22 N.J.R. 3151(a)
13:1-7.2	Police Training Commission: drug screening of police trainees	22 N.J.R. 2256(b)		
13:1A-2.11	Legislative agents: annual fee	22 N.J.R. 1810(a)		
13:2	Alcoholic beverage control	22 N.J.R. 1811(a)	R.1990 d.412	22 N.J.R. 2508(c)
13:3-3.4	Maximum fee for participation in amusement games	22 N.J.R. 1435(b)	R.1990 d.465	22 N.J.R. 2982(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)		
13:20-10	Automatic vehicle identification system for toll collection	22 N.J.R. 2133(a)	R.1990 d.491	22 N.J.R. 3151(b)
13:21-1.3, 1.4, 1.5	Commercial driver licenses: disclosure and use of social security numbers	22 N.J.R. 2134(a)		
13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
13:21-16	Motor vehicle counterpart fees	22 N.J.R. 1325(a)	R.1990 d.435	22 N.J.R. 2747(a)
13:24-1.1, 2.3, 2.8, 4.1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)		
13:29-1.4	Board of Accountancy: licensee change of address	22 N.J.R. 1438(a)	R.1990 d.373	22 N.J.R. 2331(a)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)		
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.13	Board of Medical Examiners: FLEX fees	22 N.J.R. 1988(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)		
13:36-1.6	Mortuary science license revival fees	22 N.J.R. 1328(a)	R.1990 d.372	22 N.J.R. 2331(b)
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:38	Board of Optometrists rules	22 N.J.R. 1866(a)	R.1990 d.476	22 N.J.R. 3153(a)
13:39-2.2, 2.8	Board of Pharmacy: application for NABPLEX examination	22 N.J.R. 2395(b)		
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
13:39-6.9	Sale of Schedule V over-the-counter controlled substances	22 N.J.R. 1329(a)	R.1990 d.478	22 N.J.R. 3153(b)
13:39A-5.1	Licensure as physical therapist: foreign trained applicants	22 N.J.R. 2259(a)		
13:40	Professional engineers and land surveyors	22 N.J.R. 1867(a)	R.1990 d.434	22 N.J.R. 2747(b)
13:40-5.1	Preparation of land surveys	21 N.J.R. 3715(a)		
13:40-5.1	Preparation of land surveys: extension of comment period	22 N.J.R. 157(a)		
13:41	Board of Professional Planners rules	22 N.J.R. 1438(b)	R.1990 d.402	22 N.J.R. 2530(a)
13:44-2.12	Close of veterinary practice: maintenance of medical records	22 N.J.R. 1868(a)		
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:45A	Division of Consumer Affairs administrative rules	22 N.J.R. 2396(a)		
13:45A-19.1	Division of Consumer Affairs: petitions for rulemaking	22 N.J.R. 786(a)	R.1990 d.371	22 N.J.R. 2331(c)
13:45A-21.4	Kosher poultry identification	22 N.J.R. 1439(a)	R.1990 d.433	22 N.J.R. 2747(c)
13:46	Boxing, wrestling and sparring events	22 N.J.R. 1231(a)	R.1990 d.454	22 N.J.R. 2748(a)
13:47D	Repeal (see 13:47K)	22 N.J.R. 1440(a)	R.1990 d.468	22 N.J.R. 2982(b)
13:47K	Weights and measures: packaged commodities	22 N.J.R. 1440(a)	R.1990 d.468	22 N.J.R. 2982(b)
13:59-1	Criminal history checks for non-criminal matters	22 N.J.R. 1869(a)	R.1990 d.425	22 N.J.R. 2530(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)		
13:70-3.41	Thoroughbred racing: employee compensation insurance	22 N.J.R. 1716(a)		
13:70-3.44	Thoroughbred racing: public telephones at tracks	22 N.J.R. 2402(a)		
13:70-13.8	Thoroughbred racing: protest by jockey	22 N.J.R. 2402(b)		
13:70-14A.9	Thoroughbred racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(a)		
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	22 N.J.R. 1716(b)	R.1990 d.485	22 N.J.R. 3154(a)
13:70-19.23	Thoroughbred racing: declaring race official	22 N.J.R. 2403(a)		
13:71-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(b)		
13:71-6.1	Harness racing: employee compensation insurance	22 N.J.R. 1717(a)		
13:71-22.1	Harness racing: public telephones at tracks	22 N.J.R. 2403(b)		
13:71-23.8	Harness racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(c)		
13:71-23.8	Harness racing: administering medication to respiratory bleeders	22 N.J.R. 1718(a)	R.1990 d.486	22 N.J.R. 3155(a)
13:75-1.12	Violent Crimes Compensation Board: attorney fees	22 N.J.R. 2260(a)		

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13:80-1	Solid and hazardous waste information awards	21 N.J.R. 2911(a)	R.1990 d.471	22 N.J.R. 2999(a)
13:81	Statewide 9-1-1 emergency telecommunication system	22 N.J.R. 1234(a)	R.1990 d.392	22 N.J.R. 2332(a)

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PUBLIC UTILITIES—TITLE 14

14:0	Energy conservation: preproposal and public hearing	22 N.J.R. 1692(a)		
14:1-8.6	Access to documents filed with Board of Public Utilities	21 N.J.R. 3864(a)		
14:3	All utilities	22 N.J.R. 1112(a)		
14:3	All utilities: public hearing	22 N.J.R. 1330(a)		
14:3-3.2	Customer's proof of identity	22 N.J.R. 615(a)		
14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	22 N.J.R. 617(a)		
14:3-4.7	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:3-4.11	Meter tampering	21 N.J.R. 3865(a)		
14:3-5.1	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)		
14:3-7.14	Discontinuance of service to multiple family premises	21 N.J.R. 3865(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)		
14:17-6.22	Cable television: petitions for approval to curtail service	22 N.J.R. 2889(a)		
14:18	Cable television	22 N.J.R. 1330(b)	R.1990 d.415	22 N.J.R. 2575(a)
14:18-3.2	Cable television: requests for service	22 N.J.R. 2890(a)		
14:18-3.5	Cable television: outage credit	22 N.J.R. 2890(b)		
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)		
14:18-3.23	Cable television: reimbursement	22 N.J.R. 2892(b)		
14:18-3.24	Cable television: late fees and charges	22 N.J.R. 2893(a)		
14:18-5.1	Cable television: location	22 N.J.R. 2894(a)		
14:18-7.5	Cable television: use of PEG channels	22 N.J.R. 2894(b)		
14:18-7.6, 7.7	Cable television: telephone system information and performance	22 N.J.R. 2895(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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16:28A-1.7, 1.11, 1.65	Restricted parking and stopping along U.S. 9 in Marlboro and Middle Township, Route 21 in Passaic, and Route 15 in Dover	22 N.J.R. 1897(a)	R.1990 d.438	22 N.J.R. 2749(c)
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16:28A-1.8, 1.9, 1.33, 1.41, 1.104	Restricted parking and stopping along Route 10 in Livingston, Route 47 in Vineland, Route 17 in Upper Saddle River, U.S. 40-322 in Atlantic City, and Route 77 in Bridgeton	22 N.J.R. 2906(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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**N.J.A.C.
CITATION**
19:47-1.6
19:47-2.14
19:47-8.2

Five times odds at craps
Double-spot blackjack layout: 90-day experiment
Minimum and maximum wagers: administrative
correction

**PROPOSAL NOTICE
(N.J.R. CITATION)**
22 N.J.R. 2254(a)
Expires 11-11-90

**DOCUMENT
NUMBER**

**ADOPTION NOTICE
(N.J.R. CITATION)**
22 N.J.R. 2343(a)
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