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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: APRIL 15, 1991
See the Register Index for Subsequent Rulemaking Activity.

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

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 33(1991)
Management Control and Supervision of State-Owned Vehicles

Issued: June 7, 1991.
Effective: June 7, 1991.
Expiration: Indefinite.

WHEREAS, State Government is entrusted with the responsibility to manage operations in a manner that carefully conserves taxpayer dollars; and

WHEREAS, by Executive Order No. 4, the State's car fleet has been reduced in furtherance of this responsibility to taxpayers; and

WHEREAS, the State must continue to provide a diverse fleet of vehicles, including certain passenger cars, police cars, vans, pick-up trucks, dump trucks, as well as snow removal, landscape and heavy construction equipment to support necessary State services; and

WHEREAS, the cost of acquiring and maintaining the State's essential fleet of vehicles constitutes a public expense; and

WHEREAS, the assignment, use, and maintenance of all State vehicles must be scrutinized to ensure that the fleet size is appropriate to meet legitimate program needs and that it is managed in the most cost-efficient manner; and

WHEREAS, the Governor's Management Review Commission has undertaken an operational review of the maintenance and use of State vehicles and has found that the present decentralized fleet management practices have led to duplicative and inconsistent programs within the agencies that currently manage, maintain, and repair State vehicles; and

WHEREAS, the Governor's Management Review Commission has also suggested that 29 of the State's 71 existing vehicle maintenance facilities can accommodate the State's entire vehicle maintenance needs; and

WHEREAS, increased consolidation of the supervision, control and maintenance of State-owned and leased vehicles will eliminate duplication, standardize policy, increase efficiency and substantially reduce costs; and

WHEREAS, the Governor's Management Review Commission has determined that the Central Motor Pool agency, within the Department of Treasury, can efficiently manage, maintain, and repair the State vehicle fleet;

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 Department of Treasury shall:

(a) assume title of all State-owned vehicles, and management, control, and supervision of all State-owned and leased vehicles;

(b) assume control and management over all State vehicle maintenance, fueling and repair facilities and, through the Central Motor Pool Agency, be responsible and accountable for managing all of those facilities as are determined to be necessary; and

(c) implement the consolidation of the State vehicle maintenance and fueling facilities as outlined and recommended by the Governor's Management Review Commission.

For purposes of this Order, "vehicle" means any device which is required to be registered with or licensed by the Division of Motor Vehicles, except water craft.

2. In developing a plan to implement the consolidation of motor vehicle maintenance and fueling facilities, the Department of Treasury shall:

(a) consult with all affected State departments and agencies;

(b) thoroughly review the impact of the plan upon State personnel and, where possible, achieve reductions in personnel through attrition; and

(c) assure that the quality and reliability of public and life safety services provided to the citizens of the State are maintained or improved.

3. The State Treasurer shall issue guidelines and promulgate rules or regulations as may be necessary to assure the proper assignment, use and maintenance of State owned and leased vehicles.

4. The Department of Treasury shall complete consolidation of the operation of motor vehicle maintenance and fueling facilities no later than 18 months from the effective date of this Order.

5. Each department, division, office or agency of the State is authorized and directed, to the extent not inconsistent with law, to cooperate with and assist the Department of Treasury by making available the necessary information, personnel, and support required to carry out the designs of this Order.

6. This Order shall take effect immediately and shall supersede any prior Executive Order to the extent inconsistent with this Order.

RULE PROPOSALS

PERSONNEL

(a)

MERIT SYSTEM BOARD

Selection and Appointment Residency Standards

Proposed Amendment: N.J.A.C. 4A:4-2.11

Authorized By: Merit System Board, Peter J. Calderone, Assistant Commissioner, Department of Personnel.
Authority: N.J.S.A. 11A:2-6 and 11A:4-1 et seq.
Proposal Number: PRN 1991-347.

A **public hearing** concerning the proposed amendment will be held on:

Thursday, July 18, 1991 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza, 1st Floor
Trenton, New Jersey

Please call the Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by July 31, 1991 to:

Peter J. Calderone
Assistant Commissioner
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 4A:4-2.11 would authorize the Department of Personnel to enforce residency requirements from the examination closing date to the date of appointment. The proposed language is similar to language in the repealed N.J.A.C. 4:1-8.8. At present, the rules are not clear that the Department can take action against an eligible who moves out of the jurisdiction after the closing date, but before the eligible list is promulgated.

Social Impact

The proposed amendment would enable the Department of Personnel to enforce residency requirements at any stage of the selection and placement process, up to the date of appointment. It is the appointing authority's responsibility to review and enforce residence requirements relating to appointment and continuing employment. The Department would be able to disqualify a candidate if he or she moves out of a jurisdiction between the closing date and the date of the examination or the date on which the eligible list is promulgated. The Department would therefore be able to serve remaining candidates better if it is able to ensure that only those who meet the requirements take the test and get on the eligible list in the first instance.

Economic Impact

No substantial economic impact is expected to result from the proposed amendment to N.J.A.C. 4A:4-2.11. However, because the amendment would help to ensure that only eligible persons are involved at any given stage of the selection and appointment process, Department of Personnel operations should be able to function more efficiently.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposed amendment would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment would regulate employment in the public sector.

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

4A:4-2.11 Residence standards

(a) (No change.)

(b) Unless otherwise specified, residency requirements shall be met by the announced closing date for the examination **and must be continuously maintained from that date up to and including the date of appointment.**

(c)-(e) (No change.)

(b)

MERIT SYSTEM BOARD

Employee Transfers; Consolidation of Merit System Political Subdivisions

Proposed New Rule: N.J.A.C. 4A:4-7.11

Authorized By: Merit System Board, Peter J. Calderone, Assistant Commissioner, Department of Personnel.
Authority: N.J.S.A. 11A:4-16.
Proposal Number: PRN 1991-348.

A **public hearing** concerning the proposed new rule will be held on:

Thursday, July 18, 1991 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza, 1st Floor
Trenton, New Jersey

Please call the Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by July 31, 1991 to:

Peter J. Calderone
Assistant Commissioner
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

When certain functions of a political subdivision operating under Title 11A, New Jersey Statutes, have been consolidated or combined with another political subdivision also operating under Title 11A, New Jersey Statutes, a relaxation of the rules has had to be granted by the Merit System Board to allow for the transfer of employees to the receiving unit. N.J.S.A. 11:28-3 (now repealed) had specifically provided for this type of transfer. Title 11A, New Jersey Statutes, does not provide for such transfer but does provide for the general authority of the Merit System Board to regulate transfers. It is under this general authority that the Merit System Board proposes a new N.J.A.C. 4A:4-7.11 which would provide for a transfer of employees to the receiving unit in a consolidation, and the retention by permanent and probationary employees of their status, as well as their seniority and leave entitlements.

Social Impact

The proposed new rule would ensure that permanent or probationary employees being absorbed into a receiving unit retain all rights they had prior to a consolidation.

Economic Impact

No substantial economic impact is expected from proposed new rule N.J.A.C. 4A:4-7.11. However, affected employees would enjoy more certainty in their employment status following a consolidation. In addition, Department of Personnel operations would function more efficiently without the need to request rule relaxation prior to a consolidation of functions of one political subdivision with another.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since this proposed new rule would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule would regulate employment in the public sector.

Full text of the proposal follows:

4A:4-7.11 Transfer or combining of functions

(a) When any of the functions of a department, agency or unit of a political subdivision operating under Title 11A, New Jersey Statutes, are transferred, consolidated, unified, absorbed or combined with those of the State or of a separate political subdivision

operating under Title 11A, New Jersey Statutes, the Department of Personnel, upon request of both appointing authorities, shall approve the transfer of the affected employees to the receiving unit.

(b) Any employee so transferred who holds permanent or probationary status in a title in the career service shall continue to hold such status in the receiving unit.

(c) Seniority calculations and leave entitlements for transferred permanent or probationary employees shall be calculated as if the entire period of service was in the receiving unit.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Private Enforcing Agencies

Pre-proposed Amendments: N.J.A.C. 5:23-4.14, 4A.17 and 8.18

Take notice that the Department of Community Affairs is considering proposing amendments to N.J.A.C. 5:23-4.14 (private on-site inspection and plan review agencies), 4A.17 (in-plant evaluation and inspection agencies) and 8.18 (asbestos safety control monitors) to require professional liability (errors and omissions) insurance coverage for all firms seeking either authorization or reauthorization from the Department.

The Department invites comments from firms that would be subject to any such requirements, from insurance professionals and from other interested parties concerning minimum coverage requirements, the type of coverage that would be most appropriate, the extent to which coverage should be allowed to vary depending on the scope and nature of the firm's work, the type of coverage that firms now have, the availability and cost of this coverage, and such other issues as may be relevant.

Please submit all comments on or before July 31, 1991 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF PARKS AND FORESTRY

Natural Areas and the Natural Areas System

Proposed Amendments: N.J.A.C. 7:2-11.3 through 11.9 and 11.12 through 11.14

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3; 13:1B-15.4 et seq.; 13:1B-15.12a et seq.; and 13:1D-9.

DEP Docket Number: 017-91-03.

Proposal Number: PRN 1991-343.

Submit written comments by August 30, 1991 to:

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

The agency proposal follows:

Summary

The Department proposes to amend N.J.A.C. 7:2-11 in order to correct or clarify several sections of the Natural Areas System rules and to change the administering agency for five Natural Areas. The proposed revisions are intended to enhance the efficient operation of the Natural Areas System (System) and to correct errors and omissions in the rules which have been noted since their last revision effective December 21, 1987. These miscellaneous amendments are proposed primarily in response to suggestions from the various administering agencies, and have been reviewed and approved by the Natural Areas Council.

The System currently contains 42 areas totaling almost 30,000 acres. The proposed changes in the administering agency for five Natural Areas are the result of the recent interagency transfer of two Natural Areas from the Division of Parks and Forestry to the Division of Fish, Game and Wildlife, the transfer of administration of two Natural Areas from the Region 3 office of the Division of Parks and Forestry to Ringwood State Park, and an error in the administrative assignment of one Natural Area.

Additional changes proposed for the Natural Areas System rules include the following:

1. The definition of "primary classification" has been deleted from N.J.A.C. 7:2-11.3. This term was used in an earlier version of this subchapter but does not appear in the rules as currently written.
2. Clarifying language has been added at N.J.A.C. 7:2-11.4 regarding the procedure for documenting the suitability of a site for inclusion on the Natural Areas Register and for including a site on the Natural Areas Register.
3. N.J.A.C. 7:2-11.6(a)2 has been revised to clarify that a site held by the Department under a conservation easement is eligible for designation to the System.
4. A new subsection has been added to N.J.A.C. 7:2-11.7 to explain the designation and purpose of buffer areas within natural areas.
5. A new subsection has been added at N.J.A.C. 7:2-11.8(c) and N.J.A.C. 7:2-11.9(e) has been modified to clarify the relationship of an adopted management plan for a natural area to the interim management practices listed at N.J.A.C. 7:2-11.9.
6. New language has been added at N.J.A.C. 7:2-11.8(h) and (i) to establish a procedure for adopting a management plan for a natural area.
7. N.J.A.C. 7:2-11.9(e)12 has been revised to specify that habitat manipulation within a natural area as an interim management practice requires approval by the Commissioner of a specific habitat manipulation plan.
8. N.J.A.C. 7:2-11.9(f)5 has been consolidated with N.J.A.C. 7:2-11.9(e)5 to clarify that construction and alteration of structures located within natural areas may be undertaken as an interim management practice only upon approval by the Commissioner, and to expand the scope of this interim management practice from buffer areas to all natural areas.
9. A new section has been added at N.J.A.C. 7:2-11.12 governing mapping of natural areas and designation and modification of the boundaries of natural areas.
10. A new section on public information has been added at N.J.A.C. 7:2-11.14 to enable interested persons to obtain information about the System and management plans for natural areas.

Social Impact

The purpose of the Natural Areas System is to protect and preserve natural and ecological resources for present and future generations of New Jersey residents. The current rules provide for the designation of eligible lands to the System and prescribe management of Natural Areas in a manner which insures preservation of the features the System is designed to protect. The proposed revisions will correct several minor errors in the current rules and transfer the administration of five Natural Areas, increasing the efficiency of this management system. In addition, the Department hopes that the proposed changes will increase public participation in and awareness of the operation of the System. The proposed amendments should, therefore, have a positive social benefit for present and future members of the public.

Economic Impact

The proposed amendments are expected to have a positive economic impact by increasing the Department's efficiency in managing the lands within the System.

Environmental Impact

The proposed rule revisions are administrative and technical in nature and are not expected to have a negative environmental impact on the lands within the System or other State resources. The proposed amendments may have a favorable environmental impact by increasing the Department's efficiency and effectiveness in the administration and management of System lands.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments will not impose reporting, recordkeeping, or other compliance requirements on small businesses since the proposed amendments impose land management responsibilities on the Department but not on members of the general public.

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

7:2-11.3 Definitions

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

. . .

"Natural Heritage Inventory" means a mapped and computerized data base of the State's rare plant and animal species and representative natural communities**, as authorized by N.J.S.A. 13:1B-15.146 through 13:1B-15.150.**

"Prescribed burning" means the open burning of plant [life] **material** under such conditions that the fire is confined to a predetermined area and accomplishes the environmentally beneficial objectives of habitat management and prevention or control of wildfires.

["Primary classification" means a category reflecting the type of habitat management permitted within the largest single portion of a natural area.]

"Preservation" means any measures, including no action at all, which are required in order to avoid injury, destruction or decay of a natural resource feature within a Natural Area or otherwise maintain or protect those features indicated in the designation objective.

. . .

"Register site summary" means a written report, on file with the Division, summarizing site-specific information on the suitability for inclusion of a site on the Register, and containing a map indicating the boundary of the site.

. . .

7:2-11.4 Register of Natural Areas

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

(c) Any individual or organization may suggest [a potential Register site for Division study through a request] **that a site be included on the Register by submitting a Register site summary** to the Commissioner or the Council. Potential sites may also be studied and **Register site summaries** presented to the [council] **Council** by the Department's Office of Natural Lands Management.

(d) Upon review of [a written analysis prepared by the Office of Natural Lands Management] **the Register site summary by the Council,** and **subsequent to the** recommendation [by] **of** the Council, the Commissioner may place a site on the Register. **Placement of a site on the Register shall be effective upon publication of notice in the New Jersey Register.** The site must satisfy one or more of the following criteria:

1. (No change.)

2. Natural community: The site supports a significant, viable example of a rare natural community or an extremely high quality representative of other natural communities of New Jersey. Quality includes, but is not limited to, characteristics of structure, composition, age, **size,** and degree of disturbance.

3. (No change.)

(e) (No change.)

(f) The Division shall maintain [a list of sites that have been placed on] the Register together with [a summary of information used to justify the listing] **copies of the Register site summary**.

(g) [Register sites] **A site** may be removed from the [list] **Register** by the Commissioner upon a finding and recommendation by the Council that the site [can] no longer [be classified in accordance with the categories] **satisfies the criteria** enumerated in (d) above. **Removal of a site from the Register shall be effective upon publication of notice in the New Jersey Register.**

7:2-11.5 Natural Areas Council

(a) The Natural Areas Council shall advise the Commissioner in matters relating to the administration of the Natural Areas Act (N.J.S.A. [13:1B-4] **13:1B-15.4** et seq.) and the Natural Areas System Act (N.J.S.A. 13:1B-15.12a et seq.). The specific functions of the Council include, but are not limited to, the following:

1.-6. (No change.)

7:2-11.6 Natural areas designation

(a) To qualify for designation to the System, a site must be:

1. (No change.)

2. Owned in fee or held **as** a conservation [an] easement by the Department.

(b) Upon request of the Commissioner or a majority vote of the Council, the Division shall undertake a study of a **Register** site to assess appropriateness of designation **as a natural area**. This study shall include, but not be limited to, the following analyses:

1.-9. (No change.)

(c) Upon review of the study and comments from the administering agency, the Council shall submit a final recommendation to the Commissioner for designation of the land in question for inclusion within the System. If the Council favors designation, [their] **its** recommendation shall include:

1.-3. (No change.)

(d) [If the Council recommends designation of an area to the System and the Commissioner concurs] **After considering the final recommendation of the Council**, the Commissioner [shall] **may** propose such designation as an amendment to this subchapter and the Department shall hold a public hearing **on the proposal,** in accordance with the Administrative [Procedures] **Procedure** Act, N.J.S.A. 52:14B-1 et seq.

(e)-(f) (No change.)

7:2-11.7 Classification of natural areas

(a) (No change.)

(b) [Prior to approval of a management plan] **Upon designation to the System**, each [designated] natural area shall be categorized into one of the following interim classifications:

1.-2. (No change.)

[3. Buffer area: an area that forms the perimeter of the natural area and which may serve the purpose of protecting ecological reserves and conservation preserves.]

(c) Upon adoption of a management plan for a natural area, the interim classification assigned to the area shall be superseded by the specific management practices prescribed by the management plan.

(d) As part of an adopted management plan, specified zones within the natural area may be categorized as buffer areas. A buffer area serves the purpose of protecting ecological reserves and conservation preserves.

7:2-11.8 Natural area management plans

(a) Management and uses of natural areas shall be subject to:

1.-2. (No change.)

3. A management plan adopted by the Commissioner specifying [users] **uses**, activities, or management.

(b) The Division, with the cooperation of the administering agency and other units of the Department, shall prepare a management plan **for each natural area in the System**. The primary purpose of [the] **a** management plan is to describe the natural features of the area and prescribe management practices and public uses to ensure preservation in accordance with the designation objective **of the natural area**.

(c) An adopted management plan may supersede the interim management practices listed at N.J.A.C. 7:2-11.9, if the Commissioner determines through his or her approval of the management plan that the practices in the management plan more specifically address the requirements of the designation objective for that area. Any interim management practice listed at N.J.A.C. 7:2-11.9 and not specifically addressed or superseded by the adopted management plan for the area shall remain in effect in a natural area following adoption of the management plan.

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

[(e)](**f**) The Council shall review the **draft** management plan and the comments of the administering agency and shall request additional information from the Division or recommend to the Commissioner that the plan be adopted.

Recodify existing (f) as **(g)** (No change in text.)

(h) The Commissioner shall review the draft management plan, the recommendation of the Council, and the recommendation, if any, of the Division and shall take the following action on the draft management plan:

1. Adopt the draft management plan as the management plan for the natural area, effective upon publication of notice of the plan adoption in the New Jersey Register; or

2. Request the Council and the Division's reconsideration of the draft management plan, after which the Council and the Division may resubmit the draft management plan for the Commissioner's approval.

(i) An adopted management plan for a natural area may be amended subject to the following:

1. The Council shall review any proposed amendments to an adopted management plan, and the comments of the administering agency on the proposed amendments, and shall request additional information or recommend to the Commissioner that the proposed amendments be adopted;

2. If the administering agency disagrees with the recommendation of the Council, the recommendations of each shall be forwarded to the Commissioner for a final decision; and

3. Adoption of amendments to a management plan for a natural area shall be effective upon publication of notice of the adopted amendments in the New Jersey Register.

7:2-11.9 Interim management practices

(a) (No change.)

(b) Interim management practices **listed at (e) or (f) below** which require the approval of the Commissioner shall first be submitted to the Council for its review and recommendation.

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

(e) The following interim management practices apply generally to all natural areas **upon designation to the System and until and unless superseded by the provisions of an adopted management plan:**

1.-4. (No change.)

5. Existing structures may be maintained in a natural area [but may not be enlarged]; **new structures and enlargement of existing structures may be undertaken upon approval by the Commissioner, provided the structures directly or indirectly contribute to the designation objective;** new structures, of a temporary nature, may be constructed for research purposes in accordance with N.J.A.C. 7:2-11.10;

6.-11. (No change.)

12. Habitat manipulation may be undertaken if preservation of a particular habitat type or species of native flora or fauna is included in the designation objective of the natural area and [the prior approval of the Commissioner is obtained] **upon approval by the Commissioner of a specific habitat manipulation plan prepared by the Department.**

13. Gypsy moth control activities may be implemented as an interim management practice after approval **of a gypsy moth control plan** by the Commissioner; the Commissioner shall review a **gypsy moth** control plan only after the State Forester has determined that egg mass counts and prior year defoliation indicate the tree mortality will be severe without intervention; to the extent practicable, biological controls, rather than chemical means, shall be used to control gypsy moths;

14. There shall be no physical manipulation of a natural area or application of chemicals known as adulticides for the purpose of controlling [mosquitos] **mosquitoes**; the application of larvacides may be permitted in salt marshes only and only as follows:

i. (No change.)

ii. The application of other larvacides may be initiated upon approval by the Commissioner of a specific **mosquito control** plan submitted by a mosquito control agency; the plan shall identify the specific area where [an] **a larvacide** application will be made, the types and amount of larvacide to be applied, the need for the application, and the reason why BTI cannot be used for this application;

15. (No change.)

16. Public use of natural areas shall be allowed only to the extent and in a manner that [it] will not impair natural features; the administering agency may restrict access and use as necessary to protect the natural area; the following are permissible public uses **of natural areas**:

i.-ii. (No change.)

iii. Existing trails may be maintained, but not enlarged in any manner, by the administering agency to allow public use and prevent erosion, trampling of vegetation beyond the trails, and other deterioration as follows:

(1) New trails or enlargement of existing trails for interpretive purposes may be initiated subsequent to review of a plan [therefore] by the Commissioner and approval of that plan by the Commissioner.

(2)-(3) (No change.)

iv. (No change.)

(f) The following interim management practices, unless superseded by an adopted management plan, apply to the appropriate specified natural area classifications:

1.-4. (No change.)

[5. New structures and enlargement of existing structures may be undertaken by the administering agency only within buffer areas, provided the structures directly or indirectly contribute to the designation objective;]

Recodify existing 6. and 7. as **5. and 6.** (No change in text.)

7:2-11.12 Boundaries of natural areas

(a) The Division shall maintain, and make available to the administering agency and members of the public, general location maps of each natural area in the System.

(b) All boundaries of natural areas shall conform with physical features identifiable in the field or the edge of State ownership of the natural area.

(c) The Department may correct errors in the boundary of a natural area effective upon publication of notice of the correction in the New Jersey Register.

(d) Changes in boundaries of natural areas may be made pursuant to the procedure at (f) through (j) below.

(e) In order to qualify for addition to a natural area through a boundary change, a site must be owned in fee or held as a conservation easement by the Department.

(f) Any person may petition the Department to change the boundary of a natural area by completing a proposal as specified at (g) below and submitting copies to the Council, the Division, and the administering agency for the natural area. The Division may propose to change the boundary of a natural area by providing the information specified at (g) below to the Council and the administering agency for the natural area.

(g) A proposal to change the boundary of a natural area shall be in written form and shall contain the following information:

1. The name, address, and affiliation of the petitioner;

2. The relationship of the petitioner to the natural area for which a boundary change is proposed;

3. A map, at U.S.G.S. scale or larger, clearly showing the current boundary of the natural area and the proposed boundary adjustment;

4. An explanation of the reason for the proposed boundary change; and

5. A general description of the land proposed for exclusion or inclusion in the natural area, including, but not limited to, a description of:

i. Vegetative community types;

ii. Habitat types (wetland and upland);

iii. Ecological community age, structure and quality; and

iv. Structures and other man-made features.

(h) If the proposed change would result in a net change of not more than 25 percent of the total acreage of the natural area, the

Council shall review the proposal at the next regularly-scheduled meeting after receiving the proposal and shall submit its recommendation on the proposal to the Commissioner for decision.

(i) If the proposed change would result in a net change of more than 25 percent of the total acreage of the natural area, public notice of the proposal shall be provided in the New Jersey Register. The Department shall accept written comment on the proposal and the Council shall review the proposal at the next regularly-scheduled meeting after the close of the public comment period on the proposal. The Council shall submit its recommendation and a summary of any written public comment received on the proposal to the Commissioner for decision.

(j) The Commissioner shall review the recommendation of the Council and shall take one of the following actions on the proposal:

1. Approve the boundary change, effective upon publication of notice of the boundary change in the New Jersey Register, upon a finding that the boundary change:

i. Conforms with physical features identifiable in the field or the limits of State ownership; and

ii. Serves to protect the natural area or further its designation objective; or

2. Request that the Council reconsider its recommendation and resubmit the proposal for the Commissioner's review; or

3. Deny the proposal, effective upon publication of notice of the denial in the New Jersey Register, upon a finding that the proposed boundary change:

i. Does not conform with physical features identifiable in the field or the limits of State ownership; or

ii. Does not serve to protect the natural area or further its designation objective.

7:2-[11.12]**11.13** Natural Areas System

[(a) The Division shall maintain general location maps of each area in the System and shall periodically update these maps to reflect minor boundary changes due to acquisitions or new information. Major changes in boundaries may be made upon adoption of a management plan or amendment thereto.

(b) Boundaries indicated on these maps shall reflect the true location of the natural area and be made available to the administering agency and the general public.]

[(c)](**a**) The following are designated as components of the Natural Areas System:

1.-9. (No change.)

10. Cape May Wetlands Natural Area:

i. Location: Avalon Borough, Dennis[,] **and** Middle [and Upper] Townships, Cape May County;

ii.-iv. (No change.)

11.-15. (No change.)

16. Farny Natural Area:

i.-iii. (No change.)

iv. Administering Agency: Division of Parks and Forestry, through [Region 3 offices] **Ringwood State Park**;

17. Great Bay Natural Area:

i.-iii. (No change.)

iv. Administering Agency: Division of [Parks and Forestry] **Fish, Game and Wildlife**, through [Bass River State Forest] **Assunpink Wildlife Management Area**;

18.-23. (No change.)

24. Manahawkin Natural Area:

i.-iii. (No change.)

iv. Administering Agency: Division of Fish, Game and Wildlife, through [Edward G. Brevan] **Assunpink** Wildlife Management Area;

25.-31. (No change.)

32. Strathmere Natural Area:

i. (No change.)

ii. Designation Objective: preservation of a dune habitat**, plant community associations, and rare species habitat**;

33.-36. (No change.)

37. Troy Meadows Natural Area:

i.-iii. (No change.)

iv. Administering Agency: Division of Parks and Forestry through [Region 3 Office] **Ringwood State Park**;

38.-41. (No change.)

42. Whittingham Natural Area:

i.-iii. (No change.)

iv. Administering Agency: Division of [Parks and Forestry] **Fish, Game and Wildlife**, through [Swartswood State Park] **Whittingham Wildlife Management Area.**

7:2-11.14 Public information

Interested persons may obtain information on the Natural Area System or inspect location maps of natural areas by contacting:

Office of Natural Lands Management
Division of Parks and Forestry
Department of Environmental Protection
CN 404
Trenton, New Jersey 08625-0404
(609) 984-1339

(a)

DIVISION OF WATER RESOURCES

Notice of Request for Informal Input Ground Water Quality Standards Interested Party Review: N.J.A.C. 7:9-6 and 7:9-6.4(e)3

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq. and 58:11A-1 et seq.

DEP Docket Number: 024-91-60.

Take notice that the New Jersey Department of Environmental Protection is contemplating a proposed amendment to N.J.A.C. 7:9-6, which would repeal the existing rules and adopt new rules. The new rules would constitute the Ground Water Quality Standards for protection of ambient ground water quality, including policies, a classification system, designated protected uses, water quality criteria, antidegradation policies, practical quantitation levels, and policies regarding exceptions. The anticipated rules would result in most of New Jersey's ground water being classified for protection of special environmental resources (for example, the Pinelands Area and Natural Areas) or potable use.

One paragraph of the anticipated rules, N.J.A.C. 7:9-6.4(e)3 regarding Class II-B ground waters, is reserved. The Department is contemplating a separate proposed rule for this paragraph that will establish Class II-B ground waters where past discharges have resulted in large areas of unpotable ground water, restoration of the ground water quality to potable use is generally infeasible or impracticable, there are no significant potable uses of the ground water at this time, and no significant impairment of special environmental resources is likely.

The Department is seeking public comment on drafts of the rules prior to formal proposal and adoption. The full text and Basis & Background document for each of these draft proposals is available for public review and comment by writing to:

Bureau of Water Supply Planning & Policy
Division of Water Resources
Department of Environmental Protection
CN 029
Trenton, New Jersey 08625

Submit written comments by July 31, 1991 to:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
Department of Environmental Protection
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

(a)

DIVISION OF COASTAL RESOURCES

Notice of Opportunity for Informal Public Comment on Draft Revisions to the Flood Hazard Area Regulations N.J.A.C. 7:13

Take notice that the Department is providing the opportunity to comment on draft revisions to the Flood Hazard Area Regulations before they are formally proposed.

The Flood Hazard Area Regulations were originally adopted on May 22, 1984. Since that time a need for many refinements has been identified.

The Department of Environmental Protection is now proposing to revise the Flood Hazard Area Regulations, N.J.A.C. 7:13, to better reflect current information and knowledge, the enactment of the Freshwater Wetlands Protection Act, recent court decisions and the relocation of the Stream Encroachment Program to the Division of Coastal Resources. The Department seeks public comment regarding amendments to the regulations and any means by which they may be made clearer and easier to use. The Department will consider these public comments in preparing the amendments for formal proposal.

A copy of the draft proposal may be obtained upon request from:

Division of Coastal Resources
New Jersey Department of Environmental Protection
5 Station Plaza
501 East State Street, CN-401
Trenton, New Jersey 08625
(609) 292-1235

Submit written comments by August 30, 1991 to:

Samuel A. Wolfe, Esq.
New Jersey Department of Environmental Protection
Office of Legal Affairs
401 East State Street, CN-402
Trenton, New Jersey 08625

A public meeting to discuss the proposed regulations will be held on July 16, 1991 at 10:00 A.M. in the Veterans Room at the War Memorial on Lafayette Street in Trenton, New Jersey.

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries
Weakfish Management
Proposed Amendment: N.J.A.C. 7:25-18.1
Proposed New Rules: N.J.A.C. 7:25-18.12 and 18.13

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection.
Authority: N.J.S.A. 23:2B-6.
DEP Docket Number: 023-91-06.
Proposal Number: PRN 1991-358.

A public hearing on the proposal will be held on July 18, 1991, 6:30 P.M. at:

Atlantic Community College
Walter Edge Theater
Black Horse Pike
Mays Landing, New Jersey 08330

Submit written comments by July 31, 1991 to:

Samuel Wolfe, Esq.
Office of Legal Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The purpose of this proposed amendment and new rules is to implement the recommendations of the Delaware Bay Weakfish Action Commission to protect and manage weakfish populations in New Jersey and Delaware. The bi-state Delaware Bay Weakfish Action Commission was established by House Joint Resolution No. 29 (1990) of the General Assembly and approved by the Governor of the State of Delaware and by Executive Order No. 20 (1990) of the Governor of New Jersey to investigate the causes of the decline of the weakfish population and to recommend means by which the decline of this population may be corrected. The New Jersey members of the Commission consisted of: the designee of the Commissioner of the Department of Environmental Protection, two members of the Senate, two members of the General Assembly, six public members and two non-voting members employed by an institute of higher education with technical experience in the field of marine studies. The Delaware membership of the Commission was similarly composed. Appropriate staff needs were met by the Department of Environmental Protection from New Jersey and the Department of Natural Resources and Environmental Control from Delaware.

The Commission recommended that weakfish harvest should be reduced by 25 percent based upon historical harvest information from the period of 1988-90. The Commission specifically recommended that the recreational reduction should be met through the use of a 13-inch size limit and a 10-fish bag limit and that the commercial reduction should be met with a 12-inch size limit along with individual catch quotas for all components of the commercial fishery other than otter trawls. The Commission further recommended that the rules be strictly enforced and monitored.

The Department proposes to implement these recommendations by the use of minimum size limits, bag limits and individual harvest allocations. For the purpose of implementing the Commission's recommendation, the weakfish fishery was broken down into three specific components including recreational hook and line, commercial otter trawl and all other commercial methods (gill nets, pound nets, hand line). Based upon the best information available, various management options were developed for the specific fisheries. The Commission evaluated the various alternatives and recommended a course of action for each component of the weakfish fishery.

A 25 percent reduction can best be achieved for the recreational hook and line fishery by implementing a 13-inch minimum size limit in combination with 10 fish per angler per day creel limit. This option was selected in part to ease the burden of a more restrictive creel limit on the party and charter boat fleet (see further discussion under Economic Impact).

The 12 inch minimum size limit will apply to all commercial harvests of weakfish. In the otter trawl fishery, implementation of a minimum size of 12 inches will, without further limitations, result in a 25 percent reduction. To increase the minimum size to 13 inches would result in close to a 35 percent reduction in weakfish landings for the otter trawl fishery. A 25 percent reduction in the harvest of weakfish in all other commercial fisheries can best be achieved with a 12-inch size limit and through the establishment of an individual allocation.

All commercial harvesters of weakfish will be required to obtain a Commercial Weakfish Permit which will be necessary to harvest and sell weakfish.

An individual's allocation will be based upon their historical harvest of weakfish from the three years 1988-1990. The individual's average harvest for the three year period will be used as a base upon which to assign an allocation for the 1991 calendar year which reflects a 25 percent reduction. Should the reported harvest of all individuals exceed the weakfish landings reported by the National Marine Fisheries Service, the individual allocations may have to be further reduced so that the total allocation for all commercial harvesters does not exceed 75 percent of the average National Marine Fisheries Service weakfish landings for 1988-1990.

The management options described above will reduce the fishing pressure on the weakfish resource and will enhance conditions for recovery of the stock.

Social Impact

The purpose of the proposed amendment and new rules is to implement a management program for weakfish. An immediate goal of this management program would be to reduce fishery mortality by 25 percent uniformly across all segments of the fishery. For the recreational fishery, this will require the imposition of a 13-inch minimum size limit and a 10-fish bag limit. Since neither size nor bag limits have previously existed for this species, there will be some social impacts as anglers adjust to these restrictions. A 12-inch minimum size limit with a six fish bag limit

was initially suggested as the means of achieving a 25 percent reduction in recreational harvest.

Delaware Bay party and charter boat captains felt that the six fish bag limit would be met with very strong resistance and thus seriously impact the number of potential customers. This sentiment was also expressed by representatives from recreational fishing clubs in the area. They suggested that the increase in size limit to obtain an increase in the bag limit would reduce the resistance and be much more socially acceptable.

There will also be a social impact on gill net fishermen. No longer will weakfish be subject to a totally open access fishery. Fishermen who do not have a recent history in the fishery will be excluded. Although this will impact people who might like to enter the gill net weakfish fishery, it was felt that an individual quota system would provide some protection to those already having made substantial investments in terms of time, effort and vessel and fishing gear expenses in the fishery by assuring them of the opportunity to harvest at least a limited amount based, in part, on their recent catches. The most significant social impacts would thus be felt by those individuals who were not in the fishery in the 1988-1990 period.

Economic Impact

Any time the harvest of an important recreational and commercial species is reduced, there is bound to be an economic impact. The purpose of these rules is to manage the weakfish resource, stop the decline of weakfish and through such management to restore the population to prior abundance. The short term economic loss brought about by harvest restrictions will be more than offset by improvement in stock conditions in the long term with resultant economic increases in the recreational and commercial fisheries.

The recreational fishery, especially the charter and party boat fisheries in the Delaware Bay area, has suffered significant loss of income over the past several years due to the recent decrease in weakfish stock size. This proposed rulemaking may add somewhat to this problem. The change in the original position from a 12-inch size limit and six fish bag limit to a 13-inch size limit and 10 fish bag limit, as discussed in the social impact section above, should reduce the potential economic impact of this amendment and new rules in the recreational fishery to acceptable levels.

In 1989 (the most recent full year data available), the total commercial weakfish landings in New Jersey were 1,457,113 pounds with a dockside value of $1,057,053. The otter trawl fishery accounted for approximately 871 thousand pounds valued at $428,000. Implementation of a 12-inch size limit will reduce otter trawl harvests by approximately 25 percent in number but only 10 percent by weight. Because of the lower economic per-pound value of small fish as compared to medium and large fish, the corresponding reduction in economic value would be less than $42,000.

Further, those vessels engaged in the otter trawl fishery harvest a multitude of species in addition to weakfish. In 1989, the most recent year for which these statistics are available, the otter trawl fishery accounted for landings in excess of 35 million pounds. The anticipated 10 percent reduction in weakfish landings, as a result of this proposed rulemaking, represents only 0.25 percent of the entire otter trawl fishery. Therefore, economic impacts to this segment of the fishery should not be significant.

The gill net fishery may feel the major economic impact of the proposed amendments and new rules. The gill net fishery accounted for landings of about 470,000 pounds valued at approximately $480,000. This fishery is pursued by about 400 fishermen. The majority of these individuals are part time gill netters. During the fishing season they may also fish for crabs, shellfish and eels, or may even pursue land-based jobs. There may only be 50 or so full time gill net fishermen. All 400 of these individuals, however, will feel the cumulative loss of about $120,000. The long term gains to the fishery through appropriate management measures will, as stated earlier, offset the short term losses. Without these measures, these individuals would be subject to greater long term loss from further reduction in the resource.

Environmental Impact

The proposed amendment and new rules are expected to have a positive effect on the reproductive potential of weakfish. The "Fishery Management Plan for Weakfish—1985" prepared by the Atlantic States Marine Fisheries Commission (ASMFC) recommended, among other things, maintaining a spawning stock large enough to minimize recruitment failure and increasing yield per recruit by delaying their entry into the weakfish fisheries to ages greater than one. Imposing a possession limit of 12 inches and reducing fishing mortality will help achieve both of these goals. By the time weakfish reach 12 inches, 75 percent of the fish are sexually mature. A 12-inch size limit would allow an increased number of fish to spawn before becoming available to fisheries. Reduction in fishery mortality will further allow a greater number of fish to escape harvest and return to spawn two or more times.

The ASMFC is currently in the process of amending their 1985 Weakfish Management Plan. Information developed for that plan indicates that weakfish are currently being overfished. Preliminary assessments suggest that fishery related removal from the stock should be decreased on a coastwide basis by 25 to 50 percent. This management plan is expected to be completed by June, 1991.

This proposed rulemaking is consistent with the preliminary recommendations of the ASMFC coastwide plan. Its implementation along with similar coastwide regulations should increase the abundance of weakfish available to both commercial and recreational fishermen.

Regulatory Flexibility Analysis

The proposed amendment and new rules would apply to all recreational and commercial fishermen and party and charter boats fishing for weakfish and fish dealers. Most of the commercial fishermen, party and charter boats, and fish dealers are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and may be impacted to some degree. Although these small businesses will have to comply with the requirements set forth in the Summary above, including some additional recordkeeping for monitoring and enforcement purposes, it is unlikely that additional professional services or capital costs will be required for compliance. In developing the amendment and new rules, the Department has balanced its environmental responsibilities against the economic impact to small businesses and has determined that to minimize the impact of the amendment and rules would adversely affect the environment and, therefore, no exemption from coverage is provided.

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

7:25-18.1 Size limits

(a) No person shall purchase, sell, offer for sale, or expose for sale any sea sturgeon measuring less than 42 inches in length, codfish measuring less than 12 inches in length, bluefish [or weakfish] measuring less than nine inches in length, sea bass or kingfish measuring less than eight inches in length, blackfish, mackerel, or porgy measuring less than seven inches in length or winter flounder measuring less than six inches in length.

(b) No person shall take from the marine waters in the State or have in his possession any summer flounder, commonly called fluke, under 13 inches in length, **or weakfish under 12 inches in length.**

(c)-(n) (No change.)

7:25-18.12 Special provisions applicable to weakfish

(a) A person shall not possess any weakfish less than 13 inches in length while on or angling in the marine waters of the State unless such person is the holder of a valid Commercial Weakfish Permit.

(b) A person shall not possess more than 10 weakfish at any time while on or angling in the marine waters of the State unless such person is the holder of a valid Commercial Weakfish Permit.

(c) A person shall not possess any weakfish or parts of a weakfish from which the head or tail has been removed, other than immediately prior to preparation or being served as food, which is less than the appropriate minimum size as specified at N.J.A.C. 7:25-18.1(b) and at (a) above.

(d) Any person violating the provisions of (a), (b) or (c) above shall be liable to a penalty of $20.00 for each fish taken or possessed. Each fish taken or possessed shall constitute an additional separate and distinct offense.

7:25-18.13 Special provisions applicable to a Commercial Weakfish Permit

(a) An individual shall not take or attempt to take weakfish for the purposes of sale or barter from the marine waters of the State, or from the marine waters outside the State and landed within the State, without a valid Commercial Weakfish Permit issued by the Commissioner.

(b) Commercial Weakfish Permits are non-transferable.

(c) To qualify for a Commercial Weakfish Permit, an individual shall comply with the provisions below within 45 days of the effective date of this section:

1. The applicant shall complete an application provided by the Department, listing the amount of weakfish (in pounds) harvested in each of the years 1988, 1989 and 1990;

2. The applicant shall attach documented proof of the amount of weakfish (in pounds) listed as being harvested in each of the years 1988, 1989 and 1990. Documented proof shall consist of one or more of the following:

i. Weigh-out slips totaling the amount (in pounds) harvested;

ii. A notarized statement from the applicant and the purchaser(s) attesting to the amount (in pounds) harvested (records must be verifiable based upon inspection of the purchaser's business records); or

iii. Other documentation similar to that in (c)2i or ii above may be accepted at the discretion of the Commissioner after his or her review; and

3. The applicant shall sign an affidavit on the application certifying as to the validity of the information provided.

(d) Once the application period closes, 45 days following the effective date of this section, the Commissioner will determine an annual allocation of weakfish (in pounds) that may be harvested for each qualified applicant based upon the following:

1. The recorded New Jersey commercial weakfish landings for the years 1988, 1989 and 1990 as developed and reported by the National Marine Fisheries Service; and

2. The applicant's total documented harvest of weakfish in pounds for the years 1988, 1989 and 1990 divided by three.

(e) Each permittee's allocation shall be 75 percent of their average annual harvest for the years 1988, 1989 and 1990 as determined in (d)2 above and as adjusted, if necessary, so the total allocation of all permittees does not exceed 75 percent of the average annual commercial weakfish landings for the years 1988, 1989 and 1990 for New Jersey as reported by the National Marine Fisheries Service.

(f) All qualified applicants will receive a "Commercial Weakfish Permit" within 75 days following the effective date of this section which shall indicate that permittee's annual (calendar year) allocation of weakfish that may be commercially harvested during 1991.

(g) Following 75 days after the effective date of this section, no weakfish may be commercially harvested until such permit has been issued and received.

(h) All individuals shall have their permit on their person at all times when engaged in any phase of harvesting, transporting, selling or possessing weakfish, except that a permittee may designate an agent with the proper documentation to possess, transport or sell weakfish harvested by the permittee. Documentation shall consist of an accurately completed weakfish trip ticket as provided by the Department.

(i) All weakfish harvested under the Commercial Weakfish Permit shall be landed in New Jersey. For the purposes of this section, landed shall mean the transfer of a catch of fish from a vessel to the land or any pier, wharf, dock or other structure.

(j) All permittees shall be required to complete weakfish trip tickets and monthly reports on forms provided by the Department. Trip ticket booklets shall not be lent, borrowed, or transferred and shall remain assembled as issued in good condition.

1. Each permittee shall complete weakfish trip tickets prior to landing with all information requested according to instructions provided. One copy shall accompany the harvested weakfish to the respective buyer. Another copy shall be retained by the permittee. The third copy shall remain in the trip ticket booklet which shall be available for inspection by designated enforcement personnel. Five days following completion of all trip tickets in a booklet or five days following the end of the calendar year, whichever occurs first, the booklet shall be mailed to the following address:

Division of Fish, Game and Wildlife
Weakfish Program
CN 400
Trenton, NJ 08625

2. Each permittee shall submit monthly reports on forms supplied by the Department to the address at (j)1 above. The monthly report shall be signed by the permittee attesting to the validity of the information and be submitted so it is received by the Department no later than five working days following the end of the reported month. The monthly report shall include:

i. The daily harvest and sale of weakfish (in pounds);

ii. The buyer(s) name;

iii. The cumulative total of weakfish (in pounds) at the beginning of the month;

iv. The cumulative total of weakfish (in pounds) at the end of the month; and

v. Any other requested information pertinent to management of the weakfish resource.

(k) For 1991, any weakfish harvested for commercial purposes pursuant to (a) above, prior to 75 days following the effective date of this section, shall be charged against the permittee's 1991 calendar year allocation and shall be reported on the first monthly report submitted following implementation of this section. Failure to accurately report these landings shall subject the permittee to revocation of his permit.

(l) At any time during the calendar year that the permittee's annual allocation of weakfish has been harvested, the permittee shall cease all harvesting of weakfish. A monthly report marked "FINAL" along with all trip ticket booklets shall be forwarded to the Division at the address provided above at (j)1, within five working days.

(m) Adjustments in individual allocations for years subsequent to 1991 may be made annually by the Commissioner, based upon recommendations of the Atlantic States Marine Fisheries Commission, annual recreational and commercial landings data from the National Marine Fisheries Service and an individual's historical harvest performance. If no such adjustment is made, each permittee's allocation shall remain at the previous year's amount.

(n) As recovery of the weakfish resource occurs, existing participants in the commercial fishery will receive increased annual allocations to at least the level of 100 percent of their average annual harvest for the years 1988, 1989 and 1990 prior to the issuance of a "Commercial Weakfish Permit" to any new applicant.

(o) Participants in the otter trawl fishery harvesting weakfish are exempt from (c)2, (c)3, (d), (e), (k), (l), (m) and (n) above.

(p) Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:

1. Failure to submit the application within 45 days of the effective date of this section or to attach the required documentation to the application shall result in the denial of the permit:

2. Falsification or misrepresentation of any information on the application including documentation provided to verify the amount of weakfish harvested in each of the years 1988, 1989 and 1990 shall result in the denial or revocation of the permit in addition to any civil or criminal penalties prescribed by law.

3. Failure to comply with the provisions of (j) and (l) above shall subject the violator to suspension of the Commercial Weakfish Permit.

4. Prior to the suspension or revocation of the permit, the permittee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Dental Services Manual

Proposed Readoption: N.J.A.C. 10:56

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

Authority: N.J.S.A. 30:4D-6b(4), 6g, 7, 7a, b and c; 30:4D-12; 42 C.F.R. 440.100.

Agency Control Number: 91-P-3.

Proposal Number: PRN 1991-350.

Submit comments by July 31, 1991, to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

The purpose of this proposal is to readopt the entire Dental Services Manual, which is due to expire August 26, 1991, in compliance with Executive Order No. 66(1978), commonly known as the Sunset Provision.

The Dental Services Manual was promulgated to set forth the basic policies and procedures (of the Medicaid program) relating to treatment of disease or injury to structures of the mouth. Dental services include, but are not limited to: examinations, X-rays and diagnoses; design of dental treatment plans; treatments including preventive dental care, restorative services, endodontia, periodontia, prosthodontia, exodontia and oral surgery; and prescriptions.

Subchapter 1 covers the dental treatment plan, prior authorization, non-covered services, standards of services, special dental services, utilization review, quality control and peer review, patient records, basis of payment, place of service, specific provisions governing dental services, adjunctive general services, and consultations.

Subchapter 2 covers patient eligibility and explains the proper completion and submission of the dental services claim form (MC-10).

Subchapter 3 references the Health Care Financing Administration (HCFA) Common Procedures Coding System (HCPCS Codes). The HCPCS Codes are the basis for Medicaid reimbursement.

An administrative review has been conducted, and a determination made that the rules should be continued because they are necessary, adequate, reasonable, efficient, understandable and responsive for the purpose for which they were originally promulgated. Both recipients and providers of dental services need to be informed of the services covered by the New Jersey Medicaid program.

The Chapter has been amended since the last readoption. References to timely claims submission were consolidated and standardized for non-institutional Medicaid providers, by way of locating the definition of timeliness of submission of claims in the Administration chapter of the New Jersey Administrative Code, at N.J.A.C. 10:49-1.12 by R.1987 d. 408, effective October 5, 1987, (see 19 N.J.R. 1800(a)). This amendment to the rule also modified the instructions for completing the dental services claim form, MC-10, at N.J.A.C. 10:56-2.3.

In another amendment, the Division repealed N.J.A.C. 10:56-3, Procedure Codes and Descriptions, of the rule and replaced it with a new subchapter 3, which contains the HCFA Common Procedure Coding System (HCPCS). The rule was adopted effective April 6, 1987 as R.1987 d.166 (see 19 N.J.R. 519(a)). Institution of the HCPCS codes established a uniform system of referencing health services rendered through State Medicaid programs. The establishing of uniform coding enables comparisons to be drawn between government sponsored health programs. A subsequent amendment to the system of HCPCS codes was proposed and adopted at 22 N.J.R. 1660(b) and 22 N.J.R. 2713(a), respectively. Prior authorization was removed from eight procedures, a procedure code was added for crown repair, and two limitations related to the application of sealants were removed.

There are no textual amendments associated with this readoption.

Social Impact

The rules have enabled Medicaid patients who require dental care to receive treatment. It should be continued because the social situation has not changed.

The rules impact upon dentists by indicating professional qualifications in order to become a Medicaid provider, the scope of Medicaid services, and those procedures which are required in order to submit claims for services rendered to Medicaid recipients.

Economic Impact

The economic impact is as follows: there is no cost to recipients for services rendered through the Medicaid Program; there is no change in the fee schedule, which is based upon the HCPCS Procedure Code; thus, there is no change affecting Medicaid providers.

Regulatory Flexibility Analysis

This proposed readoption could impact on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The rules apply to dentists who participate in the New Jersey Medicaid Program. This proposed readoption does not impose any new or additional reporting, recordkeeping and other compliance requirements. There is no differentiation among providers based upon size of the provider entity because all Medicaid providers are required, at N.J.S.A. 30:4D-12, to keep records substantiating services rendered to Medicaid recipients. The type of records include the name of the recipient to whom the service was rendered, date(s) of service, the nature and extent of the service, etc. The regulatory requirements are the same for all dentists regardless of the size of the practice. The standards of dental practice and patient care are the same for all dentists.

There are no capital costs associated with the rules proposed for readoption.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:56.

CORRECTIONS

(b)

THE COMMISSIONER

Fiscal Management
Inmate Accounts

Proposed New Rules: N.J.A.C. 10A:2-2

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

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

Proposal Number: PRN 1991-356.

Submit comments by July 31, 1991 to:
Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules set forth the responsibilities of the Business Manager of a correctional facility in maintaining records of inmate accounts. The proposed new rules also establish the policy and the procedures for the control of funds held in group deposits and in individual savings accounts for inmates.

Social Impact

An orderly process for monitoring inmate accounts will have several positive benefits for inmates and the correctional facilities. Inmates will have some assurance that their funds will be properly safeguarded and available for payment of court imposed fines, penalties, restitution and for legitimate personal use. These rules will lessen the likelihood that disposition of funds will be called into question.

Economic Impact

The proper and timely placement of inmate monies in interest bearing accounts will result in monies being made available through the Inmate Welfare Funds for the benefit of the inmate population.

The implementation of the rules requires no additional resources beyond that which is part of the current budget of the Department.

Regulatory Flexibility Statement

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

Full text of the proposal follows:

SUBCHAPTER 2. INMATE ACCOUNTS

10A:2-2.1 Responsibility for inmate accounts

(a) The Business Manager of the correctional facility shall be responsible for maintaining inmate accounts and recordkeeping.

(b) The Business Manager shall be responsible for providing an inmate with a receipt for each financial transaction processed.

10A:2-2.2 Group deposits

(a) Inmate accounts of a correctional facility may be maintained in a group depository in an insured commercial bank or savings institution so long as the total fund on deposit does not exceed an amount insured by the F.D.I.C. or F.S.L.I.C.

(b) Pursuant to N.J.S.A. 30:4-15, interest accruing on inmate accounts shall be transferred on a periodic basis, at least once annually, to the Inmate Welfare Fund.

(c) Accurate records of each inmate's account and spendable balance shall be maintained.

(d) Deductions from inmate accounts may be made by the Business Manager to pay court ordered penalty assessments, restitution, fines or other revenue obligations as permitted by N.J.S.A. 30:4-91.4, N.J.S.A. 2C:43-3.1 or N.J.S.A. 30:4-92.

10A:2-2.3 Individual savings accounts

(a) Inmates may establish individual savings accounts in commercial banks or savings institutions upon approval of the Superintendent. These accounts may take the form of:

1. Passbook savings;
2. Savings Bonds; or
3. Certificates of deposit.

(b) Subject to approval by the Superintendent, inmates may be permitted to retain passbooks, account statements and deposits slips.

(c) Bonds and certificates of deposit must be held for safekeeping by the Business Manager.

(d) Inmates shall not be permitted to possess withdrawal slips.

(e) Withdrawals may be permitted upon written approval of the Superintendent.

(f) All deposits and withdrawals shall be processed by the Business Manager or his or her designee.

10A:2-2.4 Written procedures

Each correctional facility shall develop written policies and procedures consistent with this subchapter.

LAW AND PUBLIC SAFETY

(a)

DIVISION ON CIVIL RIGHTS

Family Leave Act Rules

Re-proposed New Rules: N.J.A.C. 13:14

Authorized By: Division on Civil Rights, C. Gregory Stewart, Director.

Authority: N.J.S.A. 34:11B-16.

Proposal Number: PRN 1991-355.

The Division previously published regulations governing implementation of the Family Leave Act, N.J.S.A. 34:11B-1 et seq., on July 16, 1990, at 22 N.J.R. 2129(a), and conducted public hearings on September 12 and 26, 1990 in order to elicit information and views relevant to the proposed action. Thirty comments were received from the public and as a result of the Division's review of these comments and the proposed rules, it was determined that the rules should be reproposed with substantive and technical changes.

The hearing officer who presided at the hearings has submitted to the Director a report which is available to the public by writing to:

Linda Wong Peres, Assistant Director
Bureau of Policy
Division on Civil Rights
383 West State Street, CN-089
Trenton, NJ 08625

The hearing officer's recommendations, and the Division's responses thereto, correspond to the Division's responses to public comments as set forth in the Summary below.

Submit written comments on the reproposal by July 31, 1991 to:

C. Gregory Stewart, Director
Division on Civil Rights
383 West State Street, CN 089
Trenton, NJ 08625

The agency's reproposal follows:

Summary

The Family Leave Act, N.J.S.A. 34:11B-1 et seq. (the Act), effective May 4, 1990, entitles most employees in the State to a maximum of 12 weeks family leave from employment in any 24-month period. Under the Act, eligible employees may take a family leave in order to provide care made necessary by reason of the birth or adoption of a child, or the serious health condition of certain family members (that is, child, parent, or spouse). Employees returning from family leave are entitled to be restored to the position held prior to the leave or to an equivalent position of like seniority, status, employment benefits, pay and other terms and conditions of employment.

The Division on Civil Rights has been charged with the responsibility of enforcing the Act, and under its terms, the Director of the Division is to promulgate rules and regulations deemed necessary for the implementation and enforcement of the Act.

The following is a summary of proposed rules which are intended to interpret the Act's various provisions consistent with the Legislature's intent. Also included are the summaries of various comments received by the Division on the original proposed rules and the Division's responses.

N.J.A.C. 13:14-1.1 sets forth the chapter's purpose.

N.J.A.C. 13:14-1.2 defines key words and phrases as they appear in the Act and the proposed rules, as follows:

"Base hours" is defined in terms of an employee's regularly compensated hours of work, excluding overtime. This definition applies to the term "base hours" as it is used in section 3e of the Act in order to determine whether an employee is eligible for family leave. One commenter stated that the definition of "base hours," pursuant to N.J.A.C. 13:14-1.2, is unclear because the term "overtime" could either refer to statutory overtime (in excess of 40 hours) or any hours over a regularly scheduled workweek. The Division intends that the term "base hours" means regularly scheduled hours in a workweek and that the term "overtime" does not refer to statutory overtime. The Division believes that this provision is clear and determined not to amend the rules in this regard.

"Base salary" is defined to include an employee's gross salary exclusive of any amounts which exceed an employee's compensation for base hours (that is, bonuses, overtime, etc.). This definition applies to section 4h1 of the Act, which provides an exception to the basic entitlement to a family leave.

"Care" is defined to include, but is not limited to, physical care, emotional support, visitation, assistance in treatment, transportation, assistance with daily living matters and personal attendant services. This definition was added to the reproposed rules because commenters expressed confusion over the definition of this term.

"Child" is defined by setting forth the various relationships which an employee may have with another person in order to be entitled to family leave in the case of a child with a serious health condition. The definition is intended to make family leave available to traditional parents (for example, biological, adoptive, foster, etc.) as well as those who may not be parents in the ordinary sense of the word, but who provide parental care to a child (that is, grandparents and others who have a "parent-child" relationship with another person).

Several commenters contended that the definition of "child" in N.J.A.C. 13:14-1.2 is overbroad and exceeds the scope of the statutory definition, and one commenter specifically suggested that the language "or have sole or joint legal or physical custody, care, guardianship or visitation with a child" be deleted. One commenter noted agreement with the definition of "child" in N.J.A.C. 13:14-1.2 but stated that the summary of the definition reflected an enlargement of persons who might be classified as having a "parent-child" relationship and that it will be onerous for an employer to determine, maintain records of, and properly utilize this definition in determining eligibility for family leave. Another commenter suggested that employees requesting family leave for the care of a child over 18 who is incapable of self-care, because of a temporary (as opposed to permanent) mental or physical impairment, should be required to submit a certification that attests that no one else is available to care for the ill child.

The Act's definition of child includes the clause "or child of a parent." Section 3, subsection h of the Act defines parent to include a person "having sole or joint legal or physical custody, care, guardianship, or visitation with a child." Reading these provisions together requires that the term "child" be defined expansively to include those relationships referenced in the proposed regulatory definition, including those cases where a parent has sole or joint legal or physical custody, care, guardianship, or visitation with a child. Such a construction is consistent with what the Division perceives to be the Legislature's intent to make family leave available to non-traditional "de facto" parents who act as primary caretakers of children (for example, grandparents who have taken primary responsibility for raising children). Moreover, the summary of the definition of "child" does not enlarge the definition found in the rules. Rather, it simply clarifies the intent of the rules to reach those relationships wherein there is a "parent-child" relationship between the employee and the child.

In response to the commenter's concern that the administrative burdens on the part of the employer will be onerous, there is no evidence that such concerns are warranted. Thus, the Division has determined not to amend the definition of "child" in the reproposed rules.

With respect to the comment concerning employees seeking leave for the care of a child over 18 who is incapable of self care due to a temporary impairment, the Division finds no authority in the statute or elsewhere which would justify allowing employers to require such certification. Further, the statute clearly contemplates allowing a parent to take a family leave to care for an adult child who may be temporarily incapable of self care.

"Consecutive leave" is defined as leave which is taken without interruption based upon an employee's regular work schedule, and does not include breaks in employment when an employee is not regularly scheduled to work. During the comment period, several educators queried whether a break in employment during the summer months would be counted in determining whether an employee requested consecutive or intermittent leave. For clarification, this definition was included in the reproposed rules and an example was provided to avoid confusion between what type of leave may be considered consecutive or intermittent when there are breaks in employment. The example makes clear that when an employee is not regularly scheduled to work during July and August and normally works from September through June, a leave which is requested for May, June and September is a consecutive leave.

"Disability leave" is defined as the period of time during which the employee is unable to perform his or her work due to disability, inclusive of any period for which the employer collects temporary disability benefits. This term appears in proposed N.J.A.C. 13:14-6, which stipulates that disability leave is separate from and in addition to any family leave provided by the Act.

The phrase "disrupt unduly the operations of the employer" in sections 4 and 5 of the Act is defined to provide that an employee who takes family leave on an intermittent or reduced leave schedule basis must make a reasonable effort to schedule the leave so as not to disrupt unduly the operations of the employer. The Division has interpreted the Act to require that an eligible employee be given the option of taking intermittent leave or a reduced leave so long as that option will not cause an employer economic or other harm significantly greater than that which would be caused by the employee taking consecutive family leave.

The definition of "eligible employee" sets forth the test the Division will apply in order to determine whether an employee is eligible for family leave under the Act. The Act requires that an eligible employee be a person who has been employed by the same employer in the State of New Jersey for at least 12 months, and who has worked at least 1,000 base hours for that employer during the immediately preceding 12-month period. Under the previous rule proposal, a person has been employed by an employer in the State of New Jersey if he or she either 1) works exclusively in New Jersey or 2) performs some work in New Jersey and either has his or her base of operation in New Jersey or has his or her work directed and controlled from New Jersey.

Several commenters stated that the definition of "eligible employee" appearing in the original proposal is ambiguous because it is unclear, with respect to employees who do not work exclusively in New Jersey, as to the amount of work which must be performed in New Jersey to satisfy this definition. One commenter expressed specific concern that this provision extends benefits to employees not working in New Jersey but whose base of operation is directed and controlled in the State. This commenter did not believe that the site of the employer should control extension of benefits and further queried, "How much work is some work?" and "What does it mean to be directed and controlled?"

With respect to the former comment, the Division agrees that the prior definition was insufficient and accordingly amended paragraph 2 of this definition in the reproposed rule to read, "Such employee routinely performs some work in New Jersey and the employee's base of operations or the place from which such work is directed and controlled is in New Jersey."

With respect to the latter comments, the amended definition further clarifies that the work performed must be routine. However, the Division believes this commenter misread the rule because such benefits do not extend merely because the base of the employee's operations is in New Jersey. Moreover, this section refers to the site of the employee base of operations, not the employer.

The definition of "employer" is based on the definition contained in the Act. For purposes of determining whether an employer has the requisite number of employees for coverage under the Act, all employees employed by that employer will be counted, including those employed outside of the State.

Several commenters objected to the definition of "employer" under N.J.A.C. 13:14-1.2 and 1.3, insofar as these provisions count employees working outside of the State of New Jersey for the purpose of determining whether the employer has sufficient employees to trigger coverage. These commenters argued that the intent of the Legislature was to only count employees working in New Jersey; therefore, the rules went beyond the Act and would discourage employers from doing business in this State. Additionally, one commenter suggested that the proposed rules may have a discriminatory impact on employers having employees working outside of the State and suggested that such an interpretation could be deemed an equal protection violation.

Conversely, several other commenters supported the expansive definition of employer and stated that the intent of the Legislature was merely to exclude "mom and pop" businesses and include employers with larger numbers of employees.

The issue of whether or not the Act was intended to include employees working outside of the State of New Jersey, for purposes of the employee count and thereby establishing an employer's responsibility to afford family leave and an employee's eligibility, has been the subject of considerable debate. At the public hearing, one commenter, the executive director of a legislative body in which one legislator is the chairperson, supported the expansive definition of employees as provided for in the proposed rules. Conversely, two other legislators opposed the rules' definition of employee and stated that it was their intent and the intent of other members of the Legislature to only count employees working in the State.

Unfortunately, there exists no recorded legislative history to reflect statements made during the debate on the Act. Statements made by a legislator after the enactment of a statute at best reflects what was in the mind of that legislator when he or she sponsored the bill or voted in its favor and is entitled to no weight. It does not reflect what was in the Legislature's collective mind. Moreover, even if such post enactment statements were to be given some weight by this agency in its interpretation of the Act, as noted previously, the Division received a written comment by one State legislator who commended the Division's overall interpretation of the Act.

The Act itself fails to give the Division any clear guidance in this area. There is no language either under N.J.S.A. 30:11B-3e or f, which limits the term "employee" to an individual working only in this State for the purposes of the employee count. In contrast, N.J.S.A. 30:11B-4 specifical-

ly limits employee eligibility for benefits to "(a)n employee of an employer in this State." Considering the express language of section 4, one may conclude that if the Legislature intended to specifically exclude out-of-State employees for purposes of the employee count, the Legislature would have expressly provided for this exclusion. Absent such an exclusion, the term employee should be given its ordinary and well-understood meaning. Ordinarily, the term "employee" is not limited to geographical boundaries.

Given the fact that the Family Leave Act is remedial in nature and enacted out of the social, economic and humanitarian concern to promote economic security for employees who must take a leave of absence for legitimate family related purposes, the Act should be liberally construed. The Division's final determination of this issue should also be guided by the principle that an exemption from a remedial statute, including a remedial civil rights statute such as the Family Leave Act, N.J.S.A. 30:11B-1 et seq., should be afforded narrow construction.

Furthermore, in response to the claim of one commenter that the proposed rules are discriminatory and violative of the Equal Protection Clause, the Division finds this claim to be without any basis in the law.

Based upon the foregoing reasons, the Division has determined to re-propose the prior definition of employer without amendment.

"Health care provider" is defined as any person licensed to provide health care services under Federal, State, or local laws, or under the laws of a foreign nation. An individual who has been authorized to provide health care by a licensed health care provider also satisfies the definition under this subsection.

"Health insurance policy" includes all health benefits provided by an employer to an employee. The prior proposed rule excluded from this definition plans and programs to which an employer does not contribute. However, after further review of this definition, the Division determined that the opportunity to participate in group health plans, cafeteria plans and health care flexible spending accounts, should be included.

"Intermittent leave" and "reduced leave" are defined as forms of family leave available to eligible employees under certain circumstances. "Intermittent leave" is defined as a non-consecutive leave (that is, one which is made up of more than one interval) each interval of which is at least one workweek but less than 12 workweeks. "Reduced leave" is defined as a non-consecutive leave taken in increments of not less than one workday, unless agreed to by the employee and employer, but less than one workweek at a time. The definition of "reduced leave" provides that a reduced leave must be scheduled for not more than 24 consecutive weeks.

The definition of "reduced leave" as found in the original proposed rules was changed to correct an error that defined reduced leave as not more than one work week. Under the Act, "reduced leave" is less than one work week. This definition also clarified a provision in the Act which permits reduced leave of less than one workday if agreed to by the employer and employee.

"Serious health condition" is defined as an illness, injury, impairment, or physical or mental condition which requires 1) in-patient care in a hospital, hospice, or residential medical care facility or 2) continuing medical treatment or continuing supervision by a health care provider. This definition mirrors the language of the Act and was not included in the prior proposed rules.

"Spouse" is defined as a person to whom an employee is lawfully married as defined by New Jersey law.

The definition of the term "substantial and grievous economic injury" provides a standard for the term as it is used in section 4g of the Act, which provides that certain high salaried employees may be denied family leave if such denial would prevent substantial and grievous economic injury to the employer.

Several commenters expressed concern that the definition of "substantial and grievous economic injury"under the original proposed rules went beyond the intent and meaning of the Act by requiring employers to demonstrate "economic harm that will befall an employer which is of such magnitude that it would imperil the continuation of the employer's business," was overboard, was one-sided and would be impossible to meet.

One commenter stated that this provision should be modified to require an employer seeking the exemption to demonstrate it exercised commercially reasonable business judgment in determining substantial and grievous injury. Another commenter noted that the word "substantial" means real or severe and the word "grievous" means hard to bear or severe.

The Division agrees with the comments and amended this definition in the re-proposed rules to read "economic harm that will befall an employer which is of such magnitude that it would substantially and adversely affect the employer's operations, considerably beyond the costs which are associated with replacing an employee who has requested family leave."

"Workweek" is defined as the sum of the number of days an employee works each calendar week irrespective of hours worked per day.

N.J.A.C. 13:14-1.3, Applicability, clarifies which employers are covered under the Act. Specifically, for purposes of counting the number of employees of an employer in order to determine whether the applicable minimal threshold has been met, the following categories of employees will be counted: 1) all employees of the employer working in New Jersey, regardless of whether those employees are eligible for family leave; 2) all employees of the employer who work outside New Jersey; and 3) all employees of an employer's subsidiary if a significant interrelationship exists between the employer and its subsidiary as determined by applying the four part test outlined in the proposed rules.

Several commenters also believed that N.J.A.C. 13:14-1.3 incorrectly counts employees "irrespective of their eligibility for family leave" and stated that only eligible employees should be counted.

Although the Act under N.J.S.A. 34:11B-3(e) defines "employee" as a person who has been employed for at least 12 months, working not less than 1,000 base hours during the immediately preceding year, a thorough analysis of the language of the statute, taken as a whole, demonstrates that for the purposes of determining the 100 employee threshold for employer coverage under N.J.S.A. 34:11B-3(f), all employees should be counted, including employees ineligible for benefits under section 3(e). The definition of employee under section 3(e), by specifically referring to an employee "with respect to whom benefits are sought under the Act," appears to define an employee who is eligible for benefits and distinguishes eligible employees from those who are not entitled to benefits under the statute.

If the definition of employee under section 3(e) was engrafted into the term of employees as used in section 3(f), the Act would only be applicable to employers employing 100 persons "with respect to whom benefits are sought." To interpret section 3(f) as meaning that only employers with 100 or more employees "seeking benefits" are covered by the Act is obviously an unreasonable and absurd result which would render the Act virtually meaningless and is a construction which should be avoided. Moreover, such construction would impose an impossible administrative burden on the Division to determine whether a business employed, on each day for at least 20 weeks, 100 or more employees with 12 months continuous service, who worked 1,000 base hours and were seeking benefits.

Based on the above, the Division has determined to make no changes to the rules with respect to this comment.

One commenter suggested that in counting the number of employees of an employer that the Division look to the employing entity within the State to determine the employer's size. The commenter suggested seven criteria, four of which are already stated by the Division in proposed N.J.A.C. 13:14-1.3(a)3 to determine if an employer should be considered an employing entity.

The Division has already responded to commenters who disagree with the Division's rules insofar as they rely upon out-of-State employees of an employer to determine if the threshold number of employees has been attained. The four factors which have been proposed by the Division to determine if related entities should be considered when counting employees provide more than an adequate basis for determining if a related entity's employees should also be counted. Accordingly, the Division declines to include additional criteria in the rules for determining if a related entity's employees should be counted.

In response to concerns by various government entities as to whether agencies, divisions, commissions or other like entities are employers for the purposes of the Act, the Division amended the proposed rules to provide that in determining whether a government entity is an employer, the criteria established under N.J.A.C. 13:14-1.3(a) shall apply.

N.J.A.C. 13:14-1.4, Terms of leave, simply sets forth the terms of family leave as provided for under the Act. Eligible employees are entitled to up to 12 weeks family leave in any 24-month period. The 24-month period commences at the start of the employee's family leave. The leave may be paid, unpaid, or a combination of both, and an employee requesting leave must give the employer advanced written notice, the length of which is to be determined by the reason for the requested leave.

Several commenters stated that the notice requirements under N.J.A.C. 13:14-1.4 should allow for oral notice to employers where emergent circumstances warrant. Several business representatives who testified did not object to oral notice under emergent circumstances but further recommended that oral notice be followed by written notice.

The Division agrees with these comments and amended N.J.A.C. 13:14-1.4, 1.5(c)1 and 1.5(d)1 to permit employees to provide oral notice in certain circumstances.

The Act fails to expressly state that notice be provided in writing and merely requires that notice be provided in a manner which is "reasonable and practicable." Based upon the language of the Act and the latter comment, and in consideration of the fact that family leave may, in some circumstances, be scheduled by the employee and employer on an informal basis, the Division amended N.J.A.C. 13:14-1.4 to permit an employer to establish a policy which requires employees to provide such notice in writing except that such policy must provide that in emergent circumstances, an employee may provide the employer with oral notice when written notice is impracticable. The policy may require that an employee must provide the employer written notice after submitting oral notice. A policy requiring written notice shall not be applicable to an employee unless the employer adequately informs the employee of such a policy.

N.J.A.C. 13:14-1.5, Leave entitlements, sets forth the reasons for which family leave may be taken, and stipulates that an employee who takes less than 12 weeks leave for any one reason referenced above is entitled to take additional family leave for any of the referenced reasons so long as the total leave taken does not exceed 12 weeks within any 24 month period (and all other provisions of the Act are complied with).

N.J.A.C. 13:14-1.5(c) concerns leave for the birth or placement for adoption of a child, and stipulates that an eligible employee is entitled to 12 consecutive weeks of leave for the birth or adoption of a child at any time within one year of such birth or adoption. Leaves may be taken intermittently or on reduced leave schedule if the employer agrees. Paragraph (c)1 requires an employee taking a leave to provide at least 30 days written notice, except in emergent circumstances.

One commenter, while acknowledging that the proposed notice requirements contained in N.J.A.C. 13:14-1.5(c) represented an encouraging compromise "between the regulations and business needs," recommended that 60 days notification be required in instances when family leave is requested for the care of a newly born or adopted child. Another commenter recommended 90 days notification. One labor organization suggested that "reasonable advance written notice" be negotiated and governed by a collective bargaining agent where such an agent exists.

The Division notes that the referenced provision, which requires an employee to provide an employer with written notice no later than 30 days prior to commencement of leave for the care of a newly born or adopted child (unless emergent circumstances warrant shorter notice), represents an increase in notice from the 15 day minimum originally contemplated in the Division's informal guidelines. Nothing in the testimony offered at public hearings, or in the written submissions to the Division, supported a conclusion that the proposed 30 day notice requirement would be overly burdensome to employers, or that an increase in required notice of 60 or 90 days would significantly ease any such burdens to employers. Therefore, the Division declines to change this provision.

With respect to the suggestion that the notice requirements be subject to collective bargaining agreement, the Division has interpreted the reasonable advance notice provision to require 30 days. Collective bargaining agreements should be consistent with the rules and Act in this regard.

One commenter requested clarification as to whether the effective date under N.J.A.C. 13:14-1.5(c) applied only to May 4, 1990 or also applied to subsequent effective dates for the purpose of determining when an employee must commence family leave for the birth or adoption of a child.

The Division has reviewed N.J.A.C. 13:14-1.5(c) and determined that this paragraph, as originally proposed, was in error insofar as it referenced "the effective date of the Act." Therefore, in the re-proposed rules, the Division deleted the sentence, "Such consecutive leave shall commence at any time within 12 months of said birth or placement for adoption, even if such event occurred before the effective date of the Act." This sentence was replaced with, "An employee is entitled to a family leave for the birth or adoption of a child if the employer falls within the statutory definition of employer at the time leave commences and commencement of the leave begins within one year of the birth or adoption of the child."

N.J.A.C. 13:14-1.5(d) concerns leave for a serious health condition, and stipulates that an employee whose family member has a serious health condition is entitled to 12 weeks leave and that the leave may be taken intermittently, consecutively or on a reduced leave schedule. Paragraph (d)1 requires an employee taking a leave to provide the employer with at least 15 days written notice, except in emergent circumstances. Paragraph (d)2 requires an employee who takes an intermittent leave because of single serious health condition to take said leave within a 12 consecutive month period. This paragraph also requires an employee who takes intermittent leave because of more than one serious health condition episode to take said leaves within a 24 consecutive month period, the period beginning with the first leave. This paragraph further provides that an employee is entitled to use the remaining leave, if any, of the 12-week entitlement, in any manner that is consistent with other provisions of these rules. Paragraph (d)3 requires an employee taking a leave on reduced leave schedule to take such leave within a 24 consecutive week period. This paragraph provides that any of the 12-week entitlement not taken during this period may be taken consecutively or intermittently as long as the remaining leave is taken within the consecutive 24-month period which began at the start of the reduced leave.

One commenter noted that although the statute provides that in the case of a serious health condition, a leave may be taken on an intermittent basis when medically necessary, the rules as originally proposed did not specify that there be a showing of medical necessity before being eligible for an intermittent leave. The commenter suggested that the rules specify that the burden is on the employee to demonstrate that an intermittent leave is medically necessary.

The Division agrees with the former comment and, therefore, amended this paragraph to permit intermittent leave for a serious health condition when "medically necessary." With respect to the latter comment, the Division declines to amend the rules to establish where the burden of proof lies in this instance.

One commenter suggested that the rules emphasize that an employee who seeks to take family leave on an intermittent basis must make an effort to schedule such leave so as to consider the employer's needs and obligations.

Under sections 4 and 5 of the Act, an otherwise eligible employee taking leave for the care of a family member who has a serious health condition may take leave intermittently or on a reduced leave schedule if he or she makes a reasonable effort to schedule such leave so as not to disrupt unduly the operations of the employer. For purposes of clarification, the Division amended proposed N.J.A.C. 13:14-1.5(d) to include the following provision: "When requesting family leave on an intermittent basis or reduced leave schedule the employee shall make a reasonable effort to schedule such leave so as not to disrupt unduly the operations of the employer."

One commenter objected to proposed N.J.A.C. 13:14-1.5(d) because it provides employees family leave when a family member is confined in an acute care facility. This commenter recommended that this provision be modified to deny leave in such circumstances because the family member is receiving more than adequate care.

The Division has concluded that the Act was intended to permit eligible employees to take family leave in the case of a family member who has a serious health condition when the care is not exclusive and is given in conjunction with other care provided. The definition of "serious health condition" found in the Act implicitly contemplates this interpretation. Therefore, the Division declines to make changes to this section with respect to this comment.

One commenter objected to the provisions of N.J.A.C. 13:14-1.5(d)2 and 3, insofar as they permitted an eligible employee to take a combination of leaves, and stated that the Act referred to the taking of "a" family leave which, in the commenter's view, means a single leave.

The Division disagrees with this interpretation and believes an eligible employee is entitled to a combination of leaves, up to 12 weeks, in a 24-month period. It would be contrary to the intent of the Legislature to limit an employee to only one leave in a 24-month period regardless of the length of the leave.

Finally, one commenter stated that proposed N.J.A.C. 13:14-1.5(d)3 is confusing in its reference to "a family leave or a leave on a reduced leave schedule" because a reduced leave is a family leave. This commenter queried whether this section applied to all leaves or only reduced leaves.

This section as originally proposed was in error. Therefore, the Division deleted the words "or a leave" in the first sentence of that section.

N.J.A.C. 13:14-1.5(e) provides that an employee's entitlement to return to work prior to the prearranged expiration of a requested leave shall be governed by the employer's policy with respect to other leaves of absence. An employer which does not have a policy of either permitting or denying an employee to return to work prior to the prearranged expiration of any leave of absence shall permit an employee to return to work earlier unless the early return of the employee will cause undue hardship to the employer. Such undue hardship can be established if an employer is required to incur the expense of continuing the employment of a temporary employee. This subsection was not included in the original proposed rules but was incorporated to clarify to what extent an employee may return to work in these circumstances.

N.J.A.C. 13:14-1.5(f) provides that an employer shall not require an employee to take a leave of absence beyond the period of time requested for family leave. This paragraph is a new provision which was added to the re-proposed rules to clarify the Legislature's intent that an employee requesting family leave should be provided job security when he or she must take a leave for legitimate family reasons.

N.J.A.C. 13:14-1.6, Disability leave, provides that disability leave cannot be counted as part of an employee's 12-week family leave entitlement.

One commenter suggested that, in contrast to N.J.A.C. 13:14-1.6, family leave should overlap, and not supplement, disability leave. Two commenters agreed with the Division's proposed rule on this issue.

Section 13 of the Act provides that "family leave granted under this Act is in addition to, and shall not abridge nor conflict with any rights pursuant to the Temporary Disability Benefits Law, P.L. 1948, c.110 (c.43:21-25 et seq.)." This provision reflects a legislative intent to grant family leave which does not overlap leave for disability.

N.J.A.C. 13:14-1.7, Accrued paid leave, provides for the treatment of accrued paid leave in a manner which is consistent with an employer's present policy/practice regarding similar leaves of absence. The rule allows employers who have policies which require employees to exhaust all accrued paid leave during a leave of absence to require employees to exhaust said leave during a family leave. However, when an employer does not have an established policy regarding the use of accrued paid leave, the employer shall not require the employee to exhaust such leave.

One commenter recommended that N.J.A.C. 13:14-1.7 governing accrued paid leave should not be applicable where a collective bargaining relationship exists between the employer and the employee and, when a collective bargaining agreement exists, the provisions governing use of paid leave and unpaid leave should prevail until such time as those provisions are changed through negotiations.

N.J.A.C. 13:14-1.7 provides that, for the purpose of governing accrued paid leave and the exhaustion thereof, employers shall treat family leave in the same manner as similar leaves of absence. A collective bargaining agreement provision that governs the use of accrued paid leave for various forms of leave, including family leave, is consistent with the proposed rule since it would simply apply the policy governing accrued leave to family leave situations. However, collective bargaining agreement provisions which treat less favorably employees who take family leave should be construed to be contrary to the purposes of the Act. The Division believes the rule is clear in this regard and declines to amend this provision to carve out a special exception for collective bargaining agreement provisions which govern accrued leave.

One commenter requested clarification as to whether accrued leave included vacation leave under N.J.A.C. 13:14-1.7.

Accrued leave does include vacation leave. The Division believes the rules are adequately drafted and made no changes to this section.

N.J.A.C. 13:14-1.8, Other employment, prohibits an employee on family leave from engaging in other full-time employment, unless he or she was already employed full-time prior to taking the leave and said employment is not prohibited by an employer policy or practice.

This rule also limits part-time employment which shall not exceed half the regularly scheduled hours worked for the employer from whom he or she requested leave.

Two commenters contended that N.J.A.C. 13:14-1.8, as originally proposed, was inconsistent with the provisions of the Act insofar as it permits part-time employment of 20 hours or less during a family leave. One commenter suggested that an employee on family leave who desires part-time work should be required to first accept a part-time job from the employer from whom he or she is requesting leave and also suggested that the employee also be prohibited from working part-time during the employee's normal work schedule without authorization from his or her employer. The second commenter expressed concern that the rule was inconsistent because it allowed part-time work, but prohibited part-time work if outside employment was forbidden by a general employer policy.

Section 4, subsection g of the Act provides that "no employee shall, during any period of leave taken pursuant to this section, perform services on a full-time basis for any person for whom the employee did not provide those services immediately prior to commencement of the leave." Because this language implicitly allows for part-time employment, the rules should continue to permit such employment during a family leave. Also, there is nothing in the Act which suggests that the Legislature intended that an employee must first request part-time employment from the employer from whom leave is requested or that an employee is prohibited from working part-time during the employee's regularly scheduled hours. Nevertheless, the Division agrees that to define part-time employment in terms of 20 hours or less is arbitrary and, therefore, amended the second sentence of this section in the re-proposed rules as previously noted. The last sentence of this section was deleted because the Act allows for part-time employment regardless of an employer's policy prohibiting outside employment.

N.J.A.C. 13:14-1.9, Exemptions, set forth the conditions that must be present in order for an employer to deny family leave. Paragraph (a)1 requires that an employee denied family leave have a salary that ranks within the highest paid five percent of the employer's employees or have a base salary which is one of the seven highest, whichever is greatest. Paragraph (a)2 requires the employer to demonstrate that the leave would cause economic harm of such a magnitude that it would place the continuation of the employer's business in jeopardy. Paragraph (a)3 requires the employer to notify the employee that his or her request for family leave is denied.

One commenter suggested that the exemption under N.J.A.C. 13:4-1.9 should be amended to count only employees eligible for family leave for the purposes of determining the highest paid five percent of the employer's workforce. Several commenters objected that this provision counted employees whether employed in New Jersey or not and believed only employees working in New Jersey should be counted.

For the same reasons which the Division declines to amend the rules concerning the counting of only eligible employees for the purpose of determining the employer applicability and rejects comments concerning the counting of out-of-State employees, the Division has determined that the rules do not require amendment with regard to the commenters' suggestions that the proposed rules limit the calculation of this exemption to only the highest paid eligible employees who work in New Jersey.

It was clearly the intent of the Legislature to exempt only the highest level employees within an employing entity, regardless of their eligibility for benefits. Moreover, the Division's rules should interpret the Act in a consistent manner. It would be inconsistent to count all employees regardless of eligibility for determining employer applicability and then count only eligible employees for exemptions purposes. It would also be inconsistent to count out-of-State and in-State employees for purposes of determining employer applicability, but to count only in-State employees for purposes of determining which employees may be exempt under 4h of the Act. To interpret this exemption in a manner which may exclude the highest level employees of a business who may be located out-of-State, but to include lower level employees who work in the State, simply because they are the highest paid in New Jersey, would result in an inequitable and illogical application of the Act and would be contrary to the intent of the Legislature.

N.J.A.C. 13:14-1.10, Certification by an employee, allows the employer to require an employee seeking family leave to certify or submit a certification from a health care provider in support of the leave requested.

Several commenters objected to N.J.A.C. 13:14-1.10, as originally proposed, insofar as it permitted employers to "require an employee who requests family leave to sign a form of certification that indicates that such employee meets all of the eligibility requirements for which the leave is sought under the terms of the Act . . ." These comments recommended that this provision be deleted because of potential abuse by employers which may devise inappropriate or complex documents that would inhibit an employee from taking family leave. One commenter noted that no other jurisdiction which had family leave required such a certification. It was also recommended that the rules mirror the language of the Act which merely permits employers to require employees to obtain certifications by licensed health care providers or

other health care providers determined by the Director to be capable of providing certification.

One commenter supported this certification provision, and another commenter stated that the provision was vague insofar as it provides that an employee who "falsely certifies may be subject to whatever disciplinary policy the employer has established for the same or similar offenses" because some employers may not have a policy or past practice established, and it provides no deterrent to employees who are considered to be falsely certifying to their eligibility. One commenter recommended that this rule be modified to specifically provide that an employee who falsely certifies to his or her eligibility requirements is subject to discipline. Another commenter suggested that the employer should be permitted to request verification of the certification of the health care provider and also suggested that an employee should be required to submit such certification by a heath care provider upon requesting family leave.

The Act is silent as to whether an employer may require an employee to submit a certification as a condition for family leave. Moreover, the provisions permitting an employer to require certification by a health care provider are permissible and not mandatory, and may or may not be employed at the discretion of an employer. These provisions are adequate under the Act, and the Division does not believe it should impose more stringent requirements such as requiring verification of a certification by a health care provider. However, to protect employees whose employers may use such certifications to intimidate or harass an employee seeking family leave and ensure that employers may guard against the improper taking of family leave by an employee, the Division amended N.J.A.C. 13:14-1.10 in the reproposed rules to only permit an employer to require an employee who requests family leave to sign a form of certification attesting that such employee is taking family leave for the birth or adoption of a child or to care for a family member because of that family member's serious health condition, whichever is applicable. The employer may not require the employee to sign or otherwise submit a form of certification attesting to any additional facts, including the employee's eligibility for family leave. Any employee who refuses to sign such certification may be denied the requested leave. An employer may subject an employee to reasonable disciplinary measures, depending on the circumstances, when an employee intentionally misrepresents the reasons for taking family leave. The form of certification established by an employer shall contain a statement warning the employee of the consequences of refusing to sign the certification or falsely certifying.

For clarity and to provide the public with sufficient notice of all of the certification requirements under the Act, the Division incorporated section 4e of the Act which permits an employer to require that any period of family leave be supported by certification issued by a duly licensed health care provider or any other health care provider determined by the Director to be capable of providing adequate certification. This provision also permits the employer to obtain second and third opinions by other health care providers under certain circumstances and at the employer's expense. Finally, this paragraph prohibits the employer from using the certification requirements to intimidate, harass or otherwise discourage an employee from asserting any of the employee's rights to family leave.

N.J.A.C. 13:14-1.11, Reinstatement, provides that an employee returning from family leave shall be restored to the same position such employee held prior to the commencement of family leave unless such position has been filled, in which case the employee shall be placed in an equivalent position as defined in the Act.

Several commenters objected to N.J.A.C. 13:14-1.11 which entitles an employee to restoration to his or her former position, unless the position is filled, in which case, the employee is entitled to an equivalent position. One commenter suggested that an employee is only entitled to reinstatement to a "substantially equivalent position" or "another position." Another commenter suggested that the employer is permitted to reinstate the employee to either the employee's former position or an equivalent position. One member of the public submitted a statement which did not comment on the rules, but cautioned the Division that in practice an employer may be able to circumvent the "equivalent position" requirement.

The Division believes that the rules, as drafted, reasonably interpret the Act. In some circumstances, an employer might place an employee into an "equivalent position" as a reprisal for taking family leave. Such an action would be a violation of the Act and the rules which prohibit retaliation against any employee who has exercised the right to take family leave. The rules as proposed do allow an employer to place an employee, who has taken family leave, in an equivalent position when the employee's position has been filled. Although the latter commenter raises a legitimate concern, the determination of whether an employer has violated the statutory requirement of reinstating an employee into the same or equivalent position will have to be determined on a case-by-case basis.

N.J.A.C. 13:14-1.12, Multiple request for family leave, states that an employer must grant family leave to more than one employee of the same family at the same time if the employees are eligible for family leave and request such a coterminous leave.

Several commenters expressed concern that the rules, and in particular N.J.A.C. 13:14-1.12, are unduly burdensome by requiring employers to grant family leave to more than one employee from the same family at the same time. Several educational representatives stated that multiple leave requests were particularly disruptive because of the frequency of family members working for the same school board or university.

The Act does not address the issue of whether employees from the same family may take a family leave at the same time. There is nothing in the Act which indicates that multiple family members should not be permitted to take multiple family leaves. Moreover, during the public hearings, one commenter representing a university stated her belief that the Act was intended to permit employees from the same family to take leave simultaneously, especially in the case of parents who need to take a family leave for their terminally ill child. Given the remedial purpose of this legislation, the Act should be afforded liberal construction. Therefore, the Division declines to amend N.J.A.C. 13:14-1.12 with respect to these comments.

The Division included a new subsection (b) in N.J.A.C. 13:14-1.12, which clarifies an individual's recall rights under N.J.S.A. 34:11B-7. The rule provides that if during a family leave, the employer experiences a reduction in force or layoff and the employee would have lost the employee's position had the employee not been on leave, as a result of the reduction in force or pursuant to the good faith operation of a bona fide layoff and recall system including a system under a collective bargaining agreement where applicable, the employee shall not be entitled to reinstatement to the former or an equivalent position. This subsection also provides that the employee shall retain all rights under any applicable layoff and recall system, including a system under a collective bargaining agreement, as if the employee had not taken the leave.

N.J.A.C. 13:14-1.13, Employers with multiple leaves of absence, Section 8b of the Act requires that during a family leave taken under the Act, an employer is required to provide employee benefits (other than those health related benefits referred to in Section 8a) to the level and extent dictated by its policy controlling employee benefits during other temporary leaves of absence. This section of the proposed rules stipulates that where an employer has several types of leaves of absence, an employer shall follow the policy governing employee benefits of the leave which most closely resembles family leave.

One commenter stated that N.J.A.C. 13:14-1.13 is vague because it does not provide guidance as to what factors an employer should consider in determining which leave most closely resembles family leave.

The Division believes that this provision is sufficiently clear and that, in any event, this determination will be decided on a case-by-case basis.

N.J.A.C. 13:14-1.14, Retroactivity, provides that as a general rule, a leave of absence given to an employee before the Act's effective date shall not be deemed to satisfy the employer's obligation to an eligible employee who requests family leave after the effective date of the Act. The exception of this general principle is that a leave taken by an employee within one year prior to the employee's eligibility for family leave for the purpose of providing care made necessary because of the birth or placement for adoption of a child, shall be considered as part of the employee's family leave entitlement under the Act, if such leave maintained the same benefits and preserved the same rights as are required by the Act.

This paragraph was changed pursuant to one comment recommending that N.J.A.C. 13:14-1.14, governing retroactivity, be applied to leaves taken in the 12 months prior to the date when the Act becomes applicable to employees not now covered but who later become covered by virtue of the definition of employer.

The Division agreed with this comment and deleted "during the period commencing May 4, 1989 and ending May 3, 1990" in the original proposal and replaced this language with "within one year prior to the employee's eligibility for family leave."

N.J.A.C. 13:14-1.15, Prohibition against retaliation, prohibits an employer from taking any punitive action against an employee because said employee exercised any right granted under or associated with this Act or these rules, or engaged in any other conduct outlined in section g of the Act.

N.J.A.C. 13:14-1.16, Processing of complaints, stipulates that any complaint alleging a violation of the Act which is filed with the Division will be processed in the same manner as a complaint alleging a violation of N.J.S.A. 10:5-1 et seq. Such complaints are processed in accordance with the Division's Rules of Practice and Procedure, N.J.A.C. 13:4.

Social Impact

The re-proposed new rules will have a beneficial social impact upon all eligible employees in the State of New Jersey. The rules implement the stated purpose of the Legislature in promoting the economic security of families by guaranteeing jobs to employees who choose to take a leave due to the birth or adoption of a child or because of the serious health condition of a family member.

The rules also recognize the practical difficulties facing employers in providing the leave required by the Act and therefore have made provisions to protect employers from possible employee abuse. Moreover, the rules will also have a beneficial social impact in that they clarify provisions of the Act which may be the cause of confusion among employers and employees regarding the types and terms of leave permitted as well as eligibility requirements of the Act. As provided for by the Act, the applicability of the rules will be phased in gradually so that initially only employers with 100 or more employees will be covered by the requirements of the rules.

Although it is the Division's understanding that most large employers already provide leaves of absence similar to the leave required under the Act, the Division anticipates that smaller employers may experience some negative impact as a result of the requirements imposed by the Act. However, these rules merely implement the stated intent of the Legislature to promote economic security for employees who must take a leave of absence for legitimate family related purposes.

If these rules are not adopted, it would create uncertainty among employers and increase the burden on them to interpret the Act and to determine their responsibilities under the Act.

Economic Impact

These rules will not economically impact employers to a degree greater than they are presently impacted by the Act. The potential economic impact of the Act, as implemented by these regulations, has not been assessed by the Legislature or the Division. It is anticipated that public comments on these rules will provide the Division with information regarding the economic impact of the Act and these rules.

Moreover, the Legislature's determination to phase in the terms of the Act over four years will reduce the economic impact on small businesses and afford such businesses with an opportunity to adjust to the requirements of the Act. Larger employers may not experience any economic impact since many larger employers already have policies or collective bargaining agreements which provide similar or more extensive leaves than those required by the Act. Additionally, although the Act requires that an employer provide for continued benefits, neither the Act nor the regulations require that the family leave must be paid. Therefore, the economic impact to employers should be minimal. The economic impact to eligible employees will be substantial in that employees will be able to attend to specific family needs without risk to their job security.

Regulatory Flexibility Analysis

The proposed new rules will not impose any bookkeeping or recordkeeping requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Because the Act presently applies only to employers with 100 or more employees, there will be no immediate impact upon small businesses.

Consistent with the phase in provision of the Act, after May 4, 1991, the Act and these rules will apply to small businesses or employers with less than 100 employees. However, these rules do not impose any reporting, recordkeeping or compliance requirements beyond the compliance requirements imposed by the Act itself.

The recordkeeping requirements imposed by the Act are minimal and should be able to be performed by an employer's current personnel or benefits officer. Employers will, however, likely find it necessary to hire temporary employees to assume the duties normally performed by the employees who are on leave. At this point the actual cost to small businesses cannot be estimated. However, the Legislature has made the determination to impose the requirements of the Act on employers as indicated in the phase in provision of the Act and the Division has no discretion to interpret the Act's applicability otherwise.

Full text of the proposal follows:

CHAPTER 14
RULES PERTAINING TO THE FAMILY LEAVE ACT

SUBCHAPTER 1. GENERAL PROVISIONS

13:14-1.1 Purpose

The purpose of this chapter is to implement the provisions of N.J.S.A. 34:11B-1 et seq. which provide for family leave for employees in certain cases and prohibit certain employer practices by establishing interpretations of the provisions of that statute.

13:14-1.2 Definitions

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

"Act" means the "Family Leave Act," N.J.S.A. 34:11B-1 et seq., unless the context indicates otherwise.

"Base hours" means an employee's regular hours of work excluding overtime, for which an employee receives compensation.

"Base salary" as used in section 4h(1) of the Act means the salary paid to an employee, excluding overtime, bonuses, etc., but not excluding salary withheld for State, Federal, and local taxes, FICA, employee contributions to any pension, health and/or insurance plans or programs, etc.

"Care" means, but is not limited to, physical care, emotional support, visitation, assistance in treatment, transportation, assistance with essential daily living matters and personal attendant services.

"Child", for the purpose of determining whether an employee is eligible for family leave because of such employee's parental status, means a child as defined in the Act to whom such employee is a biological parent, adoptive parent, foster parent, step-parent, or legal guardian, or has a "parent-child relationship" with a child as defined by law, or has sole or joint legal or physical custody, care, guardianship or visitation with a child.

"Consecutive leave" means leave that is taken without interruption based upon an employee's regular work schedule, and does not include breaks in employment in which an employee is not regularly scheduled to work. (For example, when an employee is normally scheduled to work from September through June and is not scheduled to work during July and August, a leave taken continuously during May, June and September shall be considered a consecutive leave.)

"Disability leave" means any period of leave for which the employee is disabled (that is, unable to perform his or her work) including, but not limited to, any period of time during which an employee is collecting disability benefits.

"Disrupt unduly the operations of the employer", as used in sections 4a(3) and 5b of the Act, means an intermittent or reduced leave schedule that, if implemented, would cause the employer measurable harm, economic or otherwise, significantly greater than any measurable harm which would befall the employer if the same employee was granted a consecutive leave. The burden of proof in these instances rests with the employer and will be determined by the Division on a case by case basis.

"Eligible employee" means any individual employed by the same employer in the State of New Jersey for 12 months or more and has worked 1,000 or more base hours during the preceding 12 month period. An employee is considered to be employed in the State of New Jersey if:

1. Such employee works in New Jersey; or

2. Such employee routinely performs some work in New Jersey and the employee's base of operations or the place from which such work is directed and controlled is in New Jersey.

"Employer" means:

1. Effective May 4, 1990, an "employer" shall mean an employer as defined in the Act, which employs 100 or more employees, whether employed in New Jersey or not, who have worked each

working day for 20 or more workweeks during the current or immediately preceding calendar year.

2. Effective May 4, 1991, an "employer" shall mean an employer as defined in the Act which employs 75 or more employees, whether employed in New Jersey or not, who have worked each working day for 20 or more workweeks during the current or immediately preceding calendar year.

3. Effective May 4, 1993, an "employer" shall mean an employer as defined in the Act which employs 50 or more employees, whether employed in New Jersey or not, who have worked each working day for 20 or more workweeks during the current or immediately preceding the calendar year.

"Health care provider" means any person licensed under Federal, state, or local law, or the laws of a foreign nation, to provide health care services; or any other person who has been authorized to provide health care by a licensed health care provider.

"Health insurance policy" means all health benefits provided by an employer to an employee. Health benefits includes the opportunity provided by an employer to participate in a group health plan.

"Intermittent leave" means a non-consecutive leave comprised of intervals each of which is at least one but less than 12 workweeks within a consecutive 12 month period.

"Reduced leave" means a non-consecutive leave of up to the equivalent of 12 workweeks which is taken in increments of not less than one workday, unless otherwise agreed to by the employee and employer, but less than one workweek at a time.

"Reduced leave schedule" means a reduced leave that is scheduled for not more than 24 consecutive weeks.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition which requires:

1. Inpatient care in a hospital, hospice, or residential medical care facility; or

2. Continuing medical treatment or continuing supervision by a health care provider.

"Spouse" means a person to whom an employee is lawfully married as defined by New Jersey law.

"Substantial and grievous economic injury" as used in section 4h(2) of the Act means economic harm that will befall an employer which is of such a magnitude that it would substantially and adversely affect the employer's operations, considerably beyond the costs which are associated with replacing an employee who has requested family leave.

"Workweek" means the number of days that an employee normally works each calendar week, irrespective of the number of hours worked each day. (For purposes of a reduced leave, an employee who normally works five days each calendar week is entitled to a maximum of 60 days of family leave. An employee who normally works four days each calendar week is entitled to a maximum of 48 days of family leave).

13:14-1.3 Applicability

(a) For the purpose of counting employees, an employer, as defined in the Act and in this chapter, shall consider:

1. Employees in this State, irrespective of their eligibility for family leave;

2. Employees who work outside of the State of New Jersey; and

3. Employees of an employer's subsidiary, division or other related entity. In making the determination of whether to count the employees of an employer's subsidiary, division or other entity, the Division on Civil Rights will consider any or all of the following factors on a case by case basis:

i. The interrelationship of the employer's operation;

ii. The degree of centralized control of labor relations;

iii. The existence of common management; and/or

iv. The degree of common ownership or financial control.

(b) To determine whether a government entity is an employer for the purposes of granting family leave, the criteria established under (a) above shall apply.

13:14-1.4 Terms of leave

(a) Family leave may be taken for up to 12 weeks within any 24 month period. The calculation of the 24 month period shall commence with the commencement of the family leave. The leave may be paid, unpaid or a combination of paid and unpaid. The employee who requests the leave must provide the employer reasonable advance notice, the length of which to be determined by the type of leave requested.

(b) An employer may establish a policy which requires employees to provide such notice in writing, except that such policy must provide that, in emergent circumstances, an employee may provide the employer with oral notice when written notice is impracticable. The policy may require that an employee must provide the employer written notice after submitting oral notice. A policy requiring written notice shall not be applicable to an employee unless the employer adequately informs the employee of such a policy.

13:14-1.5 Leave entitlements

(a) An eligible employee may take 12 weeks of family leave within any 24 month period in order to provide care made necessary by reason of:

1. The birth of a child of the employee;

2. The placement for adoption of a child with an employee; or

3. The serious health condition of family member of the employee.

(b) The leave may be paid, unpaid or a combination of paid and unpaid. Should an eligible employee take less than 12 weeks of family leave for any of the above reasons, such employee shall be entitled to take additional leave for any of the above reasons provided that the total leave taken does not exceed 12 weeks in any consecutive 24 month period and the other qualifications and restrictions contained in the Act, attendant to each type of leave, are not abridged.

(c) An eligible employee is entitled to up to 12 consecutive weeks of family leave in order to care for such employee's newly born child or child placed for adoption with such employee. An employee is entitled to a family leave for the birth or adoption of a child if the employer falls within the statutory definition of employer at the time leave commences and commencement of the leave begins within one year of the birth or adoption of the child. An employee taking a family leave for either of these reasons may take such leave intermittently or on a reduced leave schedule only if agreed to by the employee and the employer.

1. An employee who takes a leave for these purposes shall provide the employer with notice no later than 30 days prior to the commencement of the leave, except where emergent circumstances warrant shorter notice.

(d) An employee whose family member (as defined by the Act) has a serious health condition is entitled to up to 12 weeks of family leave taken on a consecutive, reduced leave or when medically necessary, intermittent basis. The care that an employee provides need not be exclusive and may be given in conjunction with any other care provided. When requesting family leave on an intermittent basis or reduced leave schedule, the employee shall make a reasonable effort to schedule such leave so as not to unduly disrupt the operations of the employer.

1. An employee who takes a leave in connection with the serious health condition of a family member shall provide the employer with notice, no later than 15 days prior to the commencement of the leave, except where emergent circumstances warrant shorter notice.

2. For purposes of this subsection, the total time within which an intermittent leave is taken may not exceed a 12 month period, if such leave is taken in connection with a single serious health condition. Intermittent leaves taken in connection with more than one serious health condition episode must be taken within a consecutive 24 month period, or until such time as the employee's 12 week family leave entitlement is exhausted, whichever is shorter. Any remaining family leave to which the employee is entitled, subsequent to the expiration of any or all intermittent leaves, may be taken in a manner consistent with this chapter.

3. For purposes of this subsection, an employee taking a family leave on a reduced leave schedule shall not be entitled to such leave for more than a consecutive 24 week period. An eligible employee shall be entitled to only one leave on a reduced leave schedule during any consecutive 24 month period. Any remaining family leave to

which the employee is entitled subsequent to the expiration of a leave taken on a reduced leave schedule may be taken on a consecutive or intermittent basis.

(e) An employee's entitlement to return to work prior to the prearranged expiration of a requested family leave shall be governed by the employer's policy with respect to other leaves of absence.

1. If an employer permits an employee to return to work prior to the prearranged expiration of other leaves, then that policy shall similarly govern an employee's entitlement to return to work prior to the prearranged expiration of the requested family leave.

2. If an employer does not permit an employee to return to work prior to the prearranged expiration of other leaves, then the employee is not entitled to return to work prior to the prearranged expiration of family leave.

3. An employer which does not have a policy of either permitting or denying an employee to return to work prior to the prearranged expiration of any other leave of absence shall permit an employee to return to work prior to the prearranged expiration of requested family leave if the early return of an employee will not cause the employer undue hardship, such as, requiring the employer to incur the expense of continuing the employment of a temporary employee who was hired to replace the employee who is taking family leave.

(f) An employer shall not require an employee to take a leave of absence beyond the period of time that an employee requests family leave.

13:14-1.6 Disability leave

Disability leave is separate from, and in addition to, any family leave provided by the Act.

13:14-1.7 Accrued paid leave

For the purpose of governing the use of accrued paid leave, employers shall treat family leave in the same matter as similar leaves of absence have been treated. If an employer has had a past practice or policy of requiring its employees to exhaust all accrued paid leave during a leave of absence, the employer may require employees to do so during a family leave. If an employer has a policy of allowing employees to take unpaid leaves without first exhausting accrued paid leave while on family leave, it shall not require employees to exhaust accrued paid leave while on family leave. In situations where an employer does not have an established policy in this regard, the employee shall be entitled to utilize any accrued paid leave as part of the family leave. If such an employee determines not to utilize accrued paid leave, the employer shall not require such employee to utilize any accrued paid leave as part of the leave. Where an employer maintains leaves of absence which provide different policies and/or practices regarding the use of accrued paid leave, the employer shall treat family leave in the same manner as that other leave of absence which most closely resembles family leave.

13:14-1.8 Other employment

An employee on family leave may not engage in other full-time employment during the term of the leave, unless such employment commenced prior to the leave and is not otherwise prohibited by law. During the term of family leave an employee may commence part-time employment which shall not exceed half the regularly scheduled hours worked for the employer from whom the employee requested leave. An employee may continue part-time employment which commenced prior to the employee's family leave, at the same number of hours that the employee was regularly scheduled prior to such leave. An employer may not maintain a policy or practice which prohibits part-time employment during the course of a leave.

13:14-1.9 Exemptions

(a) An employer is not required to grant a family leave to any employee who would otherwise be eligible under this Act if:

1. The employee's base salary ranks within the highest paid five percent or his or her base salary is one of the seven highest, whichever number of employees is greater (for purposes of this exception, all employees of an employer whether employed in New Jersey or not shall be included in this calculation);

2. The employer can demonstrate that the granting of the leave would cause a substantial and grievous economic injury to the employer's operations; and

3. The employer notifies the employee of its intent to deny the leave when such determination is made.

13:14-1.10 Certification by an employee

(a) An employer may require an employee who requests family leave to sign a form of certification attesting that such employee is taking family leave for the birth or adoption of a child or to care for a family member because of that family member's serious health condition, whichever is applicable. The employer may not require the employee to sign or otherwise submit a form of certification attesting to additional facts, including the employee's eligibility for family leave. Any employee who refuses to sign such certification may be denied the requested leave.

1. An employer may subject an employee to reasonable disciplinary measures, depending on the circumstances, when an employee intentionally misrepresents that such employee is taking family leave for the birth or adoption of a child or to care for a family member because of that family member's serious health condition, whichever is applicable. The form of certification established by the employer shall contain a statement warning the employee of the consequences of refusing to sign the certification or falsely certifying.

(b) An employer may require that any period of family leave be supported by certification issued by a duly licensed health care provider or any other health care provider determined by the Director to be capable of providing adequate certification.

1. Where the certification is for the serious health condition of a family member of the employee, the certification shall be sufficient if it states the date on which the serious health condition commenced, the probable duration of the condition and the medical facts within the provider's knowledge regarding the condition.

2. Where the certification is for the birth or placement of the child, the certification need only state the date of birth or date of placement, whichever is appropriate.

3. In any case in which the employer has reason to doubt the validity of the certification provided pursuant to (b)1 above, the employer may require, at its own expense, that an employee obtain an opinion regarding the serious health condition from a second health care provider designated or approved, but not employed on a regular basis, by the employer. If the second opinion differs from the certification provided pursuant to (b)1 above, the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the serious health condition. The opinion of the third health care provider shall be considered to be final and shall be binding on the employer and the employee.

(c) An employer shall not use the certification requirements provided in (a) and (b) above to intimidate, harass or otherwise discourage an employee from requesting or taking family leave or asserting any of the employee's rights to family leave under these regulations or the Act.

13:14-1.11 Reinstatement

(a) Upon the expiration of a family leave, an employee shall be restored to the position such employee held immediately prior to the commencement of the leave. If such position has been filled, the employer shall reinstate such employee to an equivalent position of like seniority, status, employment benefits, pay, and other terms and conditions of employment.

(b) If, during a family leave provided by the Act, the employer experiences a reduction in force or layoff and the employee would have lost the employee's position had the employee not been on leave, as a result of the reduction in force or pursuant to the good faith operation of a bona fide layoff and recall system including a system under a collective bargaining agreement where applicable, the employee shall not be entitled to reinstatement to the former or an equivalent position. The employee shall retain all rights under any applicable layoff and recall system, including a system under

a collective bargaining agreement, as if the employee had not taken the leave.

13:14-1.12 Multiple requests for family leave

An employer shall grant a family leave to more than one employee from the same family (for example, brother and a sister) at the same time, provided such employees are otherwise eligible for the leave.

13:14-1.13 Employers with multiple leaves of absence

Where an employer maintains leaves of absence which provide benefits, other than health benefits, that differ depending upon the type of leave taken, such employer shall provide those benefits to an employee on family leave in the same manner as it provides benefits to employees who are granted that other leave of absence which most closely resembles family leave.

13:14-1.14 Retroactivity

Any leave of absence granted to an employee prior to the effective date of the Act shall not be considered a family leave for purposes of determining an employee's entitlement to a family leave under the Act, with the following exception: any period of leave taken by an employee within one year prior to the employee's eligibility for family leave, for the purpose of providing care made necessary because of the birth or placement for adoption of a child, shall be considered as part of the employee's family leave entitlement under the Act, if such leave maintained the same benefits and preserved the same rights as are required by the Act.

13:14-1.15 Prohibition against retaliation

No employer shall discharge or in any way retaliate against or penalize any employee because such employee sought information about family leave provisions, filed a complaint alleging a violation of the Act or this chapter or exercised any right granted under the Act or this chapter.

13:14-1.16 Processing of complaints

Any complaint filed in the Division which alleges a violation of the Act or these regulations shall be processed in the same manner as a complaint filed under the terms of N.J.S.A. 10:5-1 et seq. and N.J.A.C. 13:4.

(a)

STATE BOARD OF OPTOMETRISTS

Permissible Advertising

Proposed Amendments: N.J.A.C. 13:38-1.2 and 1.3

Authorized By: Board of Optometrists, Leonard Strulowitz, O.D., President.

Authority: N.J.S.A. 45:12-4; 45:12-11(1).

Proposal Number: PRN 1991-357.

Submit written comments by July 31, 1991 to:

Susan Gartland, Executive Director
State Board of Optometrists
P.O. Box 45012
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Optometry is proposing to amend N.J.A.C. 13:38-1.2(e) in order to clarify and expand the scope of permissible advertising. The Board is also proposing to amend N.J.A.C. 13:38-1.3(d) in order to provide that in all advertisements the required designation "Optometrist," "O.D.," or "Doctor of Optometry" must appear immediately following the licensee's name.

N.J.A.C. 13:38-1.2(e) presently states that a licensee may not advertise that he or she possesses professional superiority with regard to services or merchandise offered, or with regard to apparatus, equipment or technology, through use of such terms as "specialist," "specialty," or "expert." The following amendments are proposed to this subsection.

First, the Board is proposing to amend N.J.A.C. 13:38-1.2(e) to state that use of titles of certain post-graduate professional fellowships in optometry shall not be deemed to be a claim of professional superiority, thereby permitting a licensee who has completed the specified post-graduate fellowships to advertise that fact. The Board has found that within the profession of optometry there are no recognized specialties nor are there universally established and recognized certifying or specialty boards. While the Board acknowledges the existence of several professional organizations which claim to establish diplomate status in given areas of optometry such as contact lens fitting, prescribing and dispensing or low vision training, the Board has found that these organizations do not constitute recognized certifying agencies similar to those recognized, for example, in the practice of medicine. However, the Board makes a distinction with regard to post-graduate professional fellowships in optometry from the American Academy of Optometry and the College of Optometrists in Vision Development and believes use of such titles should be permitted.

Second, the Board is proposing to delete from this subsection the prohibition against an advertiser stating that he or she possesses professional superiority with regard to merchandise offered or with regard to apparatus, equipment or technology utilized by the advertiser. The Board believes that based upon recent technological advances, claims with regard to the superiority of ophthalmic material, apparatus, equipment or technology may be able to be substantiated. Therefore, under the proposed amendment, such a claim may be made, but only if the claim can be substantiated by the licensee.

Finally, the Board is amending this subsection to clarify its position with regard to claims of "specialization." In reviewing advertisements placed by New Jersey licensed optometrists and in receiving and reviewing consumer complaints, the Board has become aware of a growing practice whereby licensees claim specialized expertise, usually in the area of evaluating, prescribing and dispensing contact lenses. It remains the Board's position that claims of "specialization" or "specialist" or "specialty" status are inherently deceptive and misleading. The Board believes that such claims imply and suggest education, training and expertise beyond that required by statute as a pre-condition to licensure or beyond standards recognized within the profession as a pre-condition to a claim of "specialist" status. Therefore, the amended rule states the Board's position that it shall deem an advertising licensee's use of the terms "specialist," "specialty" or the substantial equivalent thereof to be the use or employment of deception and misrepresentation. The Board recognizes, however, that licensees who devote their practices to discrete areas of optometric practice (for example, contact lens fitting, vision training therapy, etc.) on a full-time basis possess an interest in being able to communicate to the public, in a truthful, non-deceptive manner, the fact that their practices are so limited. Accordingly, an amendment is proposed to permit a licensee to use such terminology as "practice limited to" where the advertising licensee's practice is exclusively or primarily devoted to one or more recognized areas of optometric care such as contact lens services, low vision services, vision training services, etc.

The Board is also proposing to amend N.J.A.C. 13:38-1.3(d) to provide that in all advertisements a licensee's name shall be immediately followed by the designation "Optometrist," "O.D.," or "Doctor of Optometry." The Board has found that, with increasing frequency, advertisements for optometrists are appearing where the title "Dr." is not modified by the designation "Optometrist" or "O.D." immediately following the practitioner's name. The Board is concerned that the public may be misled as to the practitioner's credentials even in those cases in which the body of the advertisement indicates the individual is an optometrist.

Social Impact

The proposed rule amendments will permit optometrists with certain post-graduate fellowships as well as optometrists who limit their practices to discrete areas within the field of optometry to convey that information to the public. Under the amended rules, licensees will also be permitted to make substantiated claims of superiority with regard to ophthalmic merchandise, apparatus, equipment or technology.

Consumers will benefit from the amendments in that they provide guidelines addressing what the Board has found to be misleading and deceptive advertising practices concerning claims of specialization of optometrists. While the proposed amendments permit a licensee to use the phrase "practice limited to" where the advertising licensee's practice is exclusively or primarily devoted to one or more recognized areas of optometric care or services, the amendments clarify that the Board deems the use of the terms "specialist," "specialty" or any substantial equivalent thereof to be the use or employment of deception and misrepresentation. The consumer will also benefit from the requirement that all licensees must have the designation "Optometrist" or "O.D." immediately con-

tiguous to their names, since the consumer will be aware that the advertising individual is a doctor of optometry.

Economic Impact

There will be no economic impact upon the public as a result of the proposed amendments. The requirement that all licensees must have the designation regarding optometry immediately following their names should impose no additional expense upon advertising licensees, since it merely clarifies the existing regulation. Optometrists who, under these revised rules, will now be permitted to advertise certain additional information, in a truthful and non-deceptive manner (that is, that they possess certain post-graduate fellowships, that they limit their practices to a recognized practice area, or that they possess superiority with regard to ophthalmic material, apparatus, equipment or technology) may gain economically in that they may attract more patients as a result of such advertising.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., optometrists are deemed "small businesses" within the meaning of the statute, the following statements are applicable:

The proposed amendments create no new reporting or recordkeeping requirements for licensees, and the services of other professionals are not needed in order to comply. There are no initial capital costs or annual costs to comply. While the amendments to N.J.A.C. 13:38-1.2(e) clarify and expand the scope of permissible advertising, the only affirmative compliance requirement is that the designation "Optometrist," "O.D.," or "Doctor of Optometry" appear immediately after a licensee's name. Because this requirement is intended to reduce confusion on the part of the public, no exemption from it is possible regardless of the size of the practice.

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

13:38-1.2 General advertising practices

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

(e) An advertisement shall not state that the advertiser possesses professional superiority with regard to services [or merchandise] offered [or with regard to apparatus, equipment or technology utiilized by such advertiser. The use of such terms as specialist, specialty, expert, or words of similar import shall be deemed to indicate a claim of professional superiority]. **The use of titles of post-graduate professional fellowships in optometry from the American Academy of Optometry and the College of Optometrists in Vision Development shall not be deemed to be a claim of professional superiority.**

1. An advertisement shall not state that the advertiser possesses superiority with regard to ophthalmic material, apparatus, equipment or technology utilized by such advertiser unless such claims can be substantiated by the licensee.

2. It shall be deemed to be the use or employment of deception and misrepresentation for a licensee to utilize or authorize the use of the terms "specialist," "specialty" or the substantial equivalent thereof in any advertising as defined by (a) above; provided, however, that nothing herein contained shall prohibit a licensee from utilizing such terminology as "practice limited to," where the advertising licensee's practice is exclusively or primarily devoted to one or more recognized areas of optometric care or services, e.g. contact lens services, low vision services, vision training service, etc.

(f)-(j) (No change.)

13:38-1.3 Optometric practice under assumed names and disclosure of practitioner names

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

(d) In all advertisements for optometric goods and services at a particular location or group of locations, the name of at least one licensee responsible for the optometric practice at the individual location or group of locations shall be disclosed. Any licensee's name appearing in an advertisement shall be accompanied by one of the following designations **immediately adjacent to and contiguous with his or her name**: O.D., Optometrist, Doctor of Optometry.

(e) (No change.)

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Daily Double

Proposed Amendment: N.J.A.C. 13:70-29.48

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1991-353.

Submit written comments by July 31, 1991 to:

Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

Summary

The proposed amendment to the daily double rule eliminates language that was contradictory and clarifies the proper way to calculate the pay off in this pool when certain situations arise. Under the current rule, subsection (g) contains a statement that is not entirely accurate when patrons do not correctly select the winner of the first half of the daily double along with the winner of the second half of the daily double. This amendment eliminates that language and clarifies the procedure for pay out when this situation occurs.

Social Impact

To the extent this revised rule clarifies an unusual situation, there will be a positive social impact. Patrons will be able to read the rule and understand the method of distribution.

Economic Impact

The proposed amendment would have no economic impact for the State of New Jersey track associations or horsemen in the form of purses or breeders organizations. This amendment is merely a clarification of an existing rule which will not require any increased costs to any aspect of the industry.

Regulatory Flexibility Statement

There are no recordkeeping, reporting or other compliance requirements imposed by the proposed rule amendment as it is a clarification of the current daily double rule, and has no effect on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

13:70-29.48 Daily double

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

(g) If the purchaser of a daily double ticket fails to pick the winner of the first half of the daily double, his contract is void, [no matter what circumstances might effect the programmed running of the second half of the daily double. Irrespective of what happens to the horse the purchaser picked in the second half of the daily double, he has failed in fulfilling his first half of the contract, which was to pick the winner in the first half of the daily double, and there is no refund.] **unless circumstances occur as described in (n), (o), (p) and (q) below. If these conditions do not apply, then irrespective of what happens to the horse selected in the second half of the daily double, there is no refund because the patron has failed to fulfill the first half of the contract which is to pick the winner of the first half of the daily double.**

(h)-(r) (No change.)

(a)

NEW JERSEY RACING COMMISSION

Harness Rules
Daily Double
Proposed Amendment: N.J.A.C. 13:71-27.47

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1991-354.

Submit written comments by July 31, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

Summary

The proposed amendment to the daily double rule eliminates language that was contradictory and clarifies the proper way to calculate the pay off in this pool when certain situations arise. Under the current rule, subsection (g) contains a statement that is not entirely accurate when patrons do not correctly select the winner of the first half of the daily double along with the winner of the second half of the daily double. This amendment eliminates that language and clarifies the procedure for pay out when this situation occurs.

Social Impact

To the extent this revised rule clarifies an unusual situation, there will be a positive social impact. Patrons will be able to read the rule and understand the method of distribution.

Economic Impact

The proposed amendment would have no economic impact for the State of New Jersey track associations or horsemen in the form of purses or breeders organizations. This amendment is merely a clarification of an existing rule which will not require any increased costs to any aspect of the industry.

Regulatory Flexibility Statement

There are no recordkeeping, or reporting or compliance requirements imposed by the proposed rule amendment as it is a clarification of the current daily double rule, and has no effect on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

13:71-27.47 Daily double

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

(g) If the purchaser of a daily double ticket fails to pick the winner of the first half of the daily double, his contract is void, [no matter what circumstances might effect the programmed running of the second half of the daily double. Irrespective of what happens to the horse the purchaser picked in the second half of the daily double, he has failed in fulfilling his first half of the contract, which was to pick the winner in the first half of the daily double, and there is no refund.] **unless circumstances occur as described in (n), (o), (p) and (q) below. If these conditions do not apply, then irrespective of what happens to the horse selected in the second half of the daily double, there is no refund because the patron has failed to fulfill the first half of the contract which is to pick the winner of the first half of the daily double.**

(h)-(r) (No change.)

TRANSPORTATION

(b)

DIVISION OF TRANSPORTATION ASSISTANCE
OFFICE OF REGULATORY AFFAIRS

Zone of Rate Freedom; Maximum Increases for 1992
Proposed Amendment: N.J.A.C. 16:53D-1.1

Authorized By: Thomas M. Downs, Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-21 and 48:4-2.20 through 2.25.
Proposal Number: PRN 1991-351.

A public hearing concerning this proposal will be held on:
Tuesday, July 16, 1991, at 9:00 A.M.
Hearing Room
Office of Administrative Law
9 Quakerbridge Plaza
Quakerbridge Road
Mercerville, NJ 08625

Submit written comments by July 31, 1991 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
(609) 530-2041

The agency proposal follows:

Summary

The proposed amendment implements certain provisions of N.J.S.A. Title 48:2, which directs the Commissioner of the Department of Transportation to establish a Zone of Rate Freedom (ZORF) for the regular route private autobus carriers operating within the State. The ZORF constitutes a limited percentage range to be set annually by the Commissioner in which regular route private autobus carriers may be permitted to adjust their rates, fares or charges without petitioning the Department for prior approval. Provided the autobus carrier remains within the designated percentage range, all that is required is notice to the Department and the riding public of the rate, fare or charge adjustment prior to the effective date. If, however, the regular route autobus carrier seeks a percentage adjustment greater than that provided for in the ZORF, such autobus carrier will be required to follow the standard petitioning procedures, as specified in N.J.S.A. 48:2-21 and N.J.A.C 16:51-3.10 and 3.11.

After extensive review of the ZORF and its relationship to regular route private autobus carrier costs, revenues and fare structures, the Department proposes to amend the current ZORF. The percentage limitations contained in the 1992 proposal are scaled in consideration of the varying fares currently charged by intrastate regular route private autobus operations.

The percentages set forth in the 1992 proposal do not apply to casino or regular routes in the nature of special, charter and special autobus service operating within the State. Pursuant to N.J.S.A. 48:4-2.25, the Commissioner is authorized to exempt casino or regular routes in the nature of special, charter and special autobus operations from the purview of the required rates. In accordance with said authority, the Commissioner continues to so exempt casino or regular route in the nature of special, charter and special autobus operations within the State during the calendar year of 1992, subject to the existing conditions regarding notices to the public and filings with the Department.

Social Impact

The proposed 1992 ZORF percentage amendment will enable private autobus carriers, in most cases, to modify regular route fares as may be required without incurring administrative hearing costs, while also limiting the chance for uncontestable fare increases to adversely impact on the public. In the Department's opinion, the fare changes permitted by the proposed 1992 ZORF will not be burdensome to the public or regular route private autobus companies.

Economic Impact

The proposed 1992 percentage amendment will afford privately owned autobus companies flexibility in regular route fare adjustment. Such carriers will not have to incur costly and time consuming petition procedures when their proposed fare adjustments are consistent with that allowed.

Regulatory Flexibility Analysis

A number of the autobus carriers affected by the proposed amendment are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment does not place any new reporting or recordkeeping requirements on such autobus carriers. First time autobus carriers commencing operations will have to meet the reporting and recordkeeping requirements otherwise established by law for autobus carriers. The proposed amendment sets raised limits on rate modifications for which compliance with N.J.A.C. 16:53D-3.10 and 3.11 is not required.

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

16:53D-1.1 General provisions

(a) Any regular route autobus carrier operating within the State which seeks to revise its rates, fares or charges in effect as of the time of the promulgation of this [regulation] **rule** shall not be required to conform with N.J.A.C. 16:51-3.10 (Tariff filings or petitions which do not propose increases in charges to consumers) or N.J.A.C. 16:51-3.11 (Tariff filings or petitions which propose increases in charges to customers), provided the increase or decrease in the rate, fare or charge, or the aggregate of increases and decreases in any single rate, fare or charge is not more than the maximum percentage increase or decrease as promulgated below, upgraded to the nearest $.05.

1. The following chart sets forth the [1991] **1992** percentage maximum for increases to particular rates, fares or charges and the resultant amount as upgraded to the nearest $.05:

Present Fare	% Of Increase	Increase Upgraded To Nearest $.05
$ .06 or less	[7.83%]**8.17%**	$.05
[$ .65-1.25]**$ .65-$1.20**	[7.83%]**8.17%**	$.10
[$1.30-1.90]**$1.25-$1.80**	[7.83%]**8.17%**	$.15
[$1.95 upward]**$1.85 upward**	[7.83%]**8.17%**	$.20+

2. The following chart sets forth the [1991] **1992** percentage maximum for decrease to particular rates, fares or charges and the resultant amount as upgraded to the nearest $.05:

Present Fare	% Of Decrease	Decrease Upgraded To Nearest $.05
$ .50 or less	10%	$.05
$ .55-$1.00	10%	$.10
$1.05 upward	10%	$.15+

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Sales and Use Tax

Exempt Organizations; Organizations Carrying on Trade or Business

Proposed Amendment: N.J.A.C. 18:24-9.11

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-24.

Proposal Number: PRN 1991-349.

Submit comments by July 31, 1991 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

Under N.J.S.A. 54:32B-9(b), sales by the types of nonprofit organizations described in that statute are exempt from sales and use tax requirements, subject to certain limitations. Those limitations are interpreted by the Division of Taxation in N.J.A.C. 18:24-9.11(d), which provides that an exempt organization must collect sales and use taxes if it conducts a trade or business in substantial competition with privately operated nonexempt businesses. Consistent with this interpretation, the proposed amendment states the Division's long-standing position that operating a mail, telephone or fax order business will require the collection of sales and use tax.

The proposed amendment to paragraph (d)1 deletes language that is redundant and that appears to impose sales tax whenever an exempt organization makes sales and forwards part of the receipts to its supplier. Thus, the proposed amendment clarifies that exempt organizations can sell tax free, even though the sales are commission type sales, as long as the exempt organization is making the sales and they are not in substantial competition with private businesses.

The proposed amendment also deletes the provision in paragraph (d)2 which allows exempt organizations to sell items tax free for as long as a month. Under the proposed amendment, taxability depends on whether the sales are in substantial competition with private businesses, rather than on whether they aggregate more than 30 days. Thus, the amendment eliminates the problem of exempt organizations selling high priced items, tax free, for periods long enough to very substantially compete with private businesses in the community.

The proposed amendment also adds a definition for shop or store.

Social Impact

The proposed amendment will allow exempt organizations more flexibility in conducting tax free fundraising, as long as the sales are not in substantial competition with private businesses. However, under the amended rule, if an exempt organization is making sales that are in substantial competition with private businesses, the organization will not be exempt from collecting sales tax just because the sale days aggregate 30 days or less. This treatment is proposed so that private businesses will not have to face unfair competition from an exempt organization not having to collect sales and use tax merely because it did not exceed the 30 day test.

Economic Impact

The proposed amendment may increase State revenues very slightly because exempt organization sales would no longer be exempt from sales tax merely because they meet the 30 day test. For the same reasons, the proposed amendment may cause a very minor increase in sales tax imposed on the public and a very minor decrease in sales made by exempt organizations, which sales may partially shift to private businesses. However, these changes are warranted to prevent exempt organizations from unfairly competing with private businesses. The proposed amendment is not expected to increase costs to the Division of Taxation.

Regulatory Flexibility Analysis

Because exempt organizations may be considered small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is required. The proposed amendment does not impose reporting or recordkeeping requirements. Exempt organizations will be required to collect sales tax under the amended rule, when operating in a competitive situation with private businesses. No capital costs or professional services will be required to comply with the specific provisions of this amendment. To prevent unfair competition with private business, uniform application of the amended rule to all exempt organizations is necessary; therefore, any differentiation based upon business size would be inappropriate, and has not been provided in the rule.

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

18:24-9.11 Organizations carrying on trade or business

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

(d) Where an exempt organization conducts a trade or business in substantial competition with privately operated nonexempt business entities, such organization shall, in the conduct of trade or business, pay and collect sales and use taxes in the same manner required of the privately operated nonexempt business entity.

1. An exempt organization is considered to be engaged in a trade or business in substantial competition with privately operated nonexempt business entities to the extent sales are [either made from a shop or store operated by such organization or by or through a nonexempt business entity on behalf of or under agreement with such organization. Sales made by an exempt organization through agreement with a nonexempt business entity for the provision of property or services, payment to be made by the exempt organization to the nonexempt business entity from the sale receipts or after deduction of a sales commission, are subject to sales tax unless the conditions set forth in paragraph 2 below are satisfied. For the purposes of this paragraph, property or services is defined by reference to subsections (a), (b), (c), (d) and (e) of section 3 of the Sales and Use Tax Act (N.J.S.A. 54:32B-3).] **made as follows:**

i. From a shop or store operated by such organization;

ii. By mail, telephone, or facsimile orders accepted by such organization on a regular, continuous or long term basis; or

iii. By or through a nonexempt business entity on behalf of or under an agreement with such organization.

2. An exempt organization is not considered to be engaged in a trade or business in substantial competition with privately operated nonexempt business entities to the extent sales are made by such organizations through fundraising events or activities which are of relatively short duration, and are [only] **not** held on [an occasional] **a regular** basis during a calendar year; provided, however, that all [such events or activities do not aggregate more than 30 days in a calendar year] **proceeds inure to the benefit of the exempt organization.**

[i. This paragraph does not apply to sales made by an exempt organization which are directly related to the purposes for which it was organized.]

3. A shop or store as used in (d)1i above includes any place or establishment from which goods are sold with a degree of regularity, frequency and continuity.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Annual Audit and Other Reports
Proposed Amendment: N.J.A.C. 19:45-1.7

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

Authority: N.J.S.A. 5:12-69a, 70 l-n.

Proposal Number: PRN 1991-345.

Submit comments by July 31, 1991 to:

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

The agency proposal follows:

Summary

Casino Control Commission rule N.J.A.C. 19:45-1.6 requires that each casino licensee file monthly, quarterly and annual financial and statistical reports with the Commission. Each casino licensee's annual financial statement must be audited by an independent certified public accountant (see N.J.A.C. 19:45-1.7).

Prior to 1984, Commission rules provided that the requisite reports could be filed on either a calendar or fiscal year basis. 1984 amendments to N.J.A.C. 19:45-1.6 required that all financial and statistical reports be prepared on a calendar basis (see 16 N.J.R. 361(a), 16 N.J.R. 927(a)). However, the option of preparing annual audited financial statements on a fiscal year basis was never eliminated from N.J.A.C. 19:45-1.7. The proposed amendment corrects this inconsistency.

Social Impact

The proposed amendment is not anticipated to have a significant social impact, since the Commission's rules have, since 1984, required preparation of financial and statistical reports on a calendar basis.

Economic Impact

The proposed amendment should not have any significant economic impact on either casino licensees or the regulatory agencies, since all casino licensees are presently required to utilize a calendar period of financial reporting.

Regulatory Flexibility Statement

The proposed amendment affects only the operation of casino licensees, none of which qualifies as a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed amendment follows (deletions indicated in brackets [thus]).

19:45-1.7 Annual audit and other reports

(a) (No change.)

(b) The annual financial statement shall be prepared on a comparative basis for the current and prior calendar [or fiscal] year, and shall present financial position and results of operations in conformity with generally accepted accounting principles.

(c) (No change.)

(d) Two copies of the audited financial statements, together with the report thereon of the casino licensee's independent certified public accountant, shall be filed with the Commission and the Division not later than April 30 following the end of the calendar [or fiscal] year.

(e)-(f) (No change.)

(g) Two copies of the reports required by (e) above, and two copies of any other reports on internal accounting control, administrative controls, or other matters relative to the licensee's accounting or operating procedures rendered by the licensee's independent certified public accountant, shall be filed with the Commission and the Division by the licensee by April 30 following the end of the calendar [or fiscal] year or upon receipt, whichever is earlier.

(h)-(i) (No change.)

(b)

CASINO CONTROL COMMISSION

Casino Hotel Alcoholic Beverage Control
Conditions of Operation in Type V Locations
Proposed Amendment: N.J.A.C. 19:50-3.5

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

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

Proposal Number: PRN 1991-344.

Submit comments by July 31, 1991 to:

Seth H. Briliant
Assistant Counsel
Casino Control Commission
Arcade Building
Tenessee Avenue and the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

N.J.S.A. 5:12-103, which governs the sale of alcoholic beverages in casino hotels, expressly provides in subsection 103g(5) that the Commission may permit a casino hotel alcoholic beverage (CHAB) licensee to sell package goods. N.J.A.C. 19:50-3.5(c) currently permits a CHAB package goods location in a casino hotel to offer only certain other items for sale, including cigars, cigarettes, chips, nuts, ice, accessory non-alcoholic beverages, and prepacked holiday gift merchandise such as a

bottle of wine and two wineglasses. Novelty wearing apparel is not included.

However, N.J.S.A. 33:1-12(3)(a), which is applicable to all non-casino package goods liquor licensees in New Jersey, does permit "the sale of novelty wearing apparel identified with the name of the establishment licensed under the provisions of this act," in addition to the other non-alcoholic items specified in N.J.A.C. 19:50-3.5(c). The provision for novelty wearing apparel was inserted in Title 33 by a 1976 amendment, but was not expressly incorporated into either the Commission's original 1978 CHAB rules at N.J.A.C. 19:50 or the 1983 and 1988 revisions and readoptions of those rules.

In issuing a CHAB package goods authorization to Resorts International Hotel, Inc. on October 3, 1990, the Commission determined that the provision for novelty wearing apparel in N.J.S.A. 33:1-12(3)(a) was implicitly incorporated by reference into N.J.A.C. 19:50-3.5(c), pursuant to N.J.S.A. 5:12-103(d). The proposed amendment codifies the Resorts determination by expressly including such novelty wearing apparel in the list of nonalcoholic items permitted to be sold in a CHAB package goods location, thus clarifying the Commission's rule and making it consistent with Title 33.

Social Impact

The proposed amendment clarifies that the range of non-alcoholic merchandise available in a CHAB package goods location is identical to that which may be sold, at a minimum, in non-casino package goods stores throughout New Jersey. The public will benefit from the proposed amendment, as it will now be able to purchase novelty wearing apparel in CHAB package goods locations, all of which are located in a resort area where the sale of souvenir novelty wearing apparel is commonplace.

Economic Impact

The proposed amendment creates an addition to the list of non-alcoholic merchandise which may be sold in CHAB package goods locations and should have a favorable economic impact on CHAB licensees, because it provides them with additional retail sales opportunities and increased flexibility in locating displays of novelty wearing apparel available for sale within the hotel-casino.

Regulatory Flexibility Statement

The proposed amendment would apply to any CHAB licensees with a package goods location. These CHAB licensees are generally casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Other CHAB licensees may and do include individuals, partnerships and corporations or other organizations that sell alcoholic beverages in portions of the premises of casino hotels that they occupy pursuant to a lease or other agreement. However, the proposed amendment does not impose any reporting, recordkeeping or compliance requirements; therefore, a Regulatory Flexibility Analysis is not required.

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

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

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

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

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

(a)

CASINO CONTROL COMMISSION

Advertising

Proposed Readoption with Amendments: N.J.A.C. 19:51

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-69, 70(o).
Proposal Number: PRN 1991-346.

Submit comments by July 31, 1991 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee and Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 19:51 expires on August 14, 1991. The Casino Control Commission has reviewed the rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Commission has, however, also determined that the proposed amendments will help to clarify the provisions of Chapter 51 by establishing and providing more explicit standards for the criteria governing advertising.

Chapter 51 implement section 70(o) of the Casino Control Act, N.J.S.A. 5:12-1 et seq., which directs the Commission to adopt rules governing advertising by casino licensees. In accordance with the Act, the rules prohibit false, deceptive or misleading advertising, and the advertising of odds, the number of games, or the size of the casino. The rules were amended in 1981 to delete the requirement that casino licensees submit copies of all advertising to the Commission prior to broadcast or publication (see 13 N.J.R. 542(a) and 780(d)). Amendments adopted in 1986 added junket representatives and enterprises to the list of entities regulated by Chapter 51, and abolished the requirement that casino licensees and applicants submit semi-annual reports of gaming-related advertising activity (see 18 N.J.R. 1258(a) and 1841(a)).

The proposed readoption is necessary at this time to ensure the Commission's continuing ability to fulfill its statutory obligation to protect the public from false or misleading advertising.

The proposed amendments are intended to set forth standards for the statutorily prohibited advertising practices. The proposed amendments to N.J.A.C. 19:51-1.1(a) define "advertising" to include any notice or communication of information concerning the gaming-related business of a licensee or applicant, whether through broadcast, publication or other means of dissemination. This amendment reflects the Commission's determination that the scope of Chapter 51 should be limited to advertising which is related to casino gaming. Other, non-gaming related advertising by licensees and applicants will, of course, continue to be subject to the standards promulgated by the State Division of Consumer Affairs, which regulation will ensure that the public is protected from false, deceptive or misleading advertising in accordance with section 70(o). The proposed amendments to subsection (a) also make clear that the applicant or licensee is responsible for all advertisements made in its behalf.

A proposed new subsection (b) specifies the types of notices and communications which will be deemed "informational," rather than "advertisement." Information about the rules of the games, which must be included in printed gaming guides and posted on the casino floor pursuant to N.J.S.A. 5:12-100(o), is excluded, as is information which, by regulation, is imprinted upon table layouts or slot machines. Likewise, the amendment excludes any notice regarding the rules of the games which is provided pursuant to proposed N.J.A.C. 19:47-8.3 (see the June 3, 1991 New Jersey Register, 23 N.J.R. 1784(b)). Finally, press releases and directional signage are excluded from the definition of advertising.

The proposed amendments to N.J.A.C. 19:51-1.2 clarify the criteria governing advertising. The amendments to subsection (c) provide some guidance as to the types of advertising practices which will be considered false, deceptive or misleading. Similarly, new subsection (d) specifies prohibited advertising practices. The prohibited advertisement of "odds" is defined in accordance with the broad interpretation historically given to that term by Commission decision. Proposed new subsection (e) makes clear that Chapter 51 does not preclude advertising which describes available games, or authorized variations thereof; bonus payments; location of the casino; hours of operation; or amenities available. As part of the proposed amendments, the provisions of former N.J.A.C. 19:51-1.3, prohibited advertising of casino gaming or casino gaming activity, are recodified to N.J.A.C. 19:51-1.2(b) through (e). Existing N.J.A.C. 19:51-1.4, Commission approval, is being recodified to N.J.A.C. 19:51-1.3 with no amendments made to the rule text.

Social Impact

N.J.A.C. 19:51 has enabled the Commission to protect the gaming public from deceptive advertising, in accordance with the section 70(o)

of the Casino Control Act. The proposed readoption will assure that the Commission may continue to fulfill this statutory mandate.

The proposed amendments will benefit both the casino industry and the regulatory agencies, by clarifying and defining the statutorily prohibited advertising practices.

Economic Impact

Compliance with the recordkeeping requirements imposed by N.J.A.C. 19:51 has involved administrative time and expense for casino licensees and applicants. The regulatory agencies have also incurred additional costs associated with enforcement of the advertising rules. However, such costs are necessary to the Commission's ability to implement section 70(o) of the Act.

The proposed amendments are not anticipated to have any substantial economic impact, since the amendments merely provide more explicit standards for the statutorily prohibited advertising practices.

Regulatory Flexibility Analysis

N.J.A.C. 19:51 regulates advertising by casino licensees and applicants, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Chapter 51 also regulates advertising by casino service industries, and junket representatives and enterprises, if such advertisement is directly related to casino gaming. Some of these entities may qualify as small businesses under the Regulatory Flexibility Act. These entities may incur some additional administrative time and expense in complying with N.J.A.C. 19:51-1.4, which requires that all gaming-related advertising be maintained at the advertiser's principal place of business for a period of one year from placement of the advertisement. However, such costs should be minimal and are necessary to enable the Commission to fulfill its statutory mandate. The requirements set forth in the rules proposed for readoption, therefore, must be applied consistently to all businesses regardless of business size.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:51.

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

19:51-1.1 Applicability of advertising regulations

(a) [Any inducement or other means of calling to the attention of] **Except as otherwise provided in this section, the term "advertisement" means any notice or communication to** the public [by advertising of any sort including] **of any information concerning the gaming-related business of an applicant or licensee through** broadcasting, publication, or any other means of dissemination [by a casino licensee or applicant or any agent thereof, shall be subject to the standards established by these regulations]. **An applicant or licensee shall be responsible for all advertisements which are made in its behalf, regardless of whether the applicant or licensee participated directly in its preparation, placement or dissemination.**

(b) The following notices and communications shall not be deemed advertisements for purposes of this chapter, but shall be subject to any review and approval by the Commission otherwise required by the Act or by regulation:

1. Any signage, notice, or other information required to be provided by the Act or by regulation, including, without limitation, the following:

i. Notice regarding the rules of the games in accordance with N.J.A.C. 19:47-8.3;

ii. The posting of information about rules of the games, payoffs of winning wagers and odds, in accordance with section 100(f) of the Act;

iii. Printed gaming guides containing information about the rules of the games, payoffs of winning wagers and odds, in accordance with section 100(f) of the Act;

iv. Information imprinted upon gaming table layouts in accordance with N.J.A.C. 19:46; and

v. Information imprinted, impressed, affixed or engraved on slot machines or bill changers in accordance with N.J.A.C. 19:45 and 19:46;

2. Any signage or other directional devices contained in a casino room for the purpose of identifying the location of approved games; and

3. The distribution of a prepared statement containing information or news of general interest to persons employed in the reporting of such information or news to the public, such as newspapers or periodicals, or radio or television stations.

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

19:51-1.2 [General criteria] **Criteria** governing advertising

(a) Advertising shall [adhere] **conform** to generally accepted standards of good taste **and to the requirements of section 70(o) of the Act and this chapter.**

(b) Any [No] on-site advertising **of a casino operation shall contain the phrase "Bet With Your Head, Not Over It," and** shall **not** dominate or despoil the architecture or environment of Atlantic City.

[(b) No advertisement shall be permitted within a casino hotel complex which violates the obscenity statutes of this State or which includes:

1. The portrayal or depiction of acts or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

2. The portrayal or depiction of touching, caressing or fondling of the breasts, buttocks, anus or genitals;

3. The portrayal or depiction of the pubic hair, vulva, genitals, anus, female nipple or female areola.]

(c) Advertising shall be based upon fact, and [furthermore, none of it] shall **not** be false, deceptive or misleading [in any manner whatsoever] **, whether by inference, omission or ambiguity.** Without limitation as to the generality of the foregoing requirement, [such] **no** advertising shall [conform to applicable provisions of relevant State and federal law which proscribe false advertising.]**:**

1. Use any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact;

2. Fail to specifically designate any material conditions or limiting factors; or

3. Fail to maintain any offer for the advertised period of availability or in a quantity sufficient to meet reasonably anticipated demand.

(d) The following practices shall be prohibited with respect to all advertisements:

1. Any representation or description of the size of a casino;

2. The use or statement of any information concerning the number of games available at a casino;

3. The use or statement of any information or representation about odds. For purposes of this section, the term odds shall not be limited to numerical information, and shall include, without limitation, the following:

i. Use of the word "odds";

ii. Rate of payment for a winning bet; and

iii. House advantage, hold, win or any like indication of the probability of winning or losing at a particular casino or at any authorized game;

4. The use or statement of any information, representation, or decription which contrasts or compares casino licensees with regard to total payout or the information in (d)1 through (d)3 above; and

5. Advertising within a casino hotel complex which violates the obscenity statutes of this State or which includes:

i. The portrayal or depiction of acts or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;

ii. The portrayal or depiction of touching, caressing or fondling of the breasts, buttocks, anus or genitals;

iii. The portrayal or depiction of the pubic hair, vulva, genitals, anus, female nipple or female areola.

(e) The use or statement of the following information shall be permissible with respect to all advertisements:

1. Descriptions of the games available at a licensed casino, or of any variation thereof which is permitted by regulation, including, but not limited to, types of wagers offered, provided, however, that no advertisement may contain information which is prohibited by (d)3 above;

2. Any special bonus payments or other approved promotional inducements;

3. The location of the casino;
4. The hours of a casino's operation; or
5. Descriptions of any amenities available at a casino.
Recodify existing (d) as **(f)** (No change in text.)

[19:51-1.3 Prohibited advertising of casino gaming or casino gaming activity]

[(a) No advertising shall divulge any information concerning the size of the casino, gambling odds available or the number of games at the casino. Advertising may divulge, however, the location of the casino, its hours of operation, amenities available or the types of games available.

(b) No on-site advertising of a casino operation shall appear unless it contains the phrase "Bet With Your Head, Not Over It."]

Recodify 19:51-1.4, Commission approval, as **19:51-1.3** (No change in text.)

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules
Division of Motor Vehicles Cases

Adopted Amendments: N.J.A.C. 1:13-1.1 and 1:13-4.1

Proposed: April 1, 1991 at 23 N.J.R. 928(a).
Adopted: May 6, 1991 by Jaynee LaVecchia, Director, Office of Administrative Law.
Filed: June 6, 1991 as R.1991 d.330, **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. 52:14F-5(e), (f) and (g).

Effective Date: July 1, 1991.
Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:
No comments were received. The OAL decided to add the phrase "except fatal accident cases" to N.J.A.C. 1:13-1.1(a) to make clear that the special rules do not apply to those cases, which are governed by statutory requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***).

CHAPTER 13
DIVISION OF MOTOR VEHICLES CASES

1:13-1.1 Applicability

(a) The rules of this chapter shall apply to hearings transmitted by the Division of Motor Vehicles (DMV) ***except fatal accident cases, which shall be conducted in accordance with N.J.S.A. 39:5-30(b) and (e)***.

(b) (No change.)

1:13-4.1 Agency conference; failure to reach a settlement

(a) The Division of Motor Vehicles shall, pursuant to N.J.A.C. 13:19-1.2, conduct a conference in any case where the hearing request sets forth disputed material facts which the licensee intends to raise at the hearing. The conference shall be conducted pursuant to N.J.A.C. 13:19-1.3 through 13:19-1.8. If the hearing request does not set forth disputed material facts but does present legal issues and arguments, the Director of the DMV may decide the case based upon the written record, may schedule a conference pursuant to N.J.A.C. 13:19-1.3 through 13:19-1.8 or may transmit the matter directly to the OAL for a hearing.

(b)-(d) (No change.)

(e) The licensee may accept the settlement offers by DMV by notifying the judge at any time before the hearing begins unless the Division has notified the licensee that the offer has been withdrawn because of changed circumstances or the discovery of additional information.

AGRICULTURE

(b)

DIVISION OF DAIRY INDUSTRY

Producers

Adopted Amendments: N.J.A.C. 2:50-1.1 and 2.1

Proposed: April 1, 1991 at 23 N.J.R. 929(a).
Adopted: May 31, 1991 by the State Board of Agriculture and Woodson W. Moffett, Jr., Director, Division of Dairy Industry.
Filed: May 31, 1991 as R.1991 d.323, **with substantive changes** not requiring public notice and comments (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-7 and 20.

Effective Date: July 1, 1991.
Expiration Date: May 1, 1992.

Summary of Public Comments and Agency Responses:
The Director received comments from Mr. Jerry D. Hoser; Mr. and Mrs. Clarence Bullock, t/a Double CB Dairy; Atlantic Dairy Cooperative and Johanna Dairies, Inc.

COMMENT: Mr. Hoser and Mr. and Mrs. Bullock objected to any change in the regulation. Each of them believes that the current 60 day notice requirement should be continued and that the regulation should not be changed.

RESPONSE: The Division appreciates receiving this comment from the dairy farmers, and it is its hope that the suggested changes hereinafter outlined will meet their objections to any change by providing a 28 day period as opposed to a 21 day period.

COMMENT: The Atlantic Dairy Cooperative Association, which represents over 83 New Jersey dairy farmers supplying over 10 million pounds of milk monthly to New Jersey processing plants, and Johanna Dairies, Inc., the largest buyer of New Jersey produced milk, each suggested that the proposed 21 days be changed to 28 days.

RESPONSE: Both Atlantic Dairy Cooperative and Johanna recognize the need for reasonable notice but suggested that the change from 60 to 21 days went too far. They each pointed out that the 28 day notice period would be the same as that required by Pennsylvania, from which much milk processed in New Jersey is procured.

The Division concurs that the 28 days is the most appropriate notice period. This change will accommodate the changing marketing environment while bringing New Jersey's rules into harmony with neighboring Pennsylvania.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

2:50-1.1 Dairy farmers notice to dealers of intent to discontinue sales of milk

(a) Before a dairy farmer selling milk to New Jersey dealers may discontinue selling milk to such dealer, he shall give the dealer at least *[21]* ***28*** days written notice of his intent to discontinue such sale.

(b) The notice of discontinuance shall be sent to the dealer by letter or on forms supplied by the Division of Dairy Industry. A copy of such letter or form shall be filed with the Division of Dairy Industry and the *[21]* ***28***-day period shall begin on the date that such notice is received by the Division.

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

2:50-2.1 Dealer notice to dairy farmers of intent to discontinue purchase of milk

(a) Before a dealer purchasing milk from New Jersey dairy farmers may discontinue such purchase, he shall give the dairy farmer(s) at least *[21]* ***28*** days written notice of his intent to discontinue such purchase.

(b) The notice of discontinuance shall be sent to the dairy farmer and a copy filed with the Division of Dairy Industry on forms supplied by the Division for this purpose. The *[21]* ***28***-day notice period shall begin on the day that such notice is received by the Division of Dairy Industry.

(c) (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries
Size and Possession Limits
Winter Flounder and Red Drum
Adopted Amendment: N.J.A.C. 7:25-18.1

Proposed: January 7, 1991 at 23 N.J.R. 43(a).
Adopted: June 7, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: June 10, 1991 as R.1991 d.348, **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. 23:2B-1 et seq., particularly 23:2B-6, 23:2B-7 and 23:2B-14.

DEP Docket Number: 045-90-12.
Effective Date: July 1, 1991.
Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:

This amendment was proposed on January 7, 1991. The public comment period ended on February 6, 1991. Comments were received from only one person, Allen Bogdan.

COMMENT: The size limit for winter flounder should be 8.5 inches minimum and 16 inches maximum.

RESPONSE: Instituting a minimum size limit of 8.5 inches would not allow a maximum number of winter flounder to spawn prior to capture as will the 10-inch minimum. One hundred percent maturity for winter flounder is not achieved until a size of about 10 inches. Prohibiting the taking of winter flounder greater than 16 inches would have little biological benefit and may impose adverse social and economic impacts upon participants in the fishery. The goal of instituting a 10-inch size limit is to allow a maximum number of fish to spawn prior to capture. A 16-inch size limit does nothing to further this goal. In addition, recreational and commercial fishermen would be deprived of the social and economic benefit of harvesting large fish.

COMMENT: Large fish (winter flounder), 16 inches and over, are full of eggs with little usable meat and, therefore, should not be harvested.

RESPONSE: One hundred percent maturity for winter flounder is reached at a length of about 10 inches. Therefore, all female winter flounder greater than 10 inches, and many smaller than 10 inches, are carrying eggs during part of the year. A viable market exists for winter flounder greater than 10 inches and the roe is utilized for food by many fishermen along with the meat. There is no biological basis for prohibiting the taking of winter flounder greater than 16 inches.

COMMENT: In order to conserve winter flounder stocks, ban otter trawling.

RESPONSE: Placing a ban on otter trawling in New Jersey waters would have few beneficial effects. Trawling is currently banned within two miles of the coast; therefore, a ban on otter trawling would affect only a one-mile strip of ocean along the New Jersey coast. In addition, during the years for 1979 to 1987, New Jersey landings of winter flounder captured by otter trawl amounted to only 12 percent of the total commercial and recreational harvest of winter flounder. Otter trawling, therefore, is not a major contributor to winter flounder fishing mortality.

Summary of Agency-Initiated Changes:

All changes initiated by the agency were to recodify certain sections. This modification was necessary because of several recent amendments to N.J.A.C. 7:25-18.1 and readoption of N.J.A.C. 7:25.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***).

7:25-18.1 Size and possession limits

(a) A person shall not purchase, sell, offer for sale, or expose for sale any sea sturgeon measuring less than 42 inches in length, codfish measuring less than 12 inches in length, bluefish or weakfish measuring less than nine inches in length, sea bass or kingfish measuring less than eight inches in length, or blackfish, mackerel, or porgy measuring less than seven inches in length.

(b) A person shall not take from the marine waters in the State or have in his possession any summer flounder, commonly called fluke, under 13 inches in length, winter flounder under 10 inches in length, or red drum under 14 inches in length.

(c) (No change.)

(d) A person shall not possess at any one time more than two red drum both measuring in excess of 32 inches in length.

(e) Any person violating the provisions of (a), (b) or (d) above shall be liable to a penalty of $20.00 for each fish taken or possessed. Each fish taken or possessed shall constitute an additional separate and distinct offense.

Recodify existing (e)-*[(i)]* ***(n)*** as (f)-*[(j)]* ***(o)*** (No change in text.)

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries Administration
General Net Regulations
Adopted Amendment: N.J.A.C. 7:25-18.5

Proposed: December 17, 1990 at 22 N.J.R. 3685(a).
Adopted: June 4, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: June 6, 1991 as R.1991 d.328, **without change.**

Authority: N.J.S.A. 23:2B-1 et seq., 23:5-24.1 through 24.3 and 23:10-20 et seq.

DEP Docket Number: 039-90-11.
Effective Date: July 1, 1991.
Expiration Date: February 15, 1996.

Secondary notice of the proposed amendment was achieved by mailing 31 notices to all licensed menhaden bait vessels, commercial docks, sports fishing clubs and outdoor writers.

Summary of Public Comment and Agency Responses:

No comments received.

Full text of the adoption follows.

7:25-18.5 General net regulations

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

(g) Individuals intending to take fish with a net in the marine waters of this State pursuant to N.J.S.A. 23:5-24.2 shall, as required, apply to the Commissioner for a license and/or permit. Upon receipt of the application, and the prescribed license fee, the Commissioner may, in his or her discretion, issue single season licenses and/or permits as specified for each net type for the taking of fish with nets only as follows:

1.-3. (No change.)

4. The bait net season shall begin on January 1 and shall end on December 31. Except as provided in N.J.S.A. 23:5-24.2, bait net resident fees shall be $10.00 per license.

i. Bait nets shall be limited to one or more of the following types:

(1) Dip nets 24 inches in diameter or less;

(2) Bait seines not exceeding 150 feet and mesh not exceeding 2.5 inches stretched;

(3) Cast nets not exceeding 30 feet in diameter;

(4) Lift or umbrella nets not exceeding four feet square; and

(5) Killipots not exceeding 10 inches in diameter or 25 inches in length if cylindrical or 2,000 cubic inches for any other conformation for the taking of killifish (Cyprinodontidae spp.) only;

ii. No person shall take more than 35 alewife or blueback herring in the aggregate per day with any dip net, cast net, lift or umbrella net or bait seine; and

iii. The simultaneous possession of greater than 35 alewife or blueback herring in the aggregate and any dip net, cast net, lift or umbrella net or bait seine shall constitute prima facie evidence of the violation of this rule.

5. Drifting gill nets shall be used only in the Atlantic Ocean, Delaware Bay, and the tributaries of Delaware Bay. The smallest mesh of any drifting gill net shall be not less than five inches stretched, beginning February 12 through February 29 and not less than 2.75 inches stretched beginning March 1 through December 15. These nets shall not individually exceed 200 fathoms in length. Individual drifting gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length beginning February 12 through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15. Drifting gill nets may be used for all species except those specifically protected.

i. (No change.)

ii. Separate drifting gill nets or a series of joined drifting gill nets shall be marked at each end with a fluorescent orange float at least 12 inches in diameter or a fluorescent orange flag at least 12 inches by 12 inches and suspended at least three feet above the water, measured from the surface of the water to the bottom of the flag. No less than 24 square inches of any reflective material shall be attached and maintained on each end marker. A white float measuring at least eight inches in diameter shall be located approximately 20 feet inside of each end marker;

iii.-vi. (No change.)

6. Staked and anchored gill nets shall be used only in the Atlantic Ocean, Raritan Bay, Sandy Hook Bay, and the Delaware Bay and its tributaries. Staked or anchored gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length from the beginning of the season through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15.

i. (No change.)

ii. Separate staked or anchored gill nets or a series of joined staked or anchored gill nets shall be marked at each end with a fluorescent orange float at least 12 inches in diameter or a fluorescent orange flag at least 12 inches by 12 inches and suspended at least three feet above the water, measured from the surface of the water to the bottom of the flag. No less than 24 square inches of any reflective material shall be attached and maintained on each marker. A white float measuring at least eight inches in diameter shall be located approximately 20 feet inside of each end marker;

iii.-ix. (No change.)

7.-12. (No change.)

(h) (No change.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries Administration

Atlantic Menhaden

Adopted Amendment: N.J.A.C. 7:25-22.3

Proposed: December 3, 1990 at 22 N.J.R. 3611(a).
Adopted: June 4, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: June 6, 1991 as R.1991 d.327, **without change.**

Authority: N.J.S.A. 23:2B-1 et seq., specifically 23:2B-6.

DEP Docket Number: 038-90-10.
Effective Date: July 1, 1991.
Expiration Date: February 15, 1996.

Secondary notice of the proposed amendment was achieved by mailing 31 notices to all licensed menhaden bait vessels, commercial docks, sports fishing clubs and outdoor writers.

Summary of Public Comment and Agency Responses:
No comments received.

Full text of the adoption follows.

7:25-22.3 Taking of Atlantic menhaden for bait

(a) (No change.)

(b) Persons licensed to fish for Atlantic menhaden with a purse or shirred net in the marine waters of New Jersey, for the purpose of taking Atlantic menhaden for bait purposes only, shall be subject to the following:

1. (No change.)

2. Fishing shall be restricted to not closer than 0.6 nautical miles of any point along the shore, jetties or fishing piers in the Atlantic Ocean and in that portion of the Delaware Bay south and east of a line from Fourteen Foot Light to Deadman Shoal Light (Bug Light) and thence to Dennis Creek Light. Fishing shall be restricted in Raritan Bay and Sandy Hook Bay, not closer than 0.3 nautical miles of any point along the shore, jetties or piers. It will be incumbent upon the captain of a purse seine vessel to determine the possibility of drifting inside the limit while fishing, before setting his or her net. Drifting into the restricted area along the shore or around a jetty or pier while fishing shall be considered a violation of this subchapter.

3.-12. (No change.)

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Oyster Management

Adopted Amendments: N.J.A.C. 7:25A-1.4, 1.5, 1.6 and 1.9

Proposed: April 15, 1991 at 23 N.J.R. 1112(a).
Adopted: June 7, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.
Filed: June 10, 1991 as R.1991 d.349, **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. 50:1-5.

DEP Docket Number: 016-91-03.
Effective Date: July 1, 1991.
Expiration Date: April 23, 1995.

Summary of Public Comments and Agency Responses:
The amendments were proposed April 15, 1991. The public comment period closed on May 15, 1991. **No comments were received.** The amendments are being adopted with one technical change to N.J.A.C. 7:25A-1.9(d), deleting the erroneous comma between "bushel" and "basket."

Full text of the adoption follows (deletions from proposal indicated in brackets with asterisks *[thus]*).

7:25A-1.4 Definitions

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

. . .

"Council" means the Delaware Bay Section of the Shellfisheries Council.

. . .

"Shellfish Office" means the Bureau of Shellfisheries office located on Miller Avenue, Port Norris, New Jersey. The office telephone number is (609) 785-0730 and marine contact during bay season will be VHF Channel 68.

. . .

"Time" means Eastern Standard time (EST) or Eastern Daylight Savings time (EDT), whichever is in effect that date.

"Validly licensed" means those vessels:

1. Which are operable, that is, capable of taking oysters within the previous calendar year, unless exempted from this requirement by the Commissioner, upon the recommendation of the Council and its finding that exigent circumstances warranted such recommendation; and

2. Which have been licensed and operated as required by the provisions of this chapter.

7:25A-1.5 Licenses

No licenses authorized by N.J.S.A. 50:3-1 shall be issued except as a renewal for those vessels validly licensed during the year prior to that of the license to be issued.

7:25A-1.6 Substitution of vessels; license renewal

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

(e) A licensed vessel that is lost, destroyed or disabled may be replaced within two years of December 31 of the year for which the lost, destroyed, or disabled vessel was licensed. The owner shall file a Statement of Intent with the Department, on or before December 31 of the year for which the lost, destroyed, or disabled vessel was licensed, that he will replace the vessel. The replacement vessel shall be licensed upon proof of loss and of replacement of the previously licensed vessel. No replacement vessels shall have more than a 10-percent greater gross tonnage than the previously-licensed vessel.

(f) Except as specified in (c)1 and (e) above, in order to maintain licensing during subsequent years, oyster dredge boat licenses shall be renewed annually on or before December 31. Application for renewal shall include proof of ownership of the vessel, an affidavit that the vessel was validly licensed and evidence of compliance with N.J.A.C. 7:25A-1.5.

(g)-(i) (No change.)

7:25A-1.9 Oyster seed beds

(a) (No change.)

(b) Seed oysters (seed) may be taken for the purpose of planting or replanting at the time and in the manner prescribed on leased grounds:

1. (No change.)

2. In the Atlantic Coast Section only on days and at times designated by prior written agreement with the Division; or

3. (No change.)

(c) All seed oysters shall be planted on the day taken by spreading them loosely on the bottom, not in bags, baskets, or other containers. All oysters taken from the natural beds are considered to be seed oysters until planted in the manner prescribed in this section. Seed oysters shall not be marketed or sold for any other purpose.

(d) Seed oysters taken during the seed season shall not be sorted by size, or placed in any bag, bushel*[,]* basket or other container, and shall remain on deck until planted, unless written exemption for the containerization of the seed oysters is provided by the Department upon the advice of the Council.

(e) Any vessel unable to plant its seed oysters because of mechanical problems, weather conditions or other verifiable emergency must immediately contact the Shellfish Office by VHF radio, Channel 68, or by telephoning (609) 785-0730.

(f) An Advisory Committee shall be appointed by the Commissioner and shall be composed of two members of the Council, two members of the Oyster Research Laboratory of Rutgers University, and the Director of the Division or his or her designee.

(g) Physical tests of all areas opened pursuant to this subchapter shall be made near the end of each week by the Advisory Committee described in (f) above. These tests shall be the determining factor in the Advisory Committee's recommendation to close any or all beds opened by regulation.

(h) Based upon the data and tests referred to in (g) above and the recommendation of the Advisory Committee described in (f) above, the Council, with the approval of the Commissioner, may immediately close those beds as may be necessary for the preservation and improvement of the shellfish industry.

1.-2. (No change.)

Recodify existing (g)-(k) as (i)-(m). (No change in text.)

(n) If a vessel works any part of the day on the seed beds, all oysters in possession shall be deemed seed oysters and must be planted as required in (c) above and in accordance with this chapter before the vessel may return to harvesting from the seed beds.

(o) The operator of, or any other person aboard, any oyster harvesting vessel subject to this chapter shall immediately comply with instructions and signals issued by an authorized law enforcement officer and comply with his or her instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch, for the purpose of enforcement of this chapter.

(p) This chapter shall apply to any vessel which harvests or receives seed oysters in any manner.

Recodify existing (m) as (q). (No change in text.)

(r) Any oysters taken, transported, planted or otherwise handled in violation of this chapter may be seized and replanted upon the State's natural seed beds.

HIGHER EDUCATION

(a)

STUDENT ASSISTANCE BOARD

Tuition Aid Grant Program
Tuition Aid Grant Award Table
Adopted Repeal and New Rule: N.J.A.C. 9:7-3.2

Proposed: April 15, 1991 at 23 N.J.R. 1057(a).
Adopted: June 6, 1991 by the Student Assistance Board,
M. Wilma Harris, Chairperson.
Filed: June 7, 1991 as R.1991 d.336, **without change.**

Authority: N.J.S.A. 18A:71-47(b) and 18A:71-48.

Effective Date: July 1, 1991.
Expiration Date: February 28, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

9:7-3.2 Tuition Aid Grant award table

(a) Prior to each academic year, the Student Assistance Board (SAB) shall adopt a Tuition Aid Grant (TAG) Award Table which shall indicate TAG award values which students attending various institutions of higher education shall be entitled to receive based upon their financial need.

1. The Table shall include an annual minimum grant for all institutional sectors.

(b) The value of the grant shall be related to the tuition charges of the various institutional sectors in New Jersey and the student's ability to pay for educational costs.

(c) The determination of eligibility for an award shall be made pursuant to the provisions of N.J.A.C. 9:7-2.4.

(d) Subsequent to approval of a final TAG Award Table by the SAB and Board of Higher Education (BHE), as required by law, the final TAG Award Table shall be provided to all New Jersey institutions of higher education which enroll students receiving TAG awards and to all individuals having applied for a TAG award for the upcoming academic year. The SAB shall also provide a copy of the final TAG Award Table to any other individual or entity requesting the table.

(e) The value of the student's grant may change dependent upon appropriated funds, the student's college budget and other financial aid. The student will be notified of any change in his or her grant.

INSURANCE

(a)

DIVISION OF ACTUARIAL SERVICES

Minimum Standards for Medicare Supplement Coverage

Adopted Amendments: N.J.A.C. 11:4-16.6 and 16.8; 11:4-23.1 through 23.10

Adopted New Rules: N.J.A.C. 11:4-23.7, 23.9, 23.10, 23.13, 23.14, 23.15 and 23.16

Proposed: May 6, 1991 at 23 N.J.R. 1264(a).
Adopted: June 10, 1991 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: June 10, 1991 as R.1991 d.345, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22A-1 et seq., 17:23A-1 et seq., 17:35C-1 et seq., 17:48-1 et seq., 17:48A-1 et seq., 17:48E-1 et seq., 17B:26-1 et seq., 17B:26A-1 et seq., 17B:27-26 et seq., and 17B:30-1 et seq.
Effective Date: July 1, 1991.
Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

Comment was received from one general agent, Paul S. Bunkin, Inc.

COMMENT: The commenter states that, although there is no doubt that consumers need to be protected from overzealous insurers and agents, the Department has gone overboard with these rules and is creating a regulatory climate which will cause insurers to refrain from re-entering the New Jersey marketplace.

RESPONSE: The Department disagrees that it has gone overboard with these rules. On the contrary, the Department substantially has followed the model regulations currently adopted by the National Association of Insurance Commissioners ("NAIC"). The NAIC's model Medicare Supplement Minimum Standards regulation is the recognized Federal standard which a State must meet in order to maintain a federally-certified Medicare supplement regulatory program.

Summary of Agency-Initated Changes:

The Department has deleted the phrase "or limited benefit health" at N.J.A.C. 11:4-23.9(a) and 11:4-23.13(a). Limited benefit health policies and certificates are not regulated specifically by these rules.

The Department has made a technical correction at N.J.A.C. 11:4-23.12, capitalizing the term "medicare." Additionally, the effective date of these rules has been added to N.J.A.C. 11:4-23.2(a) and the parenthetical phrase "the effective date of these proposed amendments and new rules" has been deleted.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

11:4-16.6 Minimum standards for benefits

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

(c) General rules include the following:

1. All policies, except short-term nonrenewable policies, Medicare supplement policies and as otherwise provided in this paragraph, shall provide that the policyholder shall have the right to return the policy within 10 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. With respect to Medicare supplement policies and policies issued pursuant to direct response solicitation, the policy shall provide that the policyholder shall have the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

2.-22. (No change.)

(d)-(i) (No change.)

(j) "Medicare supplement coverage" is a health insurance policy sold to a Medicare eligible person, which is designed primarily to supplement Medicare, or is advertised, marketed, or otherwise purported to be a supplement to Medicare and which meets the minimum benefit standards and other requirements set forth in N.J.A.C. 11:4-23.

(k) (No change.)

11:4-16.8 Required disclosure provisions

(a) General disclosure requirements are as follows:

1.-9. (No change.)

10. All policies, except short-term nonrenewable policies, Medicare supplement policies and as otherwise provided in this paragraph, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder shall have the right to return the policy within 10 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. With respect to Medicare supplement policies and policies issued pursuant to a direct response solicitation, the policy shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder shall have the right to return the policy within 30 days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

11.-13. (No change.)

14. An informational brochure for persons eligible for Medicare by reason of age which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare, shall be furnished by each insurer to each such Medicare eligible person in connection with the purchase of a health insurance policy, other than a short-term nonrenewal policy, regardless of whether the policy purchased is advertised, solicited or issued as a Medicare supplement policy meeting the requirements of N.J.A.C. 11:4-23. The full text of the approved guide appears as an Appendix to subchapters 16 and 23 of this chapter, Exhibit A, and is entitled "Bridging the Medicare Gaps: A Guide to Medicare Supplements."

15. To ensure uniformity in the content, form and printing of the guide specified in (a)14 above, each insurer shall comply with the requirements of N.J.A.C. 11:4-23.11.

16. (No change.)

(b) Outline of coverage—general rules include:

1. No individual health insurance policy shall be delivered or issued for delivery in this State unless the appropriate outline of coverage in (c) through (n) below is completed as to such policy and:

i. For policies offered for sale as Medicare supplement policies, the outline meets the requirements set forth at N.J.A.C. 11:4-23.11; and

ii. (No change.)

2.-8. (No change.)

(c)-(k) (No change.)

(l) An outline of coverage regarding Medicare supplement coverage, shall be issued in connection with policies in compliance with N.J.A.C. 11:4-16.6(j). The outline of coverage shall meet the requirements of N.J.A.C. 11:4-23.11.

(m) (No change.)

(n) An outline of coverage regarding limited benefit health coverage sold to Medicare eligible persons, in the form prescribed below, shall be issued to Medicare eligible persons in connection with policies which do not meet the minimum standards of N.J.A.C. 11:4-16.6(d), (e), (f), (g), (h), (i) and (j). The items included in the outline of coverage must appear in the sequence set forth as follows:

(COMPANY NAME & ADDRESS)
(POLICY NUMBER WHEN AVAILABLE)
LIMITED BENEFITS HEALTH COVERAGE
FOR MEDICARE ELIGIBLE PERSONS
OUTLINE OF COVERAGE

1. Limited Benefit Health Coverage—This type of policy will provide you with limited benefits only. It is not designed to provide hospital and medical coverage for the costs not paid by Medicare.

2. Read Your Policy Carefully—This outline of coverage briefly describes the important features of your policy. (Your agent, broker and other company representatives will explain each item to you so that you fully understand what you are buying.) For more information about the costs not paid by Medicare and what to look for in policy provisions, read the (Shopper's Guide) that was given to you with this form.

This form is not the insurance contract. Only the policy itself spells out rights and obligations of both you and your insurance company. It is important that you READ YOUR POLICY CAREFULLY. REMEMBER, if you are not satisfied with your policy, you have (10-30) days to return it to the company and get your money back.

3. Annual Premium $_____ You Pay $_____ per_____.

Inpatient Hospital Benefits	Medicare—Part A	Insurance Policy Pays
You are hospitalized during a benefit period for:		
Up to 60 days	You pay the first $_____ deductible. Medicare pays balance.	$_____
61 to 90 days	You pay $_____ copayment. Medicare pays balance.	$_____
91 to 150 days	You pay $_____ copayment. Medicare pays balance.	$_____
Beyond 150 days	You pay all cost. Medicare pays nothing.	$_____

Skilled Nursing Facility Benefits	Medicare—Part A	Insurance Policy Pays
You are admitted to a skilled nursing facility. You are a patient in this facility for up to 20 days during a benefit period.	You pay nothing. Medicare pays 100%.	$_____
You remain in the facility for any of the next 80 days— 21st-100th day.	You pay $_____ copayment per day. Medicare pays balance of reasonable costs.	$_____ per day
You remain in the facility after 100 days of comfinement.	You pay full amount. Medicare pays nothing.	$_____ per day.

*Payment will only be made if the skilled nursing facility is approved by Medicare and if the care given is medically necessary. NEITHER MEDICARE NOR THIS POLICY WILL PAY FOR CUSTODIAL CARE OR REST HOME CARE.

Medical Service Benefits	Medicare—Part B	Insurance Policy Pays
You receive physician services, medical supplies, ambulance and other covered services.	You pay the first $_____ deductible. Medicare pays 80% of the remaining "reasonable and necessary" charge.	$_____
	You pay the remaining 20% of the "reasonable and necessary" charge while you are in the hospital.	Medicare eligible expenses to the extent not covered by Medicare after you have paid $_____ of these charges.
	You pay the remaining 20% of the "reasonable and necessary" charge when you are not hospitalized.	Medicare eligible expenses to the extent not covered by Medicare after you have paid $_____ of these charges.
	You pay the portion of the bill that exceeds the "reasonable and necessary" charge.	_____**

**Unless this space is filled in with a specific dollar amount or percentage, the policy will not pay for charges that exceed Medicare's determination of "reasonable and necessary" charges.

4. (A description of any policy provisions which exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits described in 3 above.)

5. (A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.)

FOR ADDITIONAL INFORMATION ABOUT POLICY BENEFITS OR CLAIMS, TELEPHONE (COLLECT) (TOLL-FREE) (LOCAL NUMBER) _____.

(o) (No change.)

SUBCHAPTER 23. MINIMUM STANDARDS FOR MEDICARE SUPPLEMENT COVERAGE

11:4-23.1 Purpose

This subchapter provides for the reasonable standardization of coverage and the simplification of terms and benefits of Medicare supplement policies; facilitates comparison of such policies in order to increase public understanding; eliminates provisions which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and provides for full disclosure in the sale of health care service benefits and insurance to persons eligible for Medicare by reason of age.

11:4-23.2 Applicability and scope

(a) Except as otherwise specifically provided in N.J.A.C. 11:4-23.8 and 23.9, this subchapter shall apply to:

1. All Medicare supplement policies, as defined by this subchapter, delivered or issued for delivery in this State on or after *[(the effective date of the proposed amendments and new rules)]* ***July 1, 1991***;

2. All certificates as defined by this subchapter, issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this State on or after *[(the effective date of these proposed amendments and new rules)]* ***July 1, 1991***.

11:4-23.3 Definitions

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

"Applicant" means:

1. In the case of a group policy, the proposed certificate holder;

2. In the case of an individual policy, the person who seeks to contract for coverage.

"Certificate" means any certificate or other document which sets forth or summarizes the essential features of the coverage issued under a group policy, which certificate or other document has been delivered or issued for delivery in this State.

"Coverage" means:

1. Any arrangement whereby an insurer agrees to indemnify or reimburse an individual or group member for some portion or part of the health related costs incurred by that individual or member, subject to the terms of the written agreement and law; and

2. Any arrangement whereby an insurer agrees to provide direct or indirect health care services to the individual or group member, subject to the terms of the written agreement and law.

"Insured" means any applicant provided coverage by an insurer.

"Insurer" means any person who contracts to provide health services, reimburse the cost of health service in whole or in part, or provide an indemnity in the event that health services are used, in return for a prepaid or postpaid premium or other consideration.

"Medicare supplement policy" means a group or individual policy which is advertised, marketed or designed primarily as, or is otherwise held out to be, a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare by reason of age. This term does not include a policy of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization.

"Policy" shall mean any policy, contract, certificate or other document which sets forth or summarizes the essential features of the coverage issued to an individual or group by an insurer, for the purpose of providing Medicare supplement coverage, including any such policy issued pursuant to a conversion privilege to an individual 65 years of age or older, except as otherwise provided in this subchapter or Federal law.

11:4-23.4 Policy definitions and terms

(a) No policy may be advertised, solicited or issued for delivery in this State as a Medicare supplement policy unless such policy contains definitions or terms which conform to the requirements of this section.

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

i. "Injury" shall not be defined more restrictively than as a bodily injury sustained by the covered person as a result of an accident, which injury is the direct cause of the loss, independent of disease, bodily infirmity or any other cause, and which occurs while coverage is in force.

ii. Such definition may provide that injuries shall not include injuries for which benefits are provided under any workers' compensation, employer's liability or similar law, mandatory motor vehicle no-fault plan, unless prohibited by law.

2.-5. (No change.)

6. "Medicare eligible expenses" shall mean health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payments of benefits by insurers for Medicare eligible expenses shall be conditioned upon the same or less restrictive payment conditions as are applicable to Medicare claims, including the determinations of medical necessity.

7. (No change.)

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

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

10.-11. (No change.)

12. "Totally disabled" shall not be defined more restrictively than as:

i. An injury or sickness that continuously confines an individual in a hospital or skilled nursing facility; or

ii. A continuous disability resulting from an injury or sickness not requiring confinement of an individual in a hospital or skilled nursing facility, but which a physician certifies as preventing that individual from engaging in the normal activities of a person of like age and sex in good health.

11:4-23.5 Prohibited provisions

(a) No policy shall be advertised, solicited, or issued for delivery in this State as a Medicare supplement policy if it limits or excludes coverage by type of illness, accident, treatment, or medical condition, except as follows:

1.-9. (No change.)

10. Territorial limitations outside the United States.

(b) Medicare supplement policies shall not contain limitations or exclusions of the type enumerated in (a) 1, 5, 9 or 10 above that are more restrictive than those of Medicare.

(c) No Medicare supplement policy shall provide benefits which duplicate the benefits available to a covered person under Part A or Part B of Medicare.

(d) No Medicare supplement policy shall use waiver endorsements or riders to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

(e) The terms "Medicare supplement," "Medigap" and words of similar import shall not be used unless the policy or contract is issued in compliance with N.J.A.C. 11:4-23.6 and all other sections of this subchapter.

11:4-23.6 Minimum benefit standards

(a) No policy shall be advertised, solicited, or issued for delivery in this State as a Medicare Supplement policy if it does not meet the minimum standards contained in this section. These are minimum standards, and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(b) The following general standards apply to Medicare supplement policies and are in addition to all other requirements of this subchapter.

1. A Medicare supplement policy shall not deny a claim for losses incurred as a result of a preexisting condition after six months from the effective date of coverage, nor shall a preexisting condition be defined more restrictively than as set forth at N.J.A.C. 11:4-23.4(a)11.

2. A Medicare supplement policy shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

3. A Medicare supplement policy shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amounts and copayment percentage factors and out of pocket maximums, in response to which premiums may be correspondingly modified subject to the requirements of N.J.A.C. 11:4-23.8.

4. A Medicare supplement policy shall not:

i. Provide for termination of coverage of an eligible spouse because of termination of coverage of the insured other than for nonpayment of premium; or

ii. Provide for termination of a covered person's coverage by the insurer solely on the grounds of age or deterioration of health.

5. (No change.)

6. Existing Medicare supplement policies shall be appropriately amended or endorsed to eliminate benefit duplications with Medicare which are caused by Medicare benefit changes. Any rider or endorsements shall specify the benefits deleted, or shall otherwise result in a clear description of the Medicare supplement benefits provided by the policy. Such riders or endorsements shall be submitted for filing by the Commissioner.

(c) Except as may be authorized by the Commissioner, an insurer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

1. The insurer shall offer individuals covered under group policies at least the following two coverage choices when a group policyholder terminates the group Medicare supplement policy without replacing that policy as provided in (c)3 below:

i. An individual guaranteed renewable Medicare supplement policy which provides for continuation of the benefits contained in the group policy; and

ii. An individual Medicare supplement policy which provides only such benefits as are required to meet this State's minimum standards.

2. If membership in a group is terminated, the insurer shall:

i. Offer the individual whose membership is terminated such conversion opportunities as are described in (c)1 above; or

ii. Offer the individual whose membership is terminated continuation of coverage under the group policy, but only at the option of the group policyholder.

3. If a group policy holder replaces one group Medicare supplement policy by another group Medicare supplement policy, the succeeding insurer shall offer coverage to all persons who were covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusions for preexisting conditions that would have been covered under the group policy which was replaced.

(d) Benefit conversion requirements for the transition of policy compliance between the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) and the Medicare Catastrophic Coverage Repeal Act of 1989 (P.L. 101-234) are as follows:

1. Effective January 1, 1990, no Medicare supplement policy in force in this State shall contain benefits provided by Medicare.

2. Benefits eliminated by operation of the Medicare Catastrophic Coverage Act of 1988 transition provisions shall be restored.

3. For Medicare supplement policies subject to the minimum standards adopted by this State pursuant to the Medicare Catastrophic Coverage Act of 1988, the minimum benefits shall be as set forth at (e) below.

(e) The minimum benefit standards for Medicare supplement policies are:

1. Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

2. Coverage of the Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

3. Coverage of Part A Medicare eligible expenses incurred as daily hospital charges to the extent not covered by Medicare during use of Medicare's lifetime hospital inpatient reserve days;

4. Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

5. Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under Federal regulations) unless replaced in accordance with Federal regulations or already paid for under Part B;

6. Coverage of Part B Medicare eligible expenses to the extent not covered by Medicare regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible;

7. Coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under Federal regulations), unless replaced in accordance with Federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

11:4-23.7 Standards for claims payment

(a) Every insurer providing Medicare supplement policies shall comply with all provisions of Section 4081 of the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203).

(b) Compliance with the requirements set forth in (a) above must be certified on the Medicare supplement experience reporting form.

(c) Payment of benefits for Medicare eligible expenses shall be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as are applicable to Medicare claims.

11:4-23.8 Loss ratio standards

(a) Medicare supplement policies shall return to policyholders in the form of aggregate benefits under the policy, for the entire period for which rates are computed to provide coverage:

1. At least 75 percent of the aggregate amount of premiums or subscription charges collected in the case of group policies and policies issued as conversions from group policies.

2. (No change.)

(b) Every insurer shall submit annually for filing by the Commissioner its rates, rating schedule and all other supporting documentation which the Commissioner may require, including ratios of incurred losses to earned premiums by number of years of policy duration to demonstrate that the insurer is in compliance with the applicable loss ratio standard of (a) above and that the period for which the policy is rated is reasonable. Every insurer shall provide annually the following information:

1. For the most recent year, the ratio of the incurred losses to earned premiums for policies or certificates which have been in force for three years or more; and

2. The expected losses in relation to premiums over the entire period for which the policy is rated, subject to a demonstration of an expected third-year loss ratio which is greater than or equal to the applicable percentage of (a) above for policies or certificates in force less than three years.

(c) Every insurer may submit a rate increase for filing by the Commissioner whenever the expected aggregate loss ratio for the policy or certificate becomes greater than the anticipated loss ratio for that policy or certificate. The rate increase shall be such that, following the increase, the expected aggregate loss ratio shall not be less than the anticipated loss ratio. The anticipated loss ratio shall continue to meet the applicable standards of (a) above.

(d) Every insurer shall submit for filing by the Commissioner a rate reduction whenever the expected aggregate loss ratio reported for a policy or certificate is less than the anticipated loss ratio for that policy or certificate, and the requirements of (b) above may not be met.

(e) When a rate adjustment is requested pursuant to a change in the policy necessary to eliminate benefit duplication with Medicare, the submission for a rate change shall include any riders, endorsements or policy forms needed to accomplish the Medicare supplement coverage modification necessary to eliminate benefit duplications with Medicare. All such forms shall result in a clear description of the Medicare supplement benefits provided by the policy.

11:4-23.9 Filing requirements for out-of-State group policies

(a) No insurer shall deliver or issue for delivery in this State any Medicare supplement *[or limited benefit health]* policy or certificate, any written application therefor, or any printed rider or endorsements to be applied thereto, unless the forms thereof have been submitted to and filed by the Commissioner.

1. At the expiration of 30 days after submission, the form shall be deemed filed unless affirmatively disapproved for filing by the Commissioner prior thereto.

2. If any such form is disapproved for filing by the Commissioner during the said 30-day period, it may not be delivered or issued for delivery unless and until such disapproval for filing is withdrawn. Such disapproval shall be subject to review in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

3. The Commissioner may extend the 30-day period no more than another 30 days if written notice is provided to the insurer before the expiration of the initial 30 day period, in which event all but this paragraph shall apply to the extended period.

4. Forms filed by or deemed filed by the Commissioner may subsequently be withdrawn from filing. Insurers shall have the right to a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. An insurer may continue to deliver or issue for delivery such forms until a final decision in accordance with the withdrawal is rendered, following the request for a hearing, or, if no hearing is requested, delivery or issuance for delivery of such forms may continue no later than 30 days following notice of the withdrawal of that form.

(b) Disapproval for filing, or withdrawals of approval of the filing of any form, must be stated in writing with the grounds therefor included in the statement, in accordance with the rules of this State.

11:4-23.10 Compensation arrangements

(a) No insurer or other entity shall provide to any producer a first year commission or first year compensation for the sale of Medicare supplement policies in an amount which exceeds 200 percent of the commission or compensation to be provided by that insurer or other entity for the selling or servicing of that policy in the second year or period of that policy.

(b) The commission or other compensation which shall be provided for a reasonable number of subsequent renewal years shall be the same as that commission or compensation provided in the second year or period.

(c) No insurer or other entity shall provide compensation or commission to any producer, nor shall any producer receive commission or other compensation greater than the renewal commission or compensation payable by the replacing insurer on renewal policies or certificates when an existing policy is replaced, except when benefits under the new policy are clearly and substantially greater than those of the replaced policy.

(d) For purposes of this section, "compensation" means a pecuniary or nonpecuniary renumeration of any kind relating to the sale of a policy or certificate, including, but not limited to:

1. Bonuses;
2. Gifts;
3. Prizes;
4. Awards; and
5. Finders fees.

11:4-23.11 Required disclosure provisions

(a) General rules concerning required disclosure provisions include the following:

1. Medicare supplement policies shall include a renewal or continuation provision. The language or specification of such provision must be consistent with the type of policy to be issued. Such provision shall be appropriately captioned and shall appear on the first page of policies and certificates.

2. Every insurer shall provide upon delivery of a policy or certificate information relevant to the premiums payable by the applicant to whom the policy or certificate was issued. This information shall appear on the schedule page of or as an attachment to the policy or certificate.

3. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits:

i. All riders or endorsements added after the date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage shall require signed acceptance by the insured;

ii. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium or subscription charge during the policy term, shall be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by the minimum standards for Medicare supplement insurance policies, or if required by other law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth clearly.

4. A Medicare supplement policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

5. If a Medicare supplement policy contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph in the policy and be labeled as "Preexisting Condition Limitations," "Preexisting Condition Exclusions," or words of similar import.

6. Medicare supplement policies or certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the insured shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium or subscription charge or fees refunded if, after examination of the policy or certificate, the insured is not satisfied for any reason.

7. Insurers issuing policies or certificates which provide hospital or medical expense coverage on an expense incurred, indemnity, or service benefit basis, other than incidentally, to a person(s) eligible for Medicare by reason of age shall provide for delivery to all applicants an informational brochure, which is intended to improve the buyer's ability to select the most appropriate coverage, and to improve the buyer's understanding of Medicare. Delivery of the informational brochure shall be made whether or not policies are advertised, solicited or issued as Medicare supplement policies as set forth by this subchapter. The full text of the approved guide appears as an Appendix to subchapters 16 and 23 of this chapter, Exhibit A, and is entitled "Bridging the Medicare Gaps: A Guide to Medicare Supplements."

8. To ensure uniformity in the content, form and printing of the guide, each insurer shall comply with the following requirements:

i.-iii. (No change.)

9. Except in the case of direct response insurers, delivery of the guide shall be made to the applicant at the time of application, and acknowledgement of receipt of the guide shall be obtained by the insurer. Direct response insurers shall deliver the guide to the applicant upon request, but not later than the time of policy or certificate delivery.

10. Except as otherwise provided in (c) below, the terms "Medicare supplement," "Medigap," and words of similar import shall not be used unless the policy is issued in compliance with N.J.A.C. 11:4-23.6 and all other sections of this subchapter.

(b) Outline of Coverage requirements for Medicare supplement policies include:

1. Insurers issuing Medicare supplement policies or certificates for delivery in this State shall provide an outline of coverage to all applicants at the time application is made. Except for direct response policies, acknowledgement of receipt of such outline shall be obtained from the applicant.

2. (No change.)

3. The outline of coverage provided to applicants pursuant to (b)1 above shall be in the form prescribed below:

(COMPANY NAME)
OUTLINE OF MEDICARE
SUPPLEMENT COVERAGE
AND PREMIUM INFORMATION

Use this outline to compare benefits and premiums among policies.

1.-3. (No change.)

4. (A brief summary of the major benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles, as appropriate), provided by the Medicare Supplement coverage in the following order.)

Description	This Coverage Pays**	You Pay
I. Minimum Standards		
PART A: INPATIENT HOSPITAL SERVICES:		
Semi-private room and board		
Miscellaneous hospital services and supplies, such as drugs, lab tests, x-rays, and operating room.		
BLOOD		
PART B		
MEDICAL EXPENSES		
Services of a physician/ outpatient services		
Medical supplies other than prescribed drugs		
BLOOD		
MISCELLANEOUS		
Immunosuppressive drugs		
II. Additional Benefits		
PART A:		
Part A deductible		
Private rooms		
In-house private nurses		
Skilled nursing facility care		
PARTS A & B:		
Home health services		
PART B:		
Part B deductible		
Medical charges in excess of Medicare allowable expenses (percentage paid)		
OUT-OF-POCKET MAXIMUM		
PRESCRIPTION DRUGS		
MISCELLANEOUS		
Respite care benefits		
Expenses incurred in foreign countries		
OTHER:		
TOTAL PREMIUM		

IN ADDITION TO THIS OUTLINE OF COVERAGE, (INSURER) WILL SEND YOU AN ANNUAL NOTICE, 30 DAYS PRIOR TO THE EFFECTIVE DATE OF MEDICARE CHANGES, WHICH WILL DESCRIBE THESE CHANGES AND THE CHANGES IN YOUR MEDICARE SUPPLEMENT COVERAGE.

**If this policy does not provide coverage for a benefit listed above, the insurer must state "no coverage" beside that benefit in the first column.

5. (Statement that the policy (certificate) does or does not cover the following:)

i.-iv. (No change.)

v. Home health care above number of visits covered by Medicare;

Recodify existing v.-viii. as vi.-ix. (No change in text.)

6. (A description of any policy (certificate) provisions which exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payments of the benefits described in section 4 above. Also, include conspicuous statements:

i. (No change.)

ii. That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.)

7.-8. (No change.)

(c) All health and disability income policies, other than a Medicare supplement policy, issued for delivery in this State to persons eligible for Medicare by reason of age shall notify insureds under the policy that the policy is not a Medicare supplement policy. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or, if no outline of coverage is delivered, to the first page of the certificate or policy delivered to insureds. Such notice shall be in no less than 12 point type and shall contain the following language:

"THIS IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide, available from the company."

(d) At least 30 days prior to the effective dates of any Medicare benefit changes, notice shall be provided to New Jersey insureds describing the revisions of the Medicare program and the resulting modifications made by the insurer to an insured's Medicare supplement or limited benefit health policy to eliminate duplication of Medicare benefits.

1. The notices shall be in the format set forth in the Appendix to subchapters 16 and 23 of this chapter, Exhibit C (Notice of

Changes in Medicare and Your Medicare Supplement Coverage), which is incorporated herein as part of this rule.

2. No modifications shall be made to an existing Medicare supplement policy or limited benefit health policy when notices are sent except those necessary to eliminate duplication of Medicare benefits.

3. Notices shall include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement or limited benefit health policy.

4. Notices shall provide information as to when any premium adjustment is to be made due to changes in Medicare.

5. Information on benefit modifications and premium adjustments shall be in outline form and in clear and simple terms to facilitate comprehension.

6. Notices shall not contain or be accompanied by any solicitation.

7. No notice shall contain benefits and premium information for more than one policy form.

11:4-23.12 Requirements for application forms and replacement coverage

(a) Application forms shall include questions designed to elicit information as to whether a Medicare supplement policy or certificate is intended to replace any accident and sickness or Medicare supplement policy or certificate presently in force, or is intended to be additional to any such policies or certificates. A supplementary application or other form to be signed by the applicant and agent, except where coverage is not sold through an agent, containing such questions may be used. The questions shall be substantially as follows:

1. Do you have another Medicare supplement policy or certificate in force, including any health care service contract or health maintenance organization contract?

2. Have you had any *[medicare]* ***Medicare*** supplement policy or certificate in force during the last twelve (12) months?

i. If so, with which company?

ii. If the policy or policies lapsed, when did the lapse or lapses occur?

3. Are you covered by Medicaid?

4. Do you intend to replace any of your medical or health coverage with the policy or certificate for which you are applying?

(b) Agents shall list any other health policies which they have sold to the applicant that are currently in force, and any such policies sold to the applicant within the previous five years that are no longer in force, clearly indicating which policies are in force and which are not.

(c) Upon determining that a sale will involve replacement, an insurer or its agent, shall furnish to the applicant, prior to the issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of accident and sickness coverage. One copy of such notice signed by the applicant and the agent, except where coverage is sold without an agent, shall be provided to the applicant, and an additional signed copy shall be retained by the insurer. A direct response insurer shall deliver to the applicant at the time of the issuance of the policy (certificate) the notice regarding replacement of accident and sickness coverage. In no event, however, will such a notice be required in the replacement of "accident only" coverage.

(d) Insurers shall include a waiver of all preexisting condition exclusion clauses, waiting periods, elimination periods or probationary periods in a replacement policy for at least that same period of duration of the conditional clause(s) in the applicant's existing policy which has expired at the time of issuance of the replacement policy, to the extent of the benefits of the existing policy.

(e) The notice required by (c) above shall be substantially as follows:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS OR MEDICARE SUPPLEMENT COVERAGE

(Insurance Company's Name and Address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate accident and sickness or Medicare supplement coverage and replace it with coverage issued by (Company Name). Your new (policy) (certificate) provides thirty (30) days within which you may decide without cost whether you desire to keep the coverage. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness and other health coverage you may have, and terminate your present coverage only if, after due consideration, you find that purchase of this new coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT, BROKER OR OTHER REPRESENTATIVE: (Direct solicitation insurers may delete the review statement.) (Use additional pages for comments as necessary.)

I have reviewed your current medical or health coverage. I believe the replacement involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

(1) (The following is to be included by all insurers.) Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benfits under the new policy whereas a similar claim might have been payable under your present coverage.

(2) (To be included by all insurers.) State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods or probationary periods in the new policy (or coverage) for similar benefits to the extent such time had partially or fully expired under the original policy.

(3) (To be included by all insurers.) If you are replacing existing Medicare supplement coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. That is not only your right, it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(4) (To be included only if insurance is sold through an agent, broker or other representative.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to answer truthfully and completely all questions on the application concerning your medical/health history. Failure to include all material medical information on the application may provide a basis for the company to deny any future claims and to refund your premium (subscription charge) as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

(5) (To be included only by direct response insurers if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (Company Name and Address) within thirty (30) days

if any information is not correct and complete, or if any past medical history has been left out.

Signature of Agent, Broker or Other Representative
(Direct response insurers may omit this signature line.)

Typed Name and Address of Agent or Broker
(Direct response insurers may omit this line of identification.)

The above "Notice to Applicant" was delivered to me on:

Date

Applicant's Signature

(Direct response insurers may omit the above signatory statement.)

Insurance Company Name

(f) Item (1) of the notice set forth in (e) above may be omitted or modified if preexisting conditions are covered under the new coverage.

11:4-23.13 Filing requirements for advertising

(a) Every insurer providing Medicare supplement *[or limited benefit health]* policies in this State shall file with the Commissioner a copy of all advertisements to which residents of this State will have access, and through which the insurer intends, or by implication purports to the reasonable targeted consumer its intent to make its Medicare supplement *[or limited benefit health]* product(s) available for purchase or enrollment in this State, whether through written, radio, television or other electronic media, at least 30 days prior to the date on which the advertisement is to be used in this State, or made accessible to residents of this State.

(b) All advertisements shall be in accord with the standards set out in N.J.A.C. 11:2-11 and any other disclosure and advertising rules which may be applicable to insurers.

(c) The Commissioner may disapprove an advertisement at any time if the advertisement is not in compliance with this rule or is in violation of the Trade Practices Act, N.J.S.A. 17B:30-1 et seq. An advertisement which has been disapproved by the Commissioner shall continue to be disapproved until disapproval is withdrawn by the Commissioner.

(d) The Commissioner may institute any and all procedures and penalties available pursuant to the Medicare Supplement Acts of this State and the Trade Practices Act, N.J.S.A. 17B:30-1 et seq., against an insurer who is determined by the Commissioner to be in violation of this rule.

(e) All actions of the Commissioner are subject to review pursuant to the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

11:4-23.14 Standards for marketing

(a) Every insurer or other entity marketing Medicare supplement insurance coverage in this State, directly or through its producers, shall:

1. Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate;

2. Establish marketing procedures to assure excessive insurance is not sold or issued to any consumer;

3. Establish procedures for determining whether a replacement policy contains benefits clearly and substantially greater than the benefits provided under the replaced policy and thereby institute guidelines as to when first year commissions or replacement commissions are appropriate pursuant to N.J.A.C. 11:4-23.10;

4. Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with medical care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

5. Make every reasonable effort to identify when a prospective applicant or enrollee already has Medicare supplement and/or accident and sickness coverage, the quantity of such policies and extensiveness of such coverage; and

6. Establish procedures which are auditable for purposes of verifying compliance with this section.

(b) Practices which are prohibited in this State, in addition to those set forth in the Trade Practices Act, N.J.S.A. 17B:30-1 et seq., include, but are not limited to, the following:

1. Twisting; that is, knowingly making any misleading representations or incomplete or fraudulent comparisons of any policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convey any policy or to purchase any policy with another insurer;

2. High pressure tactics; that is, employing any method of marketing having the effect of or tending to induce the purchase or to recommend the purchase of coverage through force, fright, explicit or implied threat, or undue pressure; and

3. Cold lead advertising; that is, making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance, and that further contact with the consumer will be made by an insurance agent or insurance company.

11:4-23.15 Appropriateness of recommended purchase and excessive coverage

(a) In recommending the purchase or replacement of any Medicare supplement policy or certificate, an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(b) Any sale of Medicare supplement coverage which will provide an individual with more than one Medicare supplement policy or certificate is prohibited; however, additional Medicare supplement coverage may be sold to an individual if, when combined with that individual's health coverage already in force, the individual would receive coverage of no more than 100 percent of the individual's actual medical expenses allowable under the combined policies.

11:4-23.16 Reporting of multiple policies

Every insurer shall report annually, on or before March 1, to the Commissioner, the policy and certificate number and date of issuance of each policy or certificate, grouped by individual policyholders, for every individual resident of this State for which the insurer has in force more than one Medicare supplement policy or certificate.

11:4-23.17 Severability

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

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF ARCHITECTS
Fees
Adopted Amendments: N.J.A.C. 13:27-5.8 and 8.15

Proposed: April 15, 1991 at 23 N.J.R. 1059(a).
Adopted: May 23, 1991 by the State Board of Architects, Joseph E. Filippone, President.
Filed: May 31, 1991 as R.1991 d.318, **with technical changes** not requiring any additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:3-3.

Effective Date: July 1, 1991.
Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:27-5.8 Fees

(a) The fees in this section shall be charged by the Board of Architects. Unless otherwise provided herein, all fees are nonrefundable.

*[(c)]**(b)* The fees for the licensing examination are as follows:

1. (No change.)

*[(d)]**(c)* The following fees shall be charged by the Board:

1. Application Fee	$ 50.00
2. Initial License Fee (including original seal press)	
i. During the first year of a biennial renewal period	160.00
ii. During the second year of a biennial renewal period	80.00
3. Reciprocity Fee (plus initial license fee and application fee)	75.00
4. Biennial Renewal Fee	160.00
5. Duplicate wall certificate	25.00
6. Reinstatement Fee	100.00
7. Replacement seal press	40.00
8. Verification of Licensure	30.00
9. Late Fee	50.00

*[(e)]**(d)* A charge of $15.00 shall be required for a copy of the "Roster of Architects," except that it shall be issued free to State, county and municipal government agencies and to all architects listed therein.

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

13:27-8.15 Fees

(a) The following fees shall be charged by the Board of Architects for Landscape Architect Certification matters. Unless otherwise provided herein, all fees are nonrefundable.

1. Application Fee:	$125.00
2. Examination fee: Such fee as is charged by the Council of Landscape Architectural Review Boards (CLARB) for the Uniform National Examination.	
i. The fee for the local portion of the examination, as established by the Board, shall be $5.00 for both New Jersey residents and individuals seeking reciprocity.	
3. Initial Certification Fee (including seal press)	
i. During the first year of a biennial renewal period	$160.00
ii. During the second year of a biennial renewal period	$ 80.00
4. Reciprocity Fee plus initial certification fee and application fee	$ 75.00
5. Biennial Renewal Fee	$160.00
6. Reinstatement Fee	$100.00
7. Late registration fee	$ 50.00
8. Duplicate certificate fee	$ 25.00
9. Replacement seal press	$ 40.00
10. Verification of Certification	$ 25.00
11. Roster of certified landscape architects	$ 15.00

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF ACCOUNTANCY
Fees
Adopted Amendments: N.J.A.C. 13:29-1.8, 1.11, 1.12, 1.13 and 2.3

Proposed: April 15, 1991 at 23 N.J.R. 1061(a).
Adopted: May 16, 1991 by the State Board of Accountancy, David M. Pogash, C.P.A., President.
Filed: May 31, 1991 as R.1991 d.319, **without change.**

Authority: N.J.S.A. 45:2B-6(g) and 45:2B-35.

Effective Date: July 1, 1991.
Expiration Date: May 23, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:29-1.8 Applications for certificate by endorsement

(a) Applications for a certificate by endorsement shall be accompanied by the following items:

1. The endorsement, initial license and application fees as set forth in N.J.A.C. 13:29-1.13;

2.-3. (No change.)

13:29-1.11 Successful applicant

(a) Applicants who satisfy the requirements of this subchapter shall pay the initial license fee as set forth in N.J.A.C. 13:29-1.13.

(b) (No change.)

(c) A Certified Public Accountant shall renew his or her license for a period of two years from the last expiration date. A late renewal fee shall be charged for any renewal application received by the Board within 60 days after the applicable biennial registration date. After the 60th day, the Board may consider the license forfeited. Thereafter, the licensee shall be required to apply for reinstatement and to pay the reinstatement fee in addition to the fee for the current registration period.

13:29-1.12 Public School Accountant's license

The holder of a certificate as a Certified Public Accountant or registered municipal accountant shall be granted a Public School Accountant's license upon application to the Board, and the payment of a $50.00 fee for a period of two years.

13:29-1.13 Fees

(a) Fees for original applications, examinations, reexaminations and renewals, for certified public accountants, public accountants, corporations, partnerships, professional corporations, and for certified public accountants' license by endorsement are as follows:

1. Application fee: $75.00;
2. Examination fee, certified public accountant: $125.00;
3. Reexamination fee, all subjects repeated, certified public accountant: $125.00;
4. Reexamination fee for any one, two, or three subjects, certified public accountant: $100.00;
5. Examination fee, registered municipal accountant: $100.00;
6. Reexamination fee, registered municipal accountant: $100.00;
7. Endorsement as certified public accountant: $100.00 plus the application fee as set forth in (a)1 above;
8. Initial license fee for certified public accountant, municipal accountant, corporations, partnerships, professional corporations:
   i. During the first year of a biennial registration period: $80.00;
   ii. During the second year of a biennial registration period: $40.00;
9. Biennial registration for certified public accountant, public accountant, municipal accountant, corporations, partnerships, professional corporations: $80.00;
10. Reinstatement of license: $150.00;
11. Late renewal fee: $50.00.

(b) (No change.)

13:29-2.3 Licenses

(a) The holder of a Registered Municipal Accountant's license shall renew the license for a period of two years from the last expiration date. A late renewal fee shall be charged for any renewal application received by the Board within 60 days after the applicable biennial registration date. After the 60th day, the Board may consider the license forfeited. Thereafter, the licensee shall be required to apply for reinstatement and to pay the reinstatement fee in addition to the fee for the current registration period.

(b) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF VETERINARY MEDICAL EXAMINERS
Fees
Adopted Amendment: N.J.A.C. 13:44-4.1

Proposed: April 15, 1991 at 23 N.J.R. 1066(a).
Adopted: May 22, 1991 by the State Board of Veterinary Medical Examiners, George Cameron, D.V.M., President.
Filed: May 31, 1991 as R.1991 d.321, **without change.**

Authority: N.J.S.A. 45:16-3 and 45:16-9.9.

Effective Date: July 1, 1991.
Expiration Date: August 7, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:44-4.1 General provisions

(a) The following fees shall be charged by the board:

1. Application fee	$75.00
2. Initial license fee:	
i. During the first year of a biennial renewal period	150.00
ii. During the second year of a biennial renewal period	75.00
3. Practical examination	125.00
4. National Board Examination	150.00
5. Clinical Competency Examination	90.00
6. Temporary Permit I	100.00
7. Temporary Permit II	100.00
8. Active registration fee (biennial)	150.00
9. Non-active registration fee (biennial)	125.00
10. Late renewal fee	100.00
11. Reinstatement fee	150.00 plus initial license fee
12. Duplicate license registration (biennial)	50.00
13. Verification of licensure	25.00

(b)

DIVISION OF CONSUMER AFFAIRS
BOARD OF CHIROPRACTIC EXAMINERS
Fees
Adopted New Rule: N.J.A.C. 13:44E-2.5

Proposed: April 15, 1991 at 23 N.J.R. 1067(a).
Adopted: May 16, 1991 by the State Board of Chiropractic Examiners, Anthony DeMarco, D.C., President.
Filed: May 31, 1991 as R.1991 d. 320, **without change.**

Authority: N.J.S.A. 45:1-3.2 and 45:9-41.23(h).

Effective Date: July 1, 1991.
Expiration Date: July 1, 1996.

The Board of Chiropractic Examiners afforded all interested parties an opportunity to comment on the proposed fee schedule, N.J.A.C. 13:44E-2.5. The official comment period ended on May 15, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on April 15, 1991 at 23 N.J.R. 1067(a). Announcements were also forwarded to: the Trenton Times, the Star-Ledger, the Camden Courier Post, the Council of New Jersey Chiropractors, the New Jersey Chiropractic Society, the New Jersey Hospital Association, the New Jersey Association of Osteopathic Physicians and Surgeons, the Southern New Jersey Chiropractic Society, the State Board of Medical Examiners, various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Chiropractic Examiners, P.O. Box 45004, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

One letter was received during the official 30-day comment period. Thomas J. Waters, Executive Director of the Chiropractic Alliance of New Jersey, expressed opposition to the proposed fee schedule on the basis that the fees are not warranted and do not serve the best interests of the chiropractors of New Jersey. The commenter expressed the concern that the sums raised by the new fee schedule will be used to increase the number of disciplinary actions.

The Board states in response that the fee increases are a result of high administrative costs and the costs of an independent board. Pursuant to N.J.S.A. 45:1-3.2, the administrative costs of any professional board are shared among its licensees. Accordingly, the establishment of an independent Board of Chiropractic Examiners, with fewer licensees than the Medical Board, which previously regulated the practice of chiropractics in New Jersey, has necessitated the fee increases proposed by the Board.

The Board also points out that the commenter's objections to the fee schedule are based upon the stated misconception that "the Board exists to support the professional standing of the community of chiropractors in New Jersey." Under the Chiropractic Board Act of 1989, N.J.S.A. 45:41.17, the Board of Chiropractic Examiners is charged with the duty of protecting the citizens of New Jersey who receive the services of a chiropractor by maintaining standards of competency and integrity of the profession and preventing unsafe, fraudulent or deceptive practices. In order to fulfill that mandate, the Board must have a full staff, including investigators. The new fee schedule will provide the Board with the minimum financial resources necessary to carry out its statutory responsibility to protect the public health, safety and welfare.

Full text of the adoption follows.

13:44E-2.5 Fee schedule

(a) The following fees shall be charged by the Board:

1. Application Fee	$125.00
2. Examination Fee	200.00
3. Endorsement Fee	75.00 (plus initial license fee)
4. Initial License Fee:	
i. During the first year of a biennial renewal period	260.00
ii. During the second year of a biennial renewal period	130.00
5. Biennial License Renewal Fee	260.00
6. Duplicate License Fee	25.00
7. Verification of Licensure Fee	40.00
8. Late Renewal Fee	50.00
9. Reinstatement Fee	125.00 (plus all past due license fees)

(c)

VIOLENT CRIMES COMPENSATION BOARD
Counseling Fees
Adopted New Rule: N.J.A.C. 13:75-1.27

Proposed: January 22, 1991 at 23 N.J.R. 167(b).
Adopted: May 31, 1991, by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.
Filed: June 7, 1991 as R.1991 d.332, **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. 52:4B-9.

Effective Date: July 1, 1991.
Expiration Date: June 5, 1994.

Summary of Public Comments and Agency Responses:

The New Jersey Psychological Association pointed out to the Board that certain designations of counselors in its new rule were not allowable and correct under N.J.S.A. 45:14B-1 et seq. The Attorney General's Office on behalf of the Board of Psychological Examiners also noted these problems. The Violent Crimes Compensation Board as per these comments revised its designations of counselors and the Attorney General's Office on behalf of the Board of Psychological Examiners is

in agreement with these revisions. In addition to the clarifying text added at N.J.A.C. 13:75-1.27(a)2, 3 and 7, it should be noted that the "Ed.S." listing in N.J.A.C. 13:75-1.27(a)4, as that type of counselor is more properly part of the Licensed Marriage and Family Therapist category.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

13:75-1.27 Counseling Fees

(a) For all incidents occurring after *[the adoption of this rule]* ***July 1, 1991*** and for services performed after *[adoption of this rule]* ***July 1, 1991*** on claims filed prior to *[its adoption]* ***July 1, 1991***, the Board will pay out-of-pocket unreimbursable counseling and therapy expenses for each of the listed category of providers not to exceed the following amounts:

1. Psychiatrist ..... $150.00 per hourly session
2. ***Unlicensed Mental Health Practitioner practicing in compliance with N.J.S.A. 45:14B-6 (*Psy.D., Ph.D., Ed.D.*)*** $110.00 per hourly session
3. ***State Licensed*** Psychologist *[(Licensed)]* $110.00 per hourly session
4. *[ACSW, Ed.S.]* ***A.C.S.W.*** ..... $90.00 per hourly session
5. Licensed Marriage and Family Therapist ..... $90.00 per hourly session
6. *[MSW, M.A.]* ***M.S.W.*** ..... $80.00 per hourly session
7. ***M.A. (jurisdictions other than New Jersey or in New Jersey practicing in compliance with N.J.S.A. 45:14B-6) $80.00 per hourly session***

(b) For counseling disciplines not covered by the fee schedule in (a) above, ***and covered by N.J.S.A. 45:14B-8 and N.J.A.C. 13:42-5.1,*** the Board may, within its discretion pursuant to N.J.S.A. 52:4B-9, set an amount which shall not exceed $90.00 per hourly session.

(a)

VIOLENT CRIMES COMPENSATION BOARD

Secondary Victim Eligibility

Adopted New Rule: N.J.A.C. 13:75-1.28

Proposed: January 22, 1991 at 23 N.J.R. 168(a).
Adopted: May 31, 1991 by the Violent Crimes Compensation Board, Jacob C. Toporek, Chairman.
Filed: June 7, 1991 as R.1991 d.333, **without change.**

Authority: N.J.S.A. 52:4B-9.

Effective Date: July 1, 1991.
Expiration Date: June 5, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:75-1.28 Secondary victim eligibility

(a) A secondary victim means anyone who has sustained an injury or pecuniary loss as a direct result of a crime committed upon any member of said secondary victim's family or upon any person in close relationship to such secondary victim as the terms are, hereinafter, defined.

1. "Family", as used herein, is defined as spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents.

2. "Person in close relationship", as used herein, is defined as:

i. Any person, whether related by blood or adoption or not, who was actually domiciled with the direct victim on the date of the crime for which assistance is sought;

ii. Any person who is no longer living together with the direct victim but who has the legal responsibility to care for a child they have in common by birth or adoption solely where the treatment or presence of said person is medically required for the successful treatment of the child;

iii. Any person who has publicly announced his or her engagement to become married to the direct victim prior to the commission of the criminal act and who remains engaged to the direct victim at the time of the crime; or

iv. Any other individual who the Board deems under all the circumstances of a particular case to have had a close personal relationship with the direct victim.

(b) Secondary victims need not be present during the actual commission of the crime.

(c) In assessing the eligibility of secondary victims, the Board will be guided by N.J.S.A. 52:4B-10 and 18 and N.J.A.C. 13:75-1.6(d).

(d) Any loss for which the Board may reimburse a secondary victim or group of secondary victims shall not exceed a maximum of $7,000.

(e) Psychotherapy in the case of secondary victims shall not exceed 24 sessions per secondary victim. However, where said secondary victim was physically present at the scene of the crime as a witness or present immediately following its commission, the maximum counseling sessions permitted shall not exceed 30. Said sessions shall not include initial evaluation or impartial examinations authorized by the Board. All costs for psychotherapy sessions will be subject to the provisions of N.J.A.C. 13:75-1.27.

(f) Loss of earnings may only be awarded to a secondary victim where said loss is solely related to the care of the direct victim during the direct victim's medically determined period of disability due to the criminal incident, which has resulted in the direct victim's incapacity to carry out reasonable and normal day-to-day functions.

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 57 in Warren County

Adopted Amendment: N.J.A.C. 16:28-1.38

Proposed: May 6, 1991 at 23 N.J.R. 1291(a).
Adopted: June 7, 1991, by Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: June 10, 1991 as R.1991 d.340, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: July 1, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.38 Route 57

(a) The rate of speed designated for the certain part of State highway Route N.J. 57 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic in Warren County:

i.-v. (No change.)

vi. Mansfield Township:

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

(3) Zone 3: 50 miles per hour between 1465 feet west of Old Turnpike Road and Hazen Road (approximate mileposts 15.56 to 18.60); thence

(4) Zone 4: 45 miles per hour between Hazen Road and 500 feet east of Claremont Road (approximate mileposts 18.60 to 18.76); thence

(5) Zone 5: 40 miles per hour between 500 feet east of Claremont Road and the Town of Hackettstown westerly line (approximate mileposts 18.76 to 20.53); thence

vii. (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Routes N.J. 324 in Gloucester County; N.J. 79 in Monmouth County; N.J. 44 in Gloucester County; and N.J. 48 in Salem County

Adopted New Rule: N.J.A.C. 16:28-1.45

Adopted Repeals and New Rules: N.J.A.C. 16:28-1.60, 1.93 and 1.107

Proposed: May 6, 1991 at 23 N.J.R. 1291(b).
Adopted: June 7, 1991, by Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: June 10, 1991 as R.1991 d.338, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: July 1, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted repeals may be found in the New Jersey Administrative Code at N.J.A.C. 16:28-1.60, 1.93 and 1.107.

Full text of the adoption follows:

16:28-1.45 Route 324

(a) The rate of speed designated for the certain parts of State highway Route 324 described in this subsection shall be established and adopted as the maximum legal rate of speed.

1. For both directions of traffic.

i. Gloucester County:

(1) Logan Township:

(A) 50 miles per hour for the entire length.

16:28-1.60 Route 79

(a) The rate of speed designated for the certain parts of State highway Route N.J. 79 described in this subsection shall be established and adopted as the maximum legal rate of speed.

1. For both directions of traffic:

i. Monmouth County:

(1) Freehold Township:

(A) Zone 1: 40 miles per hour from Route U.S. 9 to Daniels Way—Moreau Avenue (approximate mileposts 0.00 to 0.35); thence

(B) Zone 2: 35 miles per hour from Daniels Way—Moreau Avenue to the southerly line of Freehold Borough (approximate mileposts 0.35 to 0.57); thence

(2) Freehold Borough:

(A) Zone 1: 35 miles per hour from the northerly line of Freehold Township to Route N.J. 33 (Park Avenue) (approximate mileposts 0.57 to 0.74); thence

(B) Zone 2: 30 miles per hour from Route N.J. 33 (Park Avenue) to Douglas Road, except for 25 miles per hour when passing through the Saint Rose of Lima School zone (mileposts 0.98 to 1.15) and the Freehold High School zone (mileposts 1.97 to 2.17) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 0.74 to 2.20); thence

(C) Zone 3: 40 miles per hour from Douglas Road to the southerly line of Freehold Township (approximate mileposts 2.20 to 2.40); thence

(3) Freehold Township:

(A) Zone 3: 40 miles per hour from the northerly line of Freehold Borough to Ryan Boulevard (approximate mileposts 2.40 to 2.50); thence

(B) Zone 4: 50 miles per hour from Ryan Boulevard to the southerly line of Marlboro Township (approximate mileposts 2.50 to 3.90); thence

(4) Marlboro Township:

(A) Zone 1: 50 miles per hour from the northerly line of Freehold Township to 235 feet north of Brandon Road (approximate mileposts 3.90 to 5.33); thence

(B) Zone 2: 40 miles per hour from 235 feet north of Brandon Road to 415 feet north of Buck Lane (approximate mileposts 5.33 to 5.79); thence

(C) Zone 3: 50 miles per hour from 415 feet north of Buck Lane to Brown Road, except for 35 miles per hour when passing through the Marlboro High School zone, (mileposts 6.36 to 6.64) and the Central Elementary School zone, (mileposts 7.32 to 7.42) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 5.79 to 9.38); thence

(D) Zone 4: 40 miles per hour from Brown Road to Church Lane (approximate mileposts 9.38 to 10.18); thence

(E) Zone 5: 45 miles per hour from Church Lane to the southerly line of Matawan Borough (approximate mileposts 10.18 to 10.95); thence

(5) Matawan Borough:

(A) Zone 1: 40 miles per hour from the northerly line of Marlboro Township to Claire Court (approximate mileposts 10.95 to 11.69); thence

(B) Zone 2: 30 miles per hour from Claire Court to Route N.J. 34 (approximate mileposts 11.69 to 12.13).

16:28-1.93 Route 44

(a) The rate of speed designated for the certain parts of State highway Route N.J. 44 described in this subsection shall be established and adopted as the maximum legal rate of speed.

1. For both directions of traffic in Gloucester County:

i. Logan Township:

(1) 50 miles per hour between Barkers Avenue and the Greenwich Township southerly line (approximate mileposts 0.00 to 2.14); thence

ii. Greenwich Township:

(1) Zone 1: 50 miles per hour between the Logan Township northerly line and 1950 feet south of Veterans Avenue (approximate mileposts 2.14 to 2.68); thence

(2) Zone 2: 40 miles per hour between 1950 feet south of Veterans Avenue and 50 feet south of Veterans Avenue (approximate mileposts 2.68 to 3.04); thence

(3) Zone 3: 35 miles per hour between 50 feet south of Veterans Avenue and the Borough of Paulsboro southwesterly line (Billingsport Road), except for 25 miles per hour when passing through the Gibbstown Elementary School zone (mileposts 3.51 to 3.74) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 3.04 to 5.18); thence

iii. Borough of Paulsboro:

(1) 35 miles per hour between the northeasterly line of Greenwich Township (Berkley Road) and the southerly line of West Deptford Township (Mantua Creek) (approximate mileposts 5.26 to 6.31); thence

iv. West Deptford Township:

(1) Zone 1: 35 miles per hour between the northerly line of Paulsboro and 755 feet north of the northerly line of Paulsboro (Mantua Creek) (approximate mileposts 6.31 to 6.45); thence

(2) Zone 2: 50 miles per hour between 755 feet north of the northerly line of Paulsboro (Mantua Creek) and 800 feet south of Church Street (approximate mileposts 6.45 to 8.37); thence

(3) Zone 3: 40 miles per hour between 800 feet south of Church Street and Salem Avenue (approximate mileposts 8.37 to 9.07); thence

(4) Zone 4: 45 miles per hour between Salem Avenue and Route I-295—U.S. 130 (approximate mileposts 9.07 to 9.60).

2. For northbound direction for traffic in Gloucester County:

i. Greenwich Township:

(1) 35 miles per hour between the Borough of Paulsboro southwesterly line (Billingsport Road) and the Borough of Paulsboro southwesterly line (Berkley Road) (approximate mileposts 5.18 to 5.26).

3. For southbound direction of traffic in Gloucester County:

i. Borough of Paulsboro:

(1) 35 miles per hour between the northwesterly line of Greenwich Township (Billingsport Road) and the northeasterly line of Greenwich Township (Berkley Road) (approximate mileposts 5.18 to 5.26).

16:28-1.107 Route 48

(a) The rate of speed designated for the certain parts of State highway Route N.J. 48 described in this subsection shall be established and adopted as the maximum legal rate of speed.

1. For both directions of traffic in Salem County:

i. Penns Grove Borough:

(1) Zone 1: 25 miles per hour from Route U.S. 130 (Main Street) to South Torton Street (approximate mileposts 0.00 to 0.14); thence

(2) Zone 2: 30 miles per hour from South Torton Street to the Carneys Point Township—Penns Grove Borough corporate line (approximate mileposts 0.14 to 0.27); thence

ii. Carneys Point Township:

(1) Zone 1: 30 miles per hour from the Penns Grove Borough—Carneys Point corporate line to Cedarwood Avenue (approximate mileposts 0.27 to 0.36); thence

(2) Zone 2: 40 miles per hour from Cedarwood Avenue to 625 feet west of East End Avenue, except for 30 miles per hour when passing through the Penns Grove High School zone, (mileposts 0.63 to 0.81) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 0.36 to 0.84); thence

(3) Zone 3: 50 miles per hour from 625 feet west of East End Avenue to Route U.S. 40 (approximate mileposts 0.84 to 4.26).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 179 in Hunterdon County

Adopted Amendment: N.J.A.C. 16:28-1.158

Proposed: May 6, 1991 at 23 N.J.R. 1294(a).

Adopted: June 7, 1991, by Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.

Filed: June 10, 1991 as R.1991 d.341, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: July 1, 1991.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.158 Route 179

(a) The rate of speed designated for the certain parts of State Highway Route 179 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In the City of Lambertville, Hunterdon County:

(1) Zone one: 25 mph between the northerly end of the Delaware Bridge and Route N.J. 165 (approximate mileposts 0.05 to 0.37); thence;

(2) Zone two: 40 mph between Route N.J. 165 and 475 feet north of Hancock Street (approximate mileposts 0.37 to 0.69); thence;

(3) Zone three: 45 mph between 475 feet north of Hancock Street and the Township of West Amwell southerly line (approximate mileposts 0.69 to 0.90).

ii. In the Township of West Amwell, Hunterdon County:

(1) Zone one: 45 mph between the Lambertville City northerly line and Woodward Avenue (approximate mileposts 0.90 to 1.13); thence

(2) Zone two: 50 mph between Woodward Avenue and the southwesterly line of East Amwell Township (50 feet south of Cedar Crest Drive) (approximate mileposts 1.13 to 4.47).

iii. In the Township of East Amwell, Hunterdon County:

(1) Zone one: 50 mph between Route U.S. 202 Ramp "L" and Route U.S. 202 Frontage Road (approximate mileposts 5.47 to 5.84); thence

(2) Zone two: 35 mph between the West Amwell Township northeasterly line (Melborne Lane) and Route N.J. 31 (approximate mileposts 6.13 to 6.41); thence

(3) Zone three: 30 mph between Route N.J. 31 and 470 feet north of Westville Road (approximate mileposts 6.41 to 6.57); thence

(4) Zone four: 35 mph between 470 feet north of Westville Road and Larison Lane (approximate mileposts 6.57 to 6.80); thence

(5) Zone five: 40 mph between Larison Lane and 445 feet north of Fox Hunt Road (approximate mileposts 6.80 to 7.02); thence

(6) Zone six: 45 mph between 445 feet north of Fox Hunt Road and the Route N.J. 31—Route U.S. 202 Circle (approximate mileposts 7.02 to 7.46).

2. For northbound direction of traffic:

i. In the Township of West Amwell, Hunterdon County:

(1) 50 mph between the southwesterly line of East Amwell Township (50 feet south of Cedar Crest Drive) and Route U.S. 202 Ramp "L" (approximate mileposts 4.47 to 5.47); thence

(2) 50 mph between Route U.S. 202 Frontage Road and the West Amwell Township northwesterly line (Melborne Lane) (approximate mileposts 5.84 to 6.13).

3. For southbound direction of traffic:

i. In the Township of East Amwell, Hunterdon County:

(1) Zone one: 50 mph between the Township of West Amwell northwesterly line (50 feet south of Cedar Crest Drive) and Route U.S. 202 Ramp "L" (approximate mileposts 4.47 to 5.47; thence

(2) 50 mph between Route U.S. 202 Frontage Road and the West Amwell Township northeasterly line (Melborne Lane) (approximate mileposts 5.84 to 6.13).

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Handicapped Parking Space

Route U.S. 30 in Camden County

Adopted Amendment: N.J.A.C. 16:28A-1.21

Proposed: May 6, 1991 at 23 N.J.R. 1295(a).

Adopted: June 7, 1991, by Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.

Filed: June 10, 1991 as R.1991 d.339, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-197.5.

Effective Date: July 1, 1991.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.21 Route U.S. 30
(a)-(b) (No change.)
(c) The certain part of Route U.S. 30 described in this subsection shall be designated and established as a restricted parking space for the sole use of persons who have been issued "Handicapped" vehicle identification cards by the New Jersey Division of Motor Vehicles. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following handicapped parking space:
1. Restricted parking in Haddon Township, Camden County:
i. Along the northbound (easterly) side:
(1) Beginning 35 feet from the prolongation of the southerly curb line of West Collingswood Avenue and extending 44 feet therefrom.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Turn Prohibitions
Route N.J. 73 in Burlington County
Adopted Amendment: N.J.A.C. 16:31-1.17

Proposed: May 6, 1991 at 23 N.J.R. 1295(b).
Adopted: June 7, 1991, by Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: June 10, 1991 as R.1991 d.342, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.

Effective Date: July 1, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:31-1.17 Route 73
(a) Turning movements of traffic on the certain parts of State highway Route 73 described in this subsection are regulated as follows:
1. No left turn in Camden County:
i. In Winslow Township:
(1) From southbound on Route 73 to eastbound on Pump Branch Road.
2. No left turn in Burlington County:
i. Evesham Township:
(1) From westbound on Baker Boulevard to southbound Route N.J. 73.
3. No "U" turn in Burlington County:
i. Evesham Township:
(1) From northbound on Route N.J. 73 to southbound on Route N.J. 73.

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Turn Prohibitions
Route N.J. 49 in Cumberland County
Adopted New Rule: N.J.A.C. 16:31-1.30

Proposed: May 6, 1991 at 23 N.J.R. 1296(a).
Adopted: June 7, 1991, by Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.
Filed: June 10, 1991 as R.1991 d.343, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-183.6.
Effective Date: July 1, 1991.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:31-1.30 Route 49
(a) Turning movements on the certain parts of State highway Route N.J. 49 described in this subsection are regulated as follows:
1. No "U" turn:
i. In Cumberland County:
(1) City of Millville:
(A) In both directions between the overpass of Route N.J. 55 and Wade Boulevard.

OTHER AGENCIES

(c)

DELAWARE RIVER BASIN COMMISSION
Recommendations of the Delaware Estuary Use Attainability Assessment Regarding "Swimmability"

Adopted: May 22, 1991 by the Delaware River Basin Commission, Michael F. Catania, Chairman pro tem.
Filed: May 28, 1991 as R.1991 d.316.

Effective Date: May 22, 1991.

Full text of the adoption follows.

A RESOLUTION to amend the Comprehensive Plan, Water Code of the Delaware River Basin and Administrative Manual—Part III, Water Quality Regulations by the adoption of the recommendations of the Delaware Estuary Use Attainability Assessment regarding "swimmability."

WHEREAS, current water quality standards for a portion of the tidal Delaware River do not meet the swimmable water quality goals of the federal Clean Water Act; and

WHEREAS, the Delaware River Basin Commission, with the support of the states of Delaware, New Jersey, and Pennsylvania and the USEPA, has completed a use attainability assessment of the Delaware Estuary to determine whether upgraded standards consistent with the federal goals are attainable; and

WHEREAS, the use attainability assessment recommended that the reaches from near the Chesapeake and Delaware Canal upstream to near the Commodore Barry Bridge and from the Burlington-Bristol Bridge downstream to near the Tacony-Palmyra Bridge be upgraded for swimming and other primary contact recreational activities; and

WHEREAS, the use attainability assessment also recommended that the reach between the Tacony-Palmyra Bridge and the Commodore Barry Bridge remain classified only for boating and other secondary contact recreational activities; and

WHEREAS, public hearings were held on the proposed water quality standards revisions on October 2 and 3, 1990, in Bordentown, NJ, and Philadelphia, PA, respectively; and

WHEREAS, all testifiers at the hearings supported the proposed upgrading in use classificaion for swimming; and

WHEREAS, it is necessary and appropriate to modify bacterial criteria, including the addition of enterococcus criteria, consistent with the upgraded uses; and

WHEREAS, the Administrative Manual—Part III, Water Quality Regulations, while requiring monitoring of wastewater discharges for fecal coliform to demonstrate effective disinfection, also provides for the substitution of other tests which demonstrate effective disinfection; and

WHEREAS, a geometric average enterococcus effluent limit equivalent to the proposed primary contact recreational stream

criteria for enterococcus is equivalent to the fecal coliform effluent limit for the purpose of demonstrating effective disinfection; and

WHEREAS, a March 12, 1991 Response Document was prepared which reviewed the testimony received and recommended that the water quality standards changes related to swimmability be adopted as proposed; now therefore,

BE IT RESOLVED by the Delaware River Basin Commission:

I. The Comprehensive Plan, Article 3 of the Water Code of the Delaware River Basin and the Administrative Manual—Part III, Water Quality Regulations are hereby amended as follows:

1. In 3.30.2B.3., subsection a. is revised to read as follows:

3.30.2B.3.a. recreation;

2. In 3.30.2B.3., subsection b. is removed.

3. In 3.30.2C., subsection 8. is revised to read as follows:

3.30.2C.8. Bacteria.

a. Fecal Coliform. Maximum geometric average 200 per 100 milliliters.

b. Enterococcus. Maximum geometric average 33 per 100 milliliters.

4. In 3.30.3C., subsection 8. is revised to read as follows:

3.30.3C.8. Bacteria.

a. Fecal Coliform. Maximum geometric average 770 per 100 milliliters.

b. Enterococcus. Maximum geometric average 88 per 100 milliliters.

5. In 3.30.4B.3., subsections a. and b. are revised to read as follows:

3.30.4B.3.a. recreation—secondary contact above R.M. 81.8, 3.30.4B.3.b. recreation below R.M. 81.8;

6. In 3.30.4C., subsection 8. is revised to read as follows:

3.30.4C.8. Bacteria.

a. Fecal Coliform.

1) Above R.M. 81.8 maximum geometric average 770 per 100 milliliters.

2) Below R.M. 81.8 maximum geometric average 200 per 100 milliliters.

b. Enterococcus.

1) Above R.M. 81.8 maximum geometric average 88 per 100 milliliters.

2) Below R.M. 81.8 maximum geometric average 33 per 100 milliliters.

7. In 3.30.5B.3., subsection a. is revised to read as follows:

3.30.5B.3.a. recreation;

8. In 3.30.5B.3., subsection b. is removed.

9. In 3.30.5C., subsection 8. is revised to read as follows:

3.30.5C.8. Bacteria.

a. Fecal Coliform. Maximum geometric average 200 per 100 milliliters.

b. Enterococcus. Maximum geometric average 35 per 100 milliliters.

10. In 3.30.6C., subsection 8. is revised to read as follows:

3.30.6C.8. Bacteria.

a. Fecal Coliform. Maximum geometric average 200 per 100 milliliters.

b. Enterococcus. Maximum geometric average 35 per 100 milliliters.

c. Coliform. MPN (most probable number) not to exceed federal shellfish standards in designated shellfish areas.

11. In 3.30.6C., subsection 9. is removed.

12. Redesignate 3.30.6C.10. and 3.30.6C.11. as 3.30.6C.9. and 3.30.6C.10., respectively.

II. Wastewater effluent monitoring requirements based on either fecal coliform or enterococcus geometric average limits equivalent to primary contact recreational stream criteria will demonstrate effective disinfection, and the selection of the parameter(s) to use should be left to the discretion of the state permit issuing agency.

III. This resolution shall become effective immediately.

/s/ Michael F. Catania
Michael F. Catania, Chairman pro tem

/s/ Susan M. Weisman
Susan M. Weisman, Secretary

Adopted: May 22, 1991

I hereby certify that this is a true copy of Resolution No. 91-6 adopted by the Delaware River Basin Commission on May 22, 1991.

Susan M. Weisman, Secretary

BANKING

(a)

OFFICE OF REGULATORY AFFAIRS

License Fees, Assessments and Examination Charges

Adopted Amendments: N.J.A.C. 3:1-6.1, 6.2 and 6.6; 3:23-2.1

Proposed: April 15, 1991 at 23 N.J.R. 1073(b).
Adopted: June 6, 1991 by Jeff Connor, Commissioner, Department of Banking.
Filed: June 11, 1991 as R.1991 d.350, **without change.**

Authority: N.J.S.A. 17:1-8 and 8.1; 17:9A-355; 17:16C-8 and 82(b).

Effective Date: July 1, 1991.
Expiration Dates: January 4, 1996, N.J.A.C. 3:1.
July 6, 1992, N.J.A.C. 3:23.

Summary of Public Comments and Agency Responses:

The Department received comments from the following person:

Ronald D. Watson, Chief Executive Officer, Custodian Trust Corporation. A summary of the comment and the Department's response follows:

COMMENT: The institution would prefer not to be assessed an annual fee at all, but can accept the fee structure outlined in the proposal.

RESPONSE: The Department continues to believe that some assessment upon trust assets is appropriate and that the method outlined in the proposal is the most rational and equitable of the several alternatives.

Full text of the adoption follows.

3:1-6.1 Definitions

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

"Discretionary trust assets" means the discretionary trust assets reported to the Department in the report of trust assets.

. . .

"Non-discretionary trust assets" means the non-discretionary trust assets reported to the Department in the report of trust assets.

. . .

3:1-6.2 Assessments

(a) Every bank as defined in N.J.S.A. 17:9A-1(1), every savings bank as defined in N.J.S.A. 17:9A-1(13) and every State association as defined in N.J.S.A. 17:12B-5(1) shall be assessed a yearly fee of 0.44 of one cent per $100.00 of total assets, except that trust assets shall be assessed a yearly fee in accordance with the following schedule:

Trust Assets of each type	Discretionary (cents per $100 of assets)	Non-Discretionary (cents per $100 of assets)
0-$4,999,999,999	.03	.02
$5 billion-$20 billion	.02	.01
more than $20 billion	.01	0

(b) The fee shall be assessed at one-half the yearly rate as of December 31 and one-half the yearly rate as of June 30 of each calendar year.

3:1-6.6 Examination Charge

(a) The individual per diem per person examination charge for an examination of a bank, savings bank, savings and loan association or holding company shall be $300.00.

(b) The individual per diem per person examination charge for an examination of a licensee, credit union, trust company or trust department of a bank, savings bank or savings and loan association, or any person not specified in this section shall be $325.00.

3:23-2.1 Licensees

The following table indicates the license fees established by the Commissioner of Banking for annual and biennial license periods, the maximum biennial license fees permitted by law and the specific statutory sections affected by the establishment of such biennial and annual license fees.

Licensees	STATUTORY Maximum Biennial Fee	Biennial Fee	Annual Fee
Consumer Loan (N.J.S.A. 17:10-3 & 9)	$1,000.00	$1,000.00	$500.00
Foreign Money Remitter (N.J.S.A. 17:15-1)	$1,000.00	$1,000.00	$500.00
Check Casher (N.J.S.A. 17:15A-4)	$1,000.00	$1,000.00	$500.00
Check Seller (N.J.S.A. 17:15B-7)	$1,200.00	$1,200.00	$600.00
Retail Installment Sales			
(a) Sales Finance Company (N.J.S.A. 17:16C-7)	$1,000.00	$1,000.00	$500.00
(b) Motor Vehicles Installment Seller (N.J.S.A. 17:16C-8)	$ 300.00	$ 200.00	$100.00
(c) Home Financing Agency (N.J.S.A. 17:16C-82(a))	$ 600.00	$ 600.00	$300.00
(d) Home Repair Contractor (N.J.S.A. 17:16C-82(b))	$ 300.00	$ 200.00	$100.00
(e) Home Repair Salesman (N.J.S.A. 17:16C-82(c))	$ 60.00	$ 60.00	$ 30.00
Insurance Premium Finance Company (N.J.S.A. 17:16D-4)	$1,000.00	$1,000.00	$500.00
Pawnbroker (N.J.S.A. 45:22-4)	$ 800.00	$ 600.00	$300.00

(a)

DIVISION OF SUPERVISION

Registration of Service Facilities of Foreign Financial Institutions

Adopted New Rules: N.J.A.C. 3:1-18

Proposed: May 6, 1991 at 23 N.J.R. 1233(a).
Adopted: June 10, 1991 by Jeff Connor, Commissioner, Department of Banking.
Filed: June 10, 1991 as R.1991 d.347, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, P.L.1991, c.74.

Effective Date: July 1, 1991.
Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The Department received comments from Richard Mumford, Esq.

COMMENT: The commenter suggested that the definition of the term "foreign depository" to include affiliates of foreign banks or foreign associations is misleading because some affiliates may not take deposits.

RESPONSE: The Department agrees with this comment and has changed the term "foreign depository" to "foreign financial institution."

COMMENT: The commenter noted that the term "affiliated" may include relationships which are merely contractual (such as a license or servicing relationship) in addition to affiliations which are based on a common ownership of stock.

RESPONSE: The Department agrees with this comment and has modified the definition to limit the application of the rules to affiliations based on ownership.

COMMENT: The commenter suggsted that the word "only" be inserted after "conducted" in N.J.A.C. 3:1-18.6(b) to make it clear that back office operations may be conducted only at service facilities.

RESPONSE: The Department has accepted this suggestion even though it considers the proposed language satisfactory for this purpose. As an aside, the Department notes that subsection (a) of N.J.A.C. 3:1-18.6, which limits the activities which may be conducted at back office facilities to back office operations (meaning that the facility must be exclusively dedicated to those activities) applies only to foreign banks and foreign associations. It thus leaves affiliates of foreign banks or foreign associations free, as they are under current law, to engage in other activities, in addition to back office operations, at service facilities.

COMMENT: The commenter noted that the rules do not require the Department to notify those who request registration of service facilities but submit an incomplete request.

RESPONSE: The Department agrees with this request and has modified the section accordingly.

COMMENT: The commenter found the use of "potential" in N.J.A.C. 3:1-18.5(c) to be confusing as it might lead one to conclude that a foreign

financial institution could only purchase or lease unbuilt or unfinished office space.

RESPONSE: The Department agrees with this suggestion and has deleted the word "potential."

COMMENT: The commentor suggested that the Department limit the scope of its examination authority to "banking laws."

RESPONSE: The Department does not intend to make regular scheduled examinations of service facilities, nor does the Department intend to examine for compliance with laws unrelated to financial services activities. The focus of an examination of a service facility is expected to be on whether the foreign financial institution is conducting activities there which are not back office operations. Nevertheless, the Department rejects the commenter's suggestion for the reason that it can foresee circumstances where an examination of a service facility for violations of laws which fall outside of a narrow definition of "banking laws" might be appropriate.

COMMENT: The commenter observed that the rules do not address possible complicated real estate questions which may arise in connection with service facilities.

RESPONSE: The Department recognizes that there may be factual situations which are not addressed in these rules and is prepared, if necessary, to respond to problems as they arise through future rule proposals.

In addition to these changes in response to comments, the Department added a provision which specifies the end of the first biennial registration period as August 31, 1992. By so doing the Department is notifying those who may be affected of a specific date rather than having them call the Department to be given a date.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 18. FOREIGN BANKS AND ASSOCIATIONS; REGISTRATION OF SERVICE FACILITIES

3:1-18.1 Definitions

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

"Back office operation" shall mean only the following activities:

1. Data processing;
2. Recordkeeping;
3. Accounting;
4. Check and deposit sorting and posting;
5. Computation and posting of interest;
6. Clerical and statistical activities which are similar to the activities in paragraphs 1 through 5 above; and
7. Producing and mailing correspondence and other documents, provided that the correspondence and documents do not include the address of the service facility.

"*Back office operation*" shall not mean:

1. Making loans;
2. Making underwriting decisions;
3. Receiving payments or signed loan documents directly from customers whether by mail, wire transfer, delivery service, or other means;
4. Accepting deposits;
5. Maintaining credit balances;
6. Advertising or otherwise soliciting business; and
7. Transacting business between a service facility and the foreign *[depository's]* ***financial institution's*** customers or the general public.

"Foreign association" shall have the meaning which that term has in N.J.S.A. 17:12B-213.

"Foreign bank" shall have the meaning which that term has in N.J.S.A. 17:9A-315.

"Foreign *[depository]* ***financial institution***" shall include a foreign bank, a foreign association, and an entity which is affiliated ***in ownership***, either directly or indirectly, with a foreign bank or a foreign association, but shall not include an entity which is affiliated, either directly or indirectly, with a foreign bank or foreign association, and which is licensed to transact financial services under New Jersey law, provided that the entity limits its activities to those conferred by its license.

3:1-18.2 Registration requirement

(a) Prior to engaging in back office operations in this State, a foreign *[depository]* ***financial institution*** shall register a service facility with the Department.

(b) Notwithstanding (a) above, an affiliate of a foreign bank or foreign association which is conducting back office operations in this State on *[the effective date of these rules]* ***July 1, 1991*** may continue to conduct such operations for *[60 days after the effective date of these rules]* ***until August 30, 1991*** without becoming registered.

3:1-18.3 Registration process

(a) A foreign *[depository]* ***financial institution*** may request to register a service facility by mailing to the Department the following:

1. A letter requesting registration of a service facility to conduct back office operations, which letter shall include the name of the foreign *[depository]* ***financial institution*** and the address of its principal United States office, the address of the proposed service facility, and the name and address of the foreign *[depository's]* ***financial institution*** agent in this State for service of process; and
2. The required registration fee.

3:1-18.4 Registration fee

(a) A foreign *[depository]* ***financial institution*** shall submit a registration fee of $500.00 to the Department with its request to become registered, except if the initial registration of the service facility has occurred in the second year of the biennial period, the registration fee shall be $250.00.

(b) After becoming registered, a foreign *[depository]* ***financial institution*** which intends to continue operating a service facility in this State shall submit to the Department biennally a registration renewal fee of $500.00.

(c) The first biennial period shall end August 31, 1992.

3:1-18.5 Notification of registration ***or deficiency*** by the Department

(a) The Department shall, within 30 days of receipt of the materials specified in N.J.A.C. 3:1-18.3, notify the foreign *[depository]* ***financial institution*** that the service facility is registered by the Department ***or, in the event the request for registration is incomplete, the Department shall, within 30 days of receipt of the incomplete request, notify the foreign financial institution of the nature of the deficiency***.

(b) The registration of the service facility shall not become effective until the foreign *[depository]* ***financial institution*** has received notification from the Department, except that, if the foreign *[depository]* ***financial institution*** has not received notification ***of registration*** from the Department within 30 days of *[submission]* ***the Department's receipt*** of all of the materials specified in N.J.A.C. 3:1-18.3, ***or notification of deficiency within 30 days of the Department's receipt of an incomplete request,*** such request for registration shall be deemed to have been granted by the Department.

(c) Nothing in this rule shall prohibit a foreign *[depository]* ***financial institution*** from purchasing or leasing *[potential]* office space in this State for use as a service facility, or from preparing such office space for use as a service facility prior to notification of registration by the Department.

(d) A foreign *[depository]* ***financial institution*** may register more than one service facility, but shall submit a separate request for registration, with the required fee, for each service facility and shall receive notification of that registration prior to engaging in back office operations at that service facility.

3:1-18.6 Permitted activities at service facilities

(a) A foreign bank or foreign association may conduct only back office operations at a service facility.

(b) *[All back]* ***Back*** office operations conducted by foreign *[depositories]* ***financial institutions*** in this State *[shall]* ***may*** be conducted ***only*** at service facilities.

3:1-18.7 Examination of service facilities

(a) A service facility shall be subject to examination by the Department to determine whether the foreign *[depository]* ***financial institution*** is operating the service facility in accordance with State law.

(b) The cost for the examination of a service facility shall be paid by the foreign *[depository]* ***financial institution*** and shall be billed at the Department's per diem rate for examinations of depository institutions (see: N.J.A.C. 3:1-6.6).

3:1-18.8 Hearing to close service facilities

The Commissioner may, upon notice and a hearing, order a foreign *[depository]* ***financial institution*** to close a service facility operated in violation of law. Such hearing shall be conducted in accordance with 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.

(a)

OFFICE OF REGULATORY AFFAIRS

Consumer Loan Act Regulations Advertisements

Adopted New Rule: N.J.A.C. 3:17-1.1
Adopted Amendment: N.J.A.C. 3:17-1.4

Proposed: April 1, 1991 at 23 N.J.R. 931(a).
Adopted: May 30, 1991, by Jeff Connor, Commissioner, Department of Banking.
Filed: June 6, 1991, as R.1991 d.329, **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. 17:10-13; N.J.S.A. 17:16H-2.

Effective Date: July 1, 1991.
Expiration Date: June 13, 1996.

Summary of Public Comments and Agency Responses:

The Department of Banking received comments from the following persons:

1. Neil J. Fogarty, President, Consumers League of New Jersey.
2. Jo Ann Brown, Senior Counsel, Household Finance.
3. William H. Finlay, CoreStates Financial Corporation.
4. Felix A. Cohen, Senior Vice President, Signal Financial Corporation.
5. Patricia A. Royer, Director, Division of Consumer Affairs.

A summary of comments and responses follows:

COMMENT: The rule does not apply to a bank because it is not subject to the Consumer Loan Law.

RESPONSE: The Department agrees with this comment. In fact, in the summary to a prior proposed rule which would have totally prohibited check solicitations, the Department noted the following: "The Department has received no complaints or inquiries from consumers concerning check solicitations by depositories. Should depositories begin to offer these products, the Department may act to prohibit this type of solicitation by these institutions as well." (see 22 N.J.R. 2626(a), September 4, 1990).

COMMENT: Where an applicant has been approved but the desired loan or account has not been formally created because the applicant has not appeared for loan closing or has not returned the documents sent to him for signature, the creditor should not be prohibited from sending that applicant a live check. If negotiated, that check would operate to open the account for which the applicant applied, or a substantially similar account.

RESPONSE: A person who has not yet borrowed money from a licensee would not be considered a "customer" of the licensee. Accordingly, a solicitation as outlined above would be prohibited. An applicant who has been approved by the lender needs only to sign the loan documents to obtain a loan. A check solicitation is therefore not a convenience to that person, and should not be permitted.

COMMENT: Where a borrower has an open revolving line of credit with unused capacity, the creditor should not be prohibited from sending that borrower one or more live checks drawn on the borrower's account. The use of these checks by the borrower would constitute the acceptance of an advance on the borrower's account.

RESPONSE: A person receiving such a solicitation is a customer of the licensee. Accordingly, the licensee will be permitted to send a check solicitation to that person so long as it contains the disclosures required by these rules.

COMMENT: Licensees are frequently affiliated with several other corporations which are also engaged in the consumer credit field. These licensees should not be penalized by their corporate structure, and should be permitted to send these solicitations to customers of affiliated corporations.

RESPONSE: The Department views the term "customers" broadly to include customers of affiliated corporations also engaged in the consumer credit field. To clarify this point, the Department has revised the rule upon adoption.

COMMENT: All check solicitations should be prohibited, since there is a risk of confusing consumers.

RESPONSE: The proposed rule substantially reduces this risk by requiring the following disclosure: "THIS IS A SOLICITATION FOR A LOAN—READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS CHECK!"

COMMENT: Despite the required disclosure, consumers may still be confused by these offerings. The required disclosure says: "This is a solicitation for a loan ...." In fact, it is a loan once signed by the consumer. Therefore, it is far more than a solicitation and such wording could further confuse these consumers.

RESPONSE: In originally proposing that these solicitations be prohibited, the Department was concerned that "a consumer will deposit the check without realizing that it is a loan product" (see 22 N.J.R. 2626(a), September 4, 1990). For example, there was concern that consumers might deposit the check thinking that it was a gift or a contest prize. The required disclosure will eliminate the possibility of this confusion.

The Department does not believe there is a danger that consumers will sign the check and receive up to $15,000 in return, while still believing that the check represents only an application and not the consummation of a loan.

COMMENT: This advertising practice presents an unacceptable risk that checks will be lost in the mail, that the items will be forged and that consumers will therefore be sued.

RESPONSE: In recent history, the Department is aware of no cases where check solicitations have been forged, thereby causing a consumer to defend a lawsuit. If presented with such a complaint, the Department will make every effort to assist the consumer. Moreover, the lender is the one assuming the risk here. The probability of a customer becoming liable on a stolen check is remote.

COMMENT: Finance companies keep debtors on the hook for long periods by charging high interest rates. When consumers get close to paying off the loan, the finance company solicits them for another advance. They should not be permitted to extend this debt peonage by use of unsolicited checks.

RESPONSE: The Department shares the commenter's concern that consumers are getting in debt beyond their ability to repay. This problem is aggravated when there are high interest rates, since a substantial portion of payments is then credited to interest and not principal.

However, the Department feels that the answer lies less with placing onerous restrictions upn lenders' ability to provide credit and more with educating consumers on the responsibility of using credit wisely and informing them of the perils in store for those who do not. Prohibiting this form of solicitation, moreover, will not resolve this problem, since those with a need for credit, the Department thinks, will surely find a way to obtain it.

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]*).

3:17-1.1 Definition of advertisement

For purposes of this subchapter, "advertisement" means any announcement, statement, assertion, or representation which is placed before the public in a newspaper, magazine, or other publication or in the form of a notice, circular, pamphlet, letter or poster or over any radio or television station or in any other way.

Recodify existing 3:17-1.1 through 3:17-1.3 as 3:17-1.2 through 3:17-1.4 (No change in text.)

3:17-1.5 Certain types of advertising prohibited

(a) The following types of advertisements are prohibited on the ground that they are deceptive or misleading, or negatively affect the public's confidence in the licensee or financial institutions in general:

1. The placing by licensee of tags or other advertising material on automobiles, in public or semipublic places, or the house-to-house issuance of circulars, handbills or any other similar types of advertising; and

2. The advertisement by use of a negotiable check, money order, draft or other instrument which may be used for the transfer of funds, unless:

i. The licensee sends this type of solicitation only to current or prior customers of the licensee*, **including customers of consumer credit affiliates of the licensee***;

ii. Each such solicitation allows the customer an option not to receive future solicitations of this type;

iii. The instrument is negotiable for not more than six months, and the consumer is advised to destroy the instrument if it is not going to be negotiated; and

iv. The solicitation prominently contains the following statement in 10-point print: "THIS IS A SOLICITATION FOR A LOAN—READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS CHECK!".

(a)

DIVISION OF EXAMINATION

Check Cashers; General Ledger

Adopted Amendment: N.J.A.C. 3:24-2.7

Proposed: April 1, 1991 at 23 N.J.R. 932(a).
Adopted: May 30, 1991 by Jeff Connor, Commissioner, Department of Banking.
Filed: June 3, 1991 as R.1991 d.324, **without change.**

Authority: N.J.S.A. 17:15A-16.

Effective Date: July 1, 1991.
Expiration Date: August 18, 1994.

Summary of Public Comments and Agency Responses:
The Department received no comments.

Full text of the adoption follows.

3:24-2.7 General Ledger

(a) A General Ledger containing all assets, liability, capital, income, and expense accounts shall be maintained. The General Ledger shall be posted from the daily records of checks cashed, summary of business, or any other records or original entry, at least quarterly, and shall be so kept as to facilitate the preparation of an accurate trial balance. Posting shall be completed no later than 30 days following the close of each quarter.

(b) (No change.)

EDUCATION

(b)

STATE BOARD OF EDUCATION

Special Education

Adopted Amendments: N.J.A.C. 6:28-1.1, 1.3, 3.2, 3.5, 3.7, 4.2, 4.4, 6.5, 7.1, 7.2, 10.1 and 11.4

Adopted New Rule: N.J.A.C. 6:28-10.2

Proposed: April 15, 1991 at 23 N.J.R. 1053(b).
Adopted: June 5, 1991 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.
Filed: June 7, 1991 as R.1991 d.337, **without change.**

Authority: N.J.S.A. 18A:4-15, 18A:7A-1 et seq., 18A:7B-1 et seq., 18A:7C-1 et seq., 18A:40-4, 18A:46-1 et seq., 18A:46A-1 et seq., 18A:48-8, 39:1-1, U.S. P.L. 93-112, Sec. 504, 94-142 and 99-457.

Effective Date: July 1, 1991.
Expiration Date: April 10, 1994.

Summary of Public Comments and Agency Responses:

The Department received written comments regarding the proposed amendments to N.J.A.C. 6:28 from eight interested persons and organizations. A public testimony session was held on April 17, 1991. Two commenters spoke at the session. Apart from the specific concerns summarized individually below, four commenters were in full support of the proposed amendments regarding the definition of age three. One commenter supported the choice of program options for children attaining age three. One commenter expressed support for the need for speech-language evaluations for pupils classified autistic. One commenter expressed support for the definition of autistic, the additional evaluations for an autistic child and the pupil staff ratio of 3:1 in classes for the autistic.

The summary includes the issues raised and heard by the Board at the public testimony session. The Board did not use a hearing officer at this hearing.

A copy of the public testimony session may be reviewed by contacting the State Board of Education Office at (609) 292-0739.

Written comments were received from the following:

Jean Paashaus

Brenda Considine, Coordinator
Family and Educational Advocacy
Association for Retarded Citizens

C. Ria Barry, President
New Jersey Speech-Language
Hearing Association

Amanda Blazman
Representative of Administrators
of the New Jersey Early
Intervention Coalition, Inc.

Speakers at the testimony session on April 17, 1991 were the following:

Nancy Richardson, Executive Director
New Jersey Center for Outreach
and Services for the Autism
Community, Inc.

Gerard Thiers, Executive Director
Association of Schools and Agencies
for the Handicapped

Dr. Patricia Holliday, Director
Office of Education
Department of Human Services

Karen and Eric London

Nancy Richardson
Executive Director
New Jersey Center for Outreach
and Services for the Autism
Community, Inc.

COMMENT: A commenter asked whether the EIP will be responsible for meeting all the requirements under N.J.A.C. 6:28-4.1(e) when an early intervention program (EIP) is the provider.

RESPONSE: Unless a waiver is granted in accordance with N.J.A.C. 6:28-4.6, the EIP would be responsible for meeting the requirements of N.J.A.C. 6:28-4.1(e).

COMMENT: The same commenter recommended that for the purposes of counting preschool pupils for educational funding, that a proration be established according to the time of entry and credited to the district in the subsequent count period.

RESPONSE: This is not an issue which can be addressed in the special education rules. State law (Quality Education Act) only allows pupils enrolled on the last day prior to October 16 to be counted for State aid.

COMMENT: Two commenters urged the State Board to adopt rule language which would: 1) allow existing programs to exceed a class size of six pupils, and 2) expedite the efforts of private schools to be quickly approved to operate classes for children classified autistic. There are quality school programs operating classes for autistic children which have

class sizes which exceed six children. These programs may be unable to restructure.

RESPONSE: The Department declines to make the requested change because the class size of six at elementary level and nine at the secondary level with a staff ratio of 3:1 is based on surveys of programs currently serving autistic pupils. The Department is only aware of one private school which is affected by the proposed amendments. This is a facility program in this program which should not dictate the instructional program. The Department opposes having one teacher with three aides as the span of the teacher's oversight would be too limited. The adult to child ratio must take into consideration the teacher's instructional responsibilities and supervision of aides. If appropriate, individual pupil waivers can be granted by the county office of education to allow the class size to exceed the maximum. It is unnecessary to adopt new rules for the approval of autistic classes in approved private schools because N.J.A.C. 6:28-7.2 contains a procedure for this. The Department has developed a simple format with an assurance statement to allow programs to be quickly approved to serve autistic pupils.

COMMENT: The same commenter asked the State Board to effectuate compliance with the Federal requirements for age three by changing the December 31 cut-off date to June 30.

RESPONSE: The Department considered establishing two cut-off dates in the school year for age three. Districts and parents complained that children would enter preschool programs at too young of an age.

COMMENT: The same commenter made a statement that, in the event that the recommended June 30 date is not adopted, assurance is sought that EIPs offering programs to pupils age three comply with all the rules set forth for preschool handicapped programs.

RESPONSE: When a district and parent agree to continue the placement of a child aged three in an EIP, all of the provisions of that child's individual education plan (IEP) must be met. If it is determined that all the requirements of a preschool handicapped program are required, the IEP would be developed to address them. However, if an exception is required to length of school day, class size, classification or age range, the district may attain approval through the county office of education.

COMMENT: One commenter objected to assigning preschool pupils to EIPs with handicapped children who are below age three. Local districts will take on the expense of handicapped children below the age of three. This is currently a State financial burden. EIPs should be kept separately from public schooling.

RESPONSE: The Department disagrees because some children may not be ready for a preschool handicapped program at age three. Continuing their services in the EIP may be the appropriate program. The State will continue to fund EIPs for children below age three. If a district chooses to enroll a preschool handicapped pupil in an EIP, Federal, State and local tax dollars would be used to contract with the EIP and fund the placement. EIPs will be required to separate the funding sources, so that accountability is maintained.

COMMENT: Two commenters opposed the deletion of the current definition of age three and the proposed amendments which allow continued enrollment in an EIP after a child has reached age three. The proposed amendments will delay the availability of a free, appropriate education to children who are now served at an earlier age. They recommend compliance with Federal requirements by either, (a) changing the December 31 cut-off date of June 30 so that any handicapped child attaining the chronological age of three during that school year be eligible for a free, appropriate education throughout that school year or, at least, (b) preserve the December 31 cut-off and, in addition, provide that children who attain age three after January 1 be immediately eligible for approved public and private programs or accredited nonpublic programs.

RESPONSE: In developing the proposed amendments for the definition of age three, the Department carefully considered the options suggested by the commenters. At first discussion level, the Department proposed amendments which would have divided the school year into two segments allowing children turning age three between December 31 and July 1 to enter preschool programs on January 1 of that school year. Parents and school district personnel objected to this proposal by stating that the proposed amendments forced children from EIPs and into preschool programs at too young of an age. Also, further clarification from the Federal government was received regarding the definition. Simply stated, the Federal government stated, "three is three."

With regard to continued enrollment in an EIP after attaining age three, this is only one of the program options available for these children. This option is available if the district and parents agree that the EIP is the appropriate program provider. It also allows a smooth transition from the EIP into preschool so that it would not be necessary to disrupt a child's program in the middle or at the end of the school year.

COMMENT: One commenter asked a question regarding what happens to children who are identified less than 90 days prior to their birthday or are not enrolled in an EIP.

RESPONSE: If children are identified less than 90 days prior to their birthday, in accordance with N.J.A.C. 6:28-3.2(e), the district shall obtain parental consent, determine eligibility and make available an IEP within 90 days of obtaining parental consent for evaluation.

COMMENT: The same commenter asked a question regarding what outreach is provided to identify eligible children.

RESPONSE: The Statewide Child Find initiative and the requirement that local districts provide information to parents of handicapped pupils below age three regarding available services both serve to ensure that outreach activities occur to identify eligible children.

COMMENT: The same commenter stated a concern over the provision of an extended school year program beyond June 30.

RESPONSE: If the district board of education determines that a pupil needs an extended school year program, it may be provided in the EIP, if appropriate.

COMMENT: The same commenter asked whether or not EIPs need to be approved private schools in order to provide services under contract with local school districts.

RESPONSE: EIPs are not required to be approved private schools.

COMMENT: The same commenter asked a question regarding what constitutes appropriate programs.

RESPONSE: Local school districts determine what constitutes appropriate programs for each pupil with disabilities.

COMMENT: The same commenter asked a question regarding what role the EIP staff will have in developing the individualized education program (IEP) with the local school district.

RESPONSE: The local school district will be responsible for conducting meetings to determine eligibility and to develop the pupil's IEP. The teacher(s) from the EIP having knowledge of the pupil's educational performance would be invited to these meetings by the local school district.

COMMENT: The same commenter asked a question regarding whether the children who have attained age three will have to be segregated from other children attending the EIP.

RESPONSE: Segregation is not necessary; however, separate audit trails will need to reflect all expenses for children below age three who are in the EIP and pupils who are classified preschool handicapped placed by their local school district.

COMMENT: The same commenter asked questions regarding what constitutes an extended school year and whether or not an extended school year can be obtained for children turning three who have not been previously enrolled in school.

RESPONSE: If the district board of education determines that a pupil needs an extended school year program, it may be provided in the EIP, if appropriate.

COMMENT: The same commenter asked whether or not an EIP must provide certified school nurses and certified speech-language specialists to serve preschool handicapped children.

RESPONSE: All personnel required to serve the pupil according to the IEP must be school certified.

COMMENT: The same commenter asked whether or not staff employed by the EIP must comply with regulations concerning fingerprinting.

RESPONSE: The Department is researching this issue. While awaiting the answer, all EIP administrators should be responsible for conducting sufficient criminal history checks on all employees upon hiring to ensure that the welfare of children served is protected.

COMMENT: The same commenter asked about how fees will be set for preschool handicapped children placed in EIPs and what the procedures are for developing contracts with school districts.

RESPONSE: A contractual agreement shall be provided between the district board of education and the EIP. It will be the responsibility of the district and EIP to develop procedures for contracts.

COMMENT: The same commenter asked whether Chapter 1 funding can be utilized by the EIP after a child's third birthday.

RESPONSE: The EIP may only count birth through two years of age for Chapter 1 funds. A three year old classified as preschool handicapped would be counted for Federal funds by the local school district.

COMMENT: The same commenter asked a question regarding what constitutes an exception to preschool handicapped services as required by N.J.A.C. 6:28-4.1(e)1.

RESPONSE: The local school district is responsible for determining what constitutes an exception in accordance with N.J.A.C. 6:28-4.1(e)1 which states: "Programs for the preschool handicapped shall be in operation five days per week, one day of which may be used for parent training and at least four days of which shall be to provide a minimum total of 10 hours of pupil instruction."

COMMENT: The same commenter asked how transportation services will be provided to families and children whom the district serve in the EIP.

RESPONSE: The local school district is responsible for determining transportation needs of pupils in accordance with their IEP.

Full text of the adoption follows.

6:28-1.1 General requirements

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

(e) Each district board of education is responsible for providing a system of free, appropriate special education and related services to its preschool handicapped pupils which shall:

1.-2. (No change.)

3. Be located in State approved facilities that are accessible to the handicapped or in early intervention programs approved according to N.J.A.C. 6:28-10.1.

4. (No change.)

(f)-(n) (No change.)

6:28-1.3 Definitions

Words and terms, unless otherwise stated in these definitions, when used in this chapter, shall be defined in the same manner as those words and terms used in the Education for All Handicapped Children Act.

. . .

"Pupil age" means the school age of a pupil as defined by the following:

1. "Age three" means the attainment of the third birthday. Children attaining age three shall have a free, appropriate public education available to them provided by the district board of education.

2.-3. (No change.)

. . .

6:28-3.2 Identification

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

(d) For a child who is identified to the district board of education at least 90 days prior to the attainment of age three according to N.J.A.C. 6:28-1.3, the district board of education shall obtain parental consent, determine eligibility and, if the pupil is determined to be eligible, develop and make available an individualized education program. This shall be completed not later than the date on which the child attains age three.

(e) For a child who is identified less than 90 days prior to the attainment of age three according to N.J.A.C. 6:28-1.3, the district board of education shall obtain parental consent, determine eligibility and, if eligible, develop and make available an individualized education program according to N.J.A.C. 6:28-2.1(c).

6:28-3.5 Determination of eligibility

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

(c) Classification of pupils determined to be eligible for special education and/or related services shall be determined collaboratively by the child study team, parent(s) and, if they choose to participate, the school principal and referring staff members. Classification according to the following definitions shall be based on all evaluations conducted:

1. (No change.)

2. "Autistic" means a pervasive developmental impairment characterized by (c)2i, ii, and iii below. An evaluation by a certified speech correctionist or speech-language specialist and an evaluation by a physician trained in neurodevelopmental assessment is required.

i. Social-emotional and communication development impaired in ways that are not merely predictable from cognitive and/or sensory impairment(s);

ii. Extreme aberrant responses to one or more aspects of the environment, such as insistence on sameness, resistance to change, stereotypic behaviors, lack of responsiveness to others or repetitive movements; and

iii. Onset in infancy or childhood.

Recodify existing 2. through 11. as 3. through 12. (No change in text.)

6:28-3.7 Reevaluation

(a) A reevaluation and, if the pupil will remain classified, an individualized education program shall be completed within three years of the date of the previous classification. Reevaluation shall be conducted sooner if conditions warrant or the pupil's parent(s) or teacher request the reevaluation.

1. The child study team shall determine which child study team members and/or specialists will conduct the evaluations based upon demonstrated pupil progress in meeting the goals and objectives of the individualized education program. The reevaluation shall include assessment by at least two members of the child study team.

i. For pupils who are auditorily handicapped, in addition to the two required evaluations provided by the child study team, an audiological evaluation and a speech and language assessment according to N.J.A.C. 6:28-3.5(c)1 shall be required.

ii. For pupils who are autistic, in addition to the two required evaluations provided by the child study team, a speech and language assessment and neurodevelopmental assessment according to N.J.A.C. 6:28-3.5(c)2 shall be required.

2.-5. (No change.)

6:28-4.2 Program options

(a) (No change.)

(b) A district board of education shall provide a program for a preschool handicapped pupil in one of the following settings:

1. An approved public or private program;

2. An accredited nonpublic school; or

3. An early intervention program (which is under contract with the Department) in which the child has been enrolled for the balance of the school year in which the child turns age three.

6:28-4.4 Program criteria: special class programs, secondary, vocational and vocational rehabilitation

(a) Special class programs shall meet the following criteria:

1.-5. (No change.)

6. A special class program shall serve pupils who have the same classification. Class sizes shall not exceed the following:

i. (No change.)

ii. Autistic—elementary—six pupils per classroom with a pupil to staff ratio of three to one (classroom aide required when the class size exceeds three);

iii. Autistic—secondary—nine pupils per classroom with a pupil to staff ratio of three to one (two classroom aides required for a class size of nine pupils);

Recodify existing ii through xiv as iv through xvi. (No change in text.)

7. With the exception of classes for autistic pupils, the above maximum class size may be increased by no more than one-third with the addition of a classroom aide or a second classroom aide where one is already required by obtaining prior written approval from the Department of Education through its county office.

(b)-(d) (No change.)

6:28-6.5 Placement in accredited nonpublic schools which are not specifically approved for the education of handicapped pupils

(a) (No change.)

(b) The Commissioner's consent shall be based upon certification by the district board of education that the following requirements have been met:

1.-4. (No change.)

5. The pupil shall receive a program that meets all the requirements of a thorough and efficient education as defined in N.J.S.A. 18A:7A-5c, d, e, f, and g and as implemented in N.J.A.C. 6:8-2.2, 6:8-4.3(a)3i(3) (A), (B) and (C), 3iii, iv and v, 5ii, 6:8-6.1(a),

6:8-7.1(c)1 and (d)1. These requirements shall be met except as the content of the program is modified by the individualized education program based on the educational needs of the pupil or if an exception is granted according to N.J.A.C. 6:28-4.6 or if an exemption is granted according to N.J.A.C. 6:28-3.6(e)5iv.

i. All personnel providing either special education programs according to N.J.A.C. 6:28-4.3 or 4.4 or related services according to N.J.A.C. 6:28-3.8 shall hold the appropriate educational certificate for the position in which they function.

ii. All personnel providing regular education programs shall either hold the appropriate certificate for the position in which they function or shall meet the personnel qualification standards of a recognized accrediting authority.

iii. All substitute teachers and aides providing special education and/or related services shall be employed according to N.J.A.C. 6:8-4.3(a)6ii.

6.-11. (No change.)

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

6:28-7.1 General requirements

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

6:28-7.2 Approval procedures to establish or change a program

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

(e) The application for approval to establish or change a program for educationally handicapped pupils shall include, but not be limited to:

1.-5. (No change.)

6. Additionally each private school shall submit:

i. An affidavit that its programs and services for the educationally handicapped are nonsectarian; and

ii. A copy of the certificate of incorporation.

6:28-10.1 General requirements for early intervention programs serving children between birth and age three

(a)-(l) (No change to text.)

6:28-10.2 General requirements when district boards of education contract with early intervention programs under contract with the department of education for pupils age three

(a) When an individualized education program is developed by a district board of education for a child age three who has been enrolled in an early intervention program and it is determined that the district shall provide a free, appropriate public education for that pupil by continuing the program in the early intervention program for the balance of that school year, the following requirements shall apply:

1. The district board of education shall be responsible to ensure that the requirements of N.J.A.C. 6:28-1.1(e) shall be met;

2. A contractual agreement shall be provided between the district board of education and the early intervention program;

3. Personnel shall be appropriately certified; and

4. Applications for exceptions according to N.J.A.C. 6:28-4.6 shall be made whenever necessary.

(b) When the district board of education determines that the child who has been enrolled in the early intervention program requires an extended year program, the district may contract with the early intervention program for the provision of that program.

6:28-11.4 Identification

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

(c) For a child who is identified to the district board of education at least 90 days prior to the attainment of age three according to N.J.A.C. 6:28-1.3, the district board of education shall obtain parental consent, determine eligibility and, if the pupil is determined to be eligible, develop and make available an individualized education program. This shall be completed not later than the date on which the child attains age three.

(d) For a child who is identified less than 90 days prior to the attainment of age three according to N.J.A.C. 6:28-1.3, the district board of education shall obtain parental consent, determine eligibility and, if eligible, develop and make available an individualized education program according to N.J.A.C. 6:28-2.1(c).

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmacy Manual—Pharmaceutical Services
Limitations on Coverage for Non-Legend Drugs; Prior Authorization

Adopted Amendments: N.J.A.C. 10:51-1.2, 1.13, 1.14 and 1.20
Adopted Repeal and New Rules: N.J.A.C. 10:51: Appendices B, C, D, and E

Proposed: May 6, 1991 at 23 N.J.R. 1310(b).
Adopted: June 12, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: June 12, 1991 as R.1991 d.353, **without change.**

Authority: N.J.S.A. 30:4D-6b(6); 30:4D-7, 7a, b and c; 30:4D-12.

Effective Date: July 1, 1991.
Expiration Date: October 9, 1995.

Summary of Public Comments and Agency Responses:

The Department of Human Services, Division of Medical Assistance and Health Services, received comments from the following persons:

1. Diane Kerwin, Manager, Ross Laboratories.

2. Several commenters affiliated with Kessler Institute are listed below:

Sheela Jain, M.D., Associate Medical Director
Jerald R. Zimmerman, M.D., Clinical Chief, Orthopedic Rehabilitation
Nalini Bethala, M.D., Clinical Chief, Geriatrics
Marca L. Sipski, M.D., Director of Spinal Cord Injury Services
Richard D. Zorowitz, M.D., Clinical Chief, Stroke Services
Joel A. DeLisa, M.D., Medical Director
Janice Puttorak, M.D.
Steven Hendler, M.D.
Steven Kirshblum, M.D.
Frank LoRe, M.D.
Noel Nowicki, M.D.

3. Leon Langley, Pharmacist, New Jersey Pharmaceutical Association

4. William H. Baxter, Director, State Government Affairs, Johnson & Johnson

5. Susan D. Zalenski, Director, Health Care Programs, Marion Merrell Dow, Inc.

The agency received the following comments on the proposal:

COMMENT: The commenters from the Kessler Institute requested retention of certain non-legend medication associated with the treatment of spinal cord injuries. All commenters (from Kessler) had basically the same concern which was that the amendment would prohibit Medicaid from providing certain necessary non-legend drugs to their patients, hence causing costs to be incurred by these patients and/or facility.

RESPONSE: The agency's response is that at the present time the proposed amendments will be adopted as written because of budgetary limitations; the agency cannot retain certain non-legend medication associated with spinal cord injuries. If non-legend products are not available, legend products may have to be prescribed.

COMMENT: Leon R. Langley, R.P., Director of Government Affairs, New Jersey Pharmaceutical Association, registered concern that infants and children would be adversely affected by the elimination of:

(1) Pedialyte, used to restore fluid and minerals lost in diarrhea and vomiting in infants and children: prevention of dehydration may prevent hospitalization.

(2) Pediatric cough syrups: elimination of the pediatric preparations was seen to result in prescribing adult cough syrups in reduced dosage, of which the difficulty in measuring such small quantities will be likely to result in overdose.

(3) Tylenol drops and liquid for palliative treatment of fever to prevent the suffering that goes along with fever.

RESPONSE: The agency's response to Mr. Langley's comment is that:

(1) Pedialyte is currently part of N.J.A.C. 10:51, Appendix E, and will still be available with prior authorization. This is a continuation of existing policy.

(2) and (3) The agency shares the same concerns with Mr. Langley regarding these preparations, but due to budgetary limitations, the proposed amendments are being adopted without coverage of non-legend pediatric cough syrups and Tylenol drops and liquid. The medical community may prescribe adult products with doses carefully tailored to the pediatric population or legend pediatric products.

Two commenters raised similar concerns to which the Agency submits a collective response:

COMMENT: William H. Baxter, Director, State Government Affairs, Johnson and Johnson, noted that restricting non-legend drugs will be likely to drive physicians to order prescription medications, which are significantly more expensive. Further the inaccessibility of non-legend drugs is likely to cause recipients to delay treatment until an illness is more serious and costlier to treat.

COMMENT: Sandra Zalenski, Director, Health Care Programs for Marion Merrell Dow, Inc., also stated that physicians will be moved to order more expensive prescription medications, when unable to direct recipients to use non-legend drugs. The inability of Medicaid recipients to afford to buy these preparations was noted as a possible cause for more serious and costlier illnesses.

RESPONSE: Clinical auditing practices will be continued in an effort to control costs. This is a continuation of current policy to assure overall cost effectiveness of the Medicaid program.

The commenters offered no substantiation that the inability of Medicaid recipients to afford to buy these preparations will result in the delay in treatment and/or cause more serious or costlier illnesses. In the future, the agency will take this under advisement to determine if the inability of Medicaid recipients to afford to buy these preparations will result in a delay of treatment and/or be the cause of more serious and costlier illnesses.

COMMENT: The commenter from Ross Laboratories requested retention of pediatric and adult medical nutritionals used for management of rare metabolic disorders, and for patients who may require tube feeding due to conditions of AIDS, cancer, diabetes, etc.

RESPONSE: Pediatric and adult nutritionals appear in Appendix E of N.J.A.C. 10:51 and are still available with prior authorization to Medicaid recipients.

The Department is adopting the proposed amendments and new rules without change due to current budgetary limitations. As indicated in the proposal, the amendments adopted herein continue coverage for the following non-legend products: insulin, antacids, insulin syringes and family planning drugs and devices.

Full text of the adoption follows.

10:51-1.2 Covered pharmaceutical services

(a) Covered pharmaceutical services include:

1. Prescribed drugs, legend and non-legend, as follows:

i. Contraceptive devices and contraceptive supplies (such as diaphragms, jellies, foams and rubber prophylactics);

ii. Over-the-counter, family planning supplies (such as pregnancy test kits);

iii. Devices listed in Appendix D;

iv. Diabetic testing materials listed in Appendix B;

v. Insulin syringes and/or needles listed in Apendix C;

vi. Insulin listed in Appendix B; and

vii. Antacids listed in Appendix B.

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

10:51-1.13 Services requiring prior authorization

(a) The therapeutic classes and dosage forms listed below require prior authorization, obtained by the prescriber from the appropriate Medicaid District Office (MDO) professional staff. If the prior authorization request is approved, an authorization number will be provided and must appear on the prescriber's original or valid transcribed prescription. The space labeled "Check if Prior Authorized Service" on the Prescription Claim Form (MC-6) must be checked and the "prior authorization" number provided must be entered in the proper space.

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

5. (No change in text.)

10:51-1.14 Services not eligible for reimbursement

(a) The following classes of prescription drugs are not eligible for reimbursement:

1.-7. (No change in text.)

8. Non-legend drug products not listed in Appendix B or C;

9.-16. (No change in text.)

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

10:51-1.20 Non-legend drugs

(a) The only non-legend drug products, devices or supplies that are eligible for reimbursement under the New Jersey Medicaid Program are:

1. Those items listed in Appendices B and C;

i. Contraceptive materials listed in Appendix B;

ii. Diabetic testing material listed in Appendix B;

iii. Non-legend antacids listed in Appendix B;

iv. Insulin syringes and/or needles listed in Appendix C;

v. Insulin listed in Appendix B; and

vi. Family planning supplies listed in Appendix B.

(b) (No change.)

APPENDIX B
General Non-Legend Drugs

This list replaces all previous issued non-legend drug lists. This listing is divided into sections on general non-legend drugs, contraceptive materials, insulin and diabetic testing material. Reimbursable products are listed in each section alphabetically.

Because diaphragms are legend devices they are priced at cost plus a dispensing fee. They are listed in Appendix D under contraceptive materials. All other listed items are to be charged at no more than the provider's usual and customary retail selling price, including sheath contraceptives which are listed generically as "prophylactics—rubber" under contraceptive materials. All non-legend preparations are coded according to the National Drug Code number and must be dispensed and charged only in accordance with the sizes listed at no more than the provider's usual and customary retail selling price. All eligible non-legend preparations shall be reimbursed only in accordance with the number of units actually dispensed (tabs, caps, ccs, gms, suppositories or packets, each, etc.). Payment will be based on the maximum allowable charge set forth in this subchapter, prorated on the package size or the reporting unit listed in Appendix B. All reporting units listed as "each" (package) in Appendix B are limited to reimbursement for one dispensing unit per claim. For non-legend preparations not listed in Appendix B, prior authorization from the Medicaid District Office is required in order to be reimbursed (see N.J.A.C. 10:51-1.13 of this subchapter). All items, other than insulin, having a reporting "quantity dispensed" of "one" and only one such unit is allowed per claim.

Insulin may be dispensed in multiple vials in accordance with "days supply" regulations. The appropriate National Drug Code number as listed in Appendix B should be entered on the claim form. The multiple metric quantity should be listed in the "quantity dispensed" space on the claim form.

For example, four vials of insulin are reported as "40" in the "quantity dispensed" space and the National Drug Code listed for the particular strength is entered in the "NDC" space.

APPENDIX B
GENERAL NON-LEGEND DRUGS

ALGENIC ALKA LIQUID 360CC	CC	00536-0111-83
ALGENIC ALKA TABLETS 100	TAB	00536-3013-01
ALGENIC ALKA E.S. TABLETS 100	TAB	00536-3016-01
ALGICON TABLETS 50	TAB	00067-0360-40
ALKETS TABLETS 100	TAB	00009-0243-01
ALMACONE LIQUID 12 OZ	CC	00536-0025-83
ALMACONE LIQUID GALLON	CC	00536-0025-90
ALMACONE TABLETS 100	TAB	00536-3035-01
ALMACONE TABLETS 1000	TAB	00536-3035-10
ALMACONE II LIQUID 12 OZ	CC	00536-0015-83
ALMACONE II LIQUID GALLON	CC	00536-0015-90
ALMA-MAG LIQUID 12 OZ	CC	00536-0175-83
ALU-CAP CAPSULES 100	CAP	00089-0105-10
ALU-TAB TABLETS 250	TAB	00089-0107-25

ALUDROX SUSPENSION 360CC	CC	00008-0023-01
ALUDROX TABLETS 100	TAB	00008-0022-03
AMPHOJEL SUSPENSION 360CC	CC	00008-0010-01
AMPHOJEL TABLETS 300MG 100	TAB	00008-0119-01
AMPHOJEL TABLETS 600MG 100	TAB	00008-0013-03
ANTA-GEL LIQUID 12 OZ	CC	00879-0444-14
ANTA-GEL II 12 OZ	CC	00879-0396-12
BASALJEL CAPSULES 100	CAP	00008-0472-01
BASALJEL CAPSULES 500	CAP	00008-0472-03
BASALJEL SUSPENSION 360CC	CC	00008-0131-01
BASALJEL SUSP/EXTRA STRENGTH 360CC	CC	00008-0474-01
BASALJEL SWALLOW TABLETS 100	TAB	00008-0473-01
BISODOL POWDER 3 OZ	GM	00573-0351-10
BISODOL POWDER 5 OZ	GM	00573-0351-20
BISODOL TABLETS 30	TAB	00573-0371-20
BISODOL TABLETS 100	TAB	00573-0371-30
CALCILAC TABLETS 100	TAB	00364-0052-01
CALCILAC TABLETS 1000	TAB	00364-0052-02
CALCIUM CARBONATE TABLETS 500MG 120	TAB	00615-0871-12
CALCIUM CARBONATE TABLETS 600MG 100	TAB	00304-1304-01
CALCIUM CARBONATE TABLETS 600MG 72	TAB	00904-3232-62
CALCIUM CARBONATE TABLETS 1250MG 60	TAB	00054-4122-21
CALCIUM CARBONATE TABLETS 1250MG 100	TAB	00054-4120-25
CALCIUM CARBONATE TABLETS 10GM 1000	TAB	00304-1741-00
CALCIUM CARBONATE TABLETS 10GM 100	TAB	00002-2035-02
CALCIUM CARBONATE TABLETS 10GM 1000	TAB	00002-2035-04
CALCIUM CARBONATE TABLETS 10GM 1000	TAB	00536-3414-10
CALCIUM CARB. W/VIT. D 60	TAB	00304-1569-66
CALCIUM CARB. W/VIT. D 60	TAB	00904-3234-52
CALCIUM CARB. W/VIT. D 600MG 60	TAB	00839-7081-05
CALCIUM CARB. W/VIT. D 10GM 60	TAB	00839-7009-05
CAL-GLYCINE SF TABLETS 250	TAB	00536-3430-02
CAL-GLYCINE SF TABLETS 1000	TAB	00536-3430-10
CAMALOX SUSPENSION 360CC	CC	00067-0180-71
CAMALOX TABLETS 50	TAB	00067-0185-50
CITROCARBONATE GRANULES 5 OZ	GM	00009-0220-07
CITROCARBONATE GRANULES 8 OZ	GM	00009-0220-03
CITROCARBONATE GRANULES 10 OZ	GM	00009-0220-08
CREAMALIN TABLETS 100	TAB	00024-0294-04
DIALUME CAPSULES 100	CAP	00053-3250-01
DIALUME CAPSULES 500	CAP	00053-3250-02
ENO SPARKLING ANTACID 3.5 OZ	EACH	53100-8617-00
ENO SPARKLING ANTACID 7 OZ	EACH	53100-8618-00
FERMALOX TABLETS 100	TAB	00067-0260-68
GAVISCON TABLETS 30	TAB	00088-1175-30
GAVISCON TABLETS 100	TAB	00088-1175-47
GAVISCON LIQUID 180CC	CC	00088-1171-14
GAVISCON LIQUID 60CC	CC	00088-1171-12
GAVISCON ES LIQUID 360CC	CC	00088-1173-12
GAVISCON ES TABLETS 360	TAB	00088-1174-30
GAVISCON ES TABLETS 100	TAB	00088-1174-47
GAVISCON-2 TABLETS 48	TAB	00088-1172-37
GELUSIL LIQUID 360CC	CC	00071-2036-22
GELUSIL TABLETS 50	TAB	00071-0034-19
GELUSIL TABLETS 100	TAB	00071-0034-24
GELUSIL TABLETS 165	TAB	00071-0034-27
GELUSIL TABLETS 1000	TAB	00071-0034-32
GELUSIL-II LIQUID 360CC	CC	00071-2042-22
GELUSIL-II TABLETS 80	TAB	00071-0043-22
GELUSIL-M LIQUID 360CC	CC	00071-2044-22
GELUSIL-M TABLETS 100	TAB	00071-0045-24
LOWSIUM PLUS SUSPENSION 360CC	CC	00536-1290-83
LOWSIUM SUSPENSION 360CC	CC	00536-1280-83
MAALOX E.S. TABLETS 24	TAB	00067-0340-24
MAALOX E.S. TABLETS 50	TAB	00067-0340-50
MAALOX E.S. TABLETS 100	TAB	00067-0340-67
MAALOX PLUS SUSPENSION—CHERRY 360CC	CC	00067-0336-71
MAALOX PLUS SUSPENSION—CHERRY 480CC	CC	00067-0336-16
MAALOX PLUS SUSPENSION—MINT 360CC	CC	00067-0338-71
MAALOX PLUS SUSPENSION—MINT 480CC	CC	00067-0338-16
MAALOX PLUS E.S. SUSPENSION 150CC	CC	00067-0333-62
MAALOX PLUS E.S. SUSPENSION 360CC	CC	00067-0333-71
MAALOX PLUS E.S. SUSPENSION 780CC	CC	00067-0333-44
MAALOX PLUS TABLETS 50	TAB	00067-0339-50
MAALOX PLUS TABLETS 100	TAB	00067-0339-67
MAALOX SUSPENSION 150CC	CC	00067-0330-62
MAALOX SUSPENSION 360CC	CC	00067-0330-71
MAALOX SUSPENSION 780CC	CC	00067-0330-44
MAALOX TABLETS 100	TAB	00067-0335-68
MAALOX TABLETS—CHERRY 50	TAB	00067-0341-50
MAALOX TABLETS—CHERRY 100	TAB	00067-0341-68
MAALOX T.C. LIQUID 360CC	CC	00067-0334-71
MAALOX T.C. TABLETS 48	TAB	00067-0344-48
MAALOX WHIP E.S. LIQUID 240CC	CC	00067-0370-66
MILK OF MAGNESIA LIQUID 360CC	CC	00304-0356-79
MILK OF MAGNESIA LIQUID 480CC	CC	00304-0356-98
MILK OF MAGNESIA LIQUID 480CC	CC	00472-0788-16
MILK OF MAGNESIA LIQUID 480CC	CC	54274-0921-16
MILK OF MAGNESIA LIQUID 360CC	CC	00719-4560-81
MILK OF MAGNESIA LIQUID 480CC	CC	00719-4560-83
MILK OF MAGNESIA LIQUID 480CC	CC	00781-6535-16
MILK OF MAGNESIA LIQUID 360CC	CC	00182-6084-39
MILK OF MAGNESIA LIQUID 480CC	CC	00182-6084-40
MILK OF MAGNESIA LIQUID 480CC	CC	00879-0201-16
MILK OF MAGNESIA LIQUID 960CC	CC	00879-0201-32
MILK OF MAGNESIA LIQUID 480CC	CC	51432-0626-20
MILK OF MAGNESIA LIQUID 360CC	CC	00904-0788-14
MILK OF MAGNESIA LIQUID 480CC	CC	00904-0788-16
MILK OF MAGNESIA LIQUID 360CC	CC	00839-5390-67
MILK OF MAGNESIA LIQUID 480CC	CC	00839-5390-69
MILK OF MAGNESIA LIQUID 480CC	CC	00228-1421-16
MILK OF MAGNESIA LIQUID 960CC	CC	00228-1421-32
MILK OF MAGNESIA LIQUID 360CC	CC	00536-1470-83
MILK OF MAGNESIA LIQUID 480CC	CC	00536-1470-85
MILK OF MAGNESIA LIQUID 360CC	CC	00364-7321-78
MILK OF MAGNESIA LIQUID 480CC	CC	00364-7321-16
MILK OF MAGNESIA LIQUID 360CC	CC	00003-0553-41
MILK OF MAGNESIA LIQUID 720CC	CC	00003-0553-61
MILK OF MAGNESIA LIQUID 360CC	CC	00677-0818-32
MILK OF MAGNESIA LIQUID 480CC	CC	00615-0738-16
MILK OF MAGNESIA TABLETS 1000	TAB	00536-4034-10
MYGEL LIQUID 360CC	CC	11845-0870-12
MYGEL PLUS LIQUID 360CC	CC	11845-0871-12
MY-GEL SUSPENSION 360CC	CC	00781-6532-42
PHOSPHAGEL SUSPENSION 360CC	CC	00081-0111-01
RIOPAN SUSPENSION 360CC	CC	00573-3200-20
RIOPAN CHEWABLE TABLETS 60	TAB	00573-3194-30
RIOPAN CHEWABLE TABLETS 100	TAB	00573-3194-35
RIOPAN SWALLOW TABS 60	TAB	00573-3197-30
RIOPAN SWALLOW TABS 100	TAB	00573-3197-35
RIOPAN PLUS SUSPENSION 180CC	CC	00573-3210-10
RIOPAN PLUS SUSPENSION 360CC	CC	00573-3210-20
RIOPAN PLUS CHEWABLE TABLETS 60	TAB	00573-3205-30
RIOPAN PLUS CHEWABLE TABLETS 100	TAB	00573-3205-35
RIOPAN PLUS 2 SUSPENSION 180CC	CC	00573-3220-10
RIOPAN PLUS 2 SUSPENSION 360CC	CC	00573-3220-20
RULOX SUSPENSION 360CC	CC	00536-1950-83
RULOX SUSPENSION 780CC	CC	00536-1950-78

RULOX NO. 1 TABLETS 100	TAB	00536-4496-01
RULOX NO. 1 TABLETS 1000	TAB	00536-4496-10
RULOX NO. 2 TABLETS 100	TAB	00536-4497-01
RULOX PLUS SUSPENSION 360CC	CC	00536-1990-83
RULOX PLUS TABLETS—CHERRY 50	TAB	00536-4501-06
RULOX PLUS TABLETS—LEMON 50	TAB	00536-4498-06
SILAIN TABLETS 100	TAB	00031-8831-63
SILAIN-GEL LIQUID 360CC	CC	00031-8858-22
SIMAAL GEL LIQUID 360CC	CC	00364-7249-78
SIMAAL II LIQUID 360CC	CC	00364-7308-78
SODIUM BICARBONATE TABLETS 5GM 100	TAB	00002-1024-02
SODIUM BICARBONATE TABLETS 5GM 1000	TAB	00536-4540-10
SODIUM BICARBONATE TABLETS 10 GM 1000	TAB	00304-1599-00
SODIUM BICARBONATE TABLETS 10GM 100	TAB	00002-2029-02
SODIUM BICARBONATE TABLETS 10GM 1000	TAB	00002-2029-04
SODIUM BICARBONATE TABLETS 10GM 100	TAB	00228-1583-10
SODIUM BICARBONATE TABLETS 10GM 1000	TAB	00536-4544-10
SODIUM BICARBONATE TABLETS 10GM 1000	TAB	00364-0251-02
SODIUM BICARBONATE TABLETS 10GM 1000	TAB	00677-0131-10
TITRALAC TABLETS 40	TAB	00089-0355-04
TITRALAC TABLETS 100	TAB	00089-0355-10
TITRALAC PLUS TABLETS 100	TAB	00089-0539-37
TITRALAC PLUS LIQUID 360CC	CC	00089-0950-12
TRICONSIL TABLETS 100	TAB	00781-1888-01
WINGEL LIQUID 180CC	CC	00024-2247-03
WINGEL LIQUID 360CC	CC	00024-2247-05
WINGEL TABLETS 50	TAB	00024-2249-05
WINGEL TABLETS 100	TAB	00024-2249-06

CONTRACEPTIVE MATERIALS

BECAUSE CONTRACEPTIVE FOAM 10GM	EACH	00085-0439-01
CONCEPTROL PREFILLED APPLICATOR (6PAK)	EACH	00062-3250-01
CONCEPTROL PREFILLED APPLICATOR (10PAK)	EACH	00062-3250-02
DELFEN FOAM W/APPL 20GM	EACH	00062-3130-11
DELFEN FOAM REFILL 20GM	EACH	00062-3130-13
DELFEN FOAM REFILL 50GM	EACH	00062-3130-12
EMKO FOAM W/APPL 40GM	EACH	00085-0050-01
EMKO FOAM REFILL 40GM	EACH	00085-0050-02
EMKO FOAM REFILL 90GM	EACH	00085-0050-03
GYNOL-II JELLY W/APPL 2.5 OZ	EACH	00062-3180-10
GYNOL-II JELLY REFILL 3.8 OZ	EACH	00062-3180-12
NORFORMS SUPPOSITORIES 6	EACH	00149-0101-06
NORFORMS SUPPOSITORIES 12	EACH	00149-0101-12
NORFORMS SUPPOSITORIES 24	EACH	00149-0101-24
ORTHO-CREME REFILL 2.15 OZ	EACH	00062-3190-04
ORTHO-CREME REFILL 3.45 OZ	EACH	00062-3190-05
ORTHO-GYNOL JELLY W/APPL 2.5 OZ	EACH	00062-3170-05
ORTHO-GYNOL JELLY REFILL 2.5 OZ	EACH	00062-3170-06
ORTHO-GYNOL JELLY REFILL 3.8 OZ	EACH	00062-3170-07
PROPHYLACTICS, RUBBER ONLY, PKG OF 3	EACH	00999-9000-03
PROPHYLACTICS, RUBBER ONLY, PKG OF 12	EACH	00999-9000-12
PROPHYLACTICS, RUBBER ONLY, PKG OF 36	EACH	00999-9000-36
SEMICID VAGINAL SUPP 10	EACH	00573-3301-10
SEMICID VAGINAL SUPP 20	EACH	00573-3301-21
TODAY CONTRACEPTIVE SPONGE 3	EACH	00573-3685-10
TODAY CONTRACEPTIVE SPONGE 6	EACH	00573-3685-20
TODAY CONTRACEPTIVE SPONGE 12	EACH	00573-3685-30

INSULIN PREPARATIONS

ACTRAPID INSULIN U100	CC	00003-2440-10
INSULIN BEEF NPH U100 ANY SIZE ILETIN-II	CC	00002-8312-01
INSULIN BEEF LENTE U100 ANY SIZE ILETIN-II	CC	00002-8412-01
INSULIN BEEF REG U100 ANY SIZE ILETIN-II	CC	00002-8212-01
INSULIN BEEF PROT ZN U100 ANY SIZE ILETIN-II	CC	00002-8112-01
INSULIN HUMULIN BR U100 ANY SIZE	CC	00002-8216-01
INSULIN HUMULIN REG U100 ANY SIZE	CC	00002-8215-01
INSULIN HUMULIN NPH U100 ANY SIZE	CC	00002-8315-01
INSULIN HUMULIN ULTRALENTE U100 ANY SIZE	CC	00002-8615-01
INSULIN HUMULIN 70/30 U100 ANY SIZE	CC	00002-8715-01
INSULIN ILETIN LENTE U40 ANY SIZE	CC	00002-8440-01
INSULIN ILETIN LENTE U100 ANY SIZE	CC	00002-8410-01
INSULIN ILETIN NPH U40 ANY SIZE	CC	00002-8340-01
INSULIN ILETIN NPH U100 ANY SIZE	CC	00002-8310-01
INSULIN ILETIN PROT ZN U40 ANY SIZE	CC	00002-8140-01
INSULIN ILETIN PROT ZN U100 ANY SIZE	CC	00002-8110-01
INSULIN ILETIN REG U40 ANY SIZE	CC	00002-8240-01
INSULIN ILETIN REG U100 ANY SIZE	CC	00002-8210-01
INSULIN ILETIN SEMILENTE U40 ANY SIZE	CC	00002-8540-01
INSULIN ILETIN SEMILENTE U100 ANY SIZE	CC	00002-8510-01
INSULIN ILETIN ULTRALENTE U40 ANY SIZE	CC	00002-8640-01
INSULIN ILETIN ULTRALENTE U100 ANY SIZE	CC	00002-8610-01
INSULIN PORK LENTE U100 ANY SIZE ILETIN-II	CC	00002-8411-01
INSULIN PORK NPH U100 ANY SIZE ILETIN-II	CC	00002-8311-01
INSULIN PORK PROT ZN U100 ANY SIZE ILETIN-II	CC	00002-8111-01
INSULIN PORK REG U100 ANY SIZE ILETIN-II	CC	00002-8211-01
INSULIN SQUIBB REG U40 ANY SIZE	CC	00003-3511-15
INSULIN SQUIBB REG U100 ANY SIZE	CC	00003-3512-15
INSULIN SQUIBB ISO/NPH U40 ANY SIZE	CC	00003-3521-15
INSULIN SQUIBB ISO/NPH U100 ANY SIZE	CC	00003-3522-15
INSULIN SQUIBB LENTE U40 ANY SIZE	CC	00003-3527-15
INSULIN SQUIBB LENTE U100 ANY SIZE	CC	00003-3528-15
INSULIN SQUIBB SEMILENTE U100 ANY SIZE	CC	00003-3552-15
INSULIN SQUIBB ULTRALENTE U100 ANY SIZE	CC	00003-3572-15
LENTARD INSULIN U100	CC	00003-2443-10
MONOTARD INSULIN U100	CC	00003-2442-10
NOVOLIN HUMAN LENTE INSULIN U100	CC	00003-1835-10
NOVOLIN HUMAN REG INSULIN U100	CC	0003-1833-10
NOVOLIN HUMAN NPH U100	CC	00003-1834-10
NOVOLIN 70/30 NPH	CC	00003-1837-10
NOVOLIN N PENFILL CARTRIDGES 5	CART	00003-1834-15
NOVOLIN R PENFILL CARTRIDGES 5	CART	00003-1833-15
NOVOLIN 70/30 PENFILL CARTRIDGES	CART	00003-1837-15
SEMITARD INSULIN U100	CC	00003-2441-10
ULTRATARD INSULIN U100	CC	00003-2445-10

DIABETIC TESTING MATERIAL

ACETEST REAGENT TABS 100	EACH	00193-2381-21
ALBUSTIX REAGENT STRIPS 100	EACH	00193-2870-21
AMES GLUCO SYSTEM LANCETS 100	EACH	00193-5509-21
AUTOLET COMBO PAC (USI)	EACH	00999-3100-01
AUTOLET KIT (AMES)	EACH	00193-2790-01
AUTOLET KIT (USI)	EACH	00999-3000-01
AUTOLET LANCETS (USI) 200	EACH	00999-3300-01

AUTOLET PLATFORMS (AMES) (REGULAR) 200	EACH	00193-2791-27
AUTOLET PLATFORMS (AMES) (SUPER) 200	EACH	00193-2797-27
AUTOLET PLATFORMS ORANGE (USI) 200	EACH	00999-3600-01
AUTOLET PLATFORMS YELLOW (USI) 200	EACH	00999-3500-01
B-D AUTOLANCE	EACH	00293-5771-01
B-D MICRO-FINE LANCETS 100	EACH	00293-5770-01
BILI-LABSTIX REAGENT STRIPS 100	EACH	00193-2814-21
CHEMSTRIP BG STRIPS 25	EACH	50924-0501-25
CHEMSTRIP BG STRIPS 50 USE W/ACCU-CHEK BG	EACH	50924-0503-50
CHEMSTRIP BG STRIPS 50 USE W/ACCU-CHEK II	EACH	50924-0502-50
CHEMSTRIP BG STRIPS 100 USE W/ACCU-CHEK II	EACH	50924-0508-10
CHEMSTRIP BG KIT	EACH	50924-0505-25
CHEMSTRIP K STRIPS 25	EACH	50924-0516-25
CHEMSTRIP K STRIPS 100	EACH	50924-0515-10
CHEMSTRIP UG STRIPS 100	EACH	50924-0511-10
CHEMSTRIP UGK STRIPS 50	EACH	50924-0514-50
CHEMSTRIP UGK STRIPS 100	EACH	50924-0513-10
CLINISTIX REAGENT STRIPS 50	EACH	00193-2844-50
CLINITEST ANALYSIS SET PKG	EACH	00193-2128-01
CLINITEST REAGENT TABS FOIL 100	EACH	00193-2159-21
CLINITEST REAGENT TABS 36	EACH	00193-2127-36
CLINITEST REAGENT TABS 100	EACH	00193-2126-21
COMBISTIX REAGENT STRIPS 100	EACH	00193-2867-21
DEXTROSTIX REAGENT STRIPS 10	EACH	00193-2888-10
DEXTROSTIX REAGENT STRIPS 25	EACH	00193-2888-25
DEXTROSTIX REAGENT STRIPS 100	EACH	00193-2888-21
DIASCAN TEST STRIPS 50	EACH	56151-0505-50
DIASTIX REAGENT STRIPS 50	EACH	00193-2802-50
DIASTIX REAGENT STRIPS 100	EACH	00193-2802-21
*EXACTECH TEST STRIPS 50	EACH	00338-8597-00
GENERAL PURPOSE LANCETS 100	EACH	00999-3325-01
*GLUCOFILM TEST STRIPS 25	EACH	00193-2585-25
*GLUCOFILM TEST STRIPS 50	EACH	00193-2582-50
*GLUCOFILM TEST STRIPS 100	EACH	00193-2583-25
GLUCOLET ENDCAPS (REGULAR) 100	EACH	00193-5700-21
GLUCOLET ENDCAPS (SUPER) 100	EACH	00193-5701-21
GLUCOLET LANCING DEVICE	EACH	00193-5976-10
GLUCOSCAN TEST STRIPS 50	EACH	53885-0173-12
GLUCOSCAN TEST STRIPS 100	EACH	53885-0174-12
GLUCOSTIX REAGENT STRIPS 50	EACH	00193-2627-50
GLUCOSTIX REAGENT STRIPS 100	EACH	00193-2628-21
KETO-DIASTIX REAGENT STRIPS 50	EACH	00193-2882-50
KETO-DIASTIX REAGENT STRIPS 100	EACH	00193-2882-21
KETOSTIX REAGENT STRIPS 20	EACH	00193-2880-20
KETOSTIX REAGENT STRIPS 50	EACH	00193-2880-50
KETOSTIX REAGENT STRIPS 100	EACH	00193-2880-21
MICROSTIX-NITRITE	EACH	00193-3007-03
MONOJECTOR LANCET DEVICE	EACH	08881-6021-17
MONOLET BLOOD LANCETS 200	EACH	08881-6020-18
MULTISTIX 7 REAGENT STRIPS 100	EACH	00193-2305-21
MULTISTIX 9 REAGENT STRIPS 100	EACH	00193-2301-21
MULTISTIX 8 SG REAGENT STRIPS 100	EACH	00193-2304-21
MULTISTIX 9 SG REAGENT STRIPS 100	EACH	00193-2302-21
MULTISTIX 10 SG REAGENT STRIPS 100	EACH	00193-2300-21
MULTISTIX REAGENT STRIPS 100	EACH	00193-2820-21
MULTISTIX SG REAGENT STRIPS 100	EACH	00193-2741-21
N-MULTISTIX REAGENT STRIPS 100	EACH	00193-2829-21
N-MULTISTIX SG REAGENT STRIPS 100	EACH	00193-2740-21
ONE TOUCH TEST STRIPS 50 VIAL	EACH	53885-0232-12
ONE TOUCH TEST STRIPS 50 FOIL-WRAPPED	EACH	53885-0254-50
SOFT TOUCH LANCETS 100	EACH	50924-0585-10
SOFT TOUCH LANCET DEVICE	EACH	50924-0580-01
TES-TAPE 1 PKG	EACH	00002-2344-41
*TRACER BG TEST STRIPS	EACH	50924-0535-50
TRENDSTRIPS REAGENT STRIPS 25	EACH	54993-2526-05
TRENDSTRIPS REAGENT STRIPS 50	EACH	54993-5026-05
UNILET LANCETS (USI) 200	EACH	00999-3400-01
URISTIX 4 REAGENT STRIPS 100	EACH	00193-2307-21
URISTIX REAGENT STRIPS 100	EACH	00193-2855-21

*Not Payable in PAAD (Reference is made to N.J.S.A. 30:4D-22d.)

APPENDIX C
Insulin Syringes and/or Needles

This listing provides assigned codes, which will serve as product identification for hypodermic syringes and/or needles, for the purpose of reimbursement. The assigned code must be entered in the drug code area of the prescription claim form (MC-6) when preparing claims for hypodermic syringes and/or needles.

Exception: When a prescribed syringe and/or needle is dispensed which is not listed under the "Product Description" section, the product should be described on the reverse side of the claim form (MC-6) and the statement, "Syringe and/or Needle" should be entered in the product name area on the face of the claim form. The description of syringe and/or needle is intended to be generic in nature; therefore, it is not limited to specific tradename products. When reporting "quantity dispensed" on the claim form (MC-6), indicate the number of syringes, needles or syringe/needle units dispensed. Example: If 2 packages of 10 syringe/needle units are prescribed and dispensed, enter "20" in the metric quantity box. Do not place any additional information in the metric quantity area.

When reusable syringes and/or needles are prescribed and dispensed, enter N/A (Non-applicable) in the "Days Supply" area on the prescription claim form (MC-6).

APPENDIX C
HYPODERMIC SYRINGE AND NEEDLES ASSIGNED PRODUCT CODES FOR ALL BRANDS*

Product Description	Reporting Unit	Assigned Product Code
NEEDLES, DISPOSABLE		
22G TO 25G, ALL LENGTHS	EACH	00293-5108-01
26G, ALL LENGTHS	EACH	00293-5109-01
27G, ALL LENGTHS	EACH	00293-5110-01
PEN NEEDLE (FOR USE WITH NOVOPEN)	EACH	00003-1852-35
NEEDLES, REUSABLE		
23G TO 27G, ALL LENGTHS	EACH	00293-1201-01
SYRINGES AND NEEDLE UNITS, DISPOSABLE		
INSULIN, U40, W/26G, ½" NEEDLE	EACH	00293-5567-01
INSULIN, U40 MICRO-FINE, 1cc	EACH	00293-8413-01
INSULIN, U100, MICRO-FINE, ½cc LODOSE	EACH	00293-8465-01
INSULIN, U100, MICRO-FINE, 1cc	EACH	00293-8410-01
INSULIN, U100, 28G, 3/10cc	EACH	00293-8430-01
INSULIN, LODOSE, ½cc	EACH	00293-8471-01
INSULIN, LODOSE, 1cc	EACH	00293-8412-01
INSULIN, 29G, 3/10cc	EACH	00293-8431-01
INSULIN, 29G, ½cc	EACH	00293-8466-01
INSULIN, 29G, 1cc	EACH	00293-8411-01
SYRINGES ONLY, GLASS REUSABLE WITH DISPOSABLE NEEDLES		
INSULIN, 1cc, U40, W/30 DISP NEEDLES 26G, ½"	EACH	00293-5008-01

SYRINGES ONLY, GLASS REUSABLE		
INSULIN, SHORT TYPE, GLASS TIP, 1cc FOR U40, U80, U40-80	EACH	00293-2022-01
INSULIN, LONG TYPE, GLASS LUER TIP U100 0.35cc	EACH	00293-2049-01
INSULIN, LONG TYPE, GLASS LUER TIP, U100 1cc	EACH	00293-2029-01

*NOTE: The Product Codes listed have been assigned for all syringes and needles or combination thereof, regardless of manufacturer.

APPENDIX D
LEGEND/NON-LEGEND DEVICES

Instructions for use:

1. Diaphragms are reported on the MC-6 claim form as "each" (enter "1" in metric quantity box).
2. Only those devices Legend or Non-Legend listed in Appendix D are reimbursable under the New Jersey Medicaid Program.

LEGEND DEVICES

DEBRISAN BEADS 25GM	EACH	00137-0024-05
DEBRISAN BEADS 60GM	EACH	00137-0024-06
DEBRISAN BEADS 120GM	EACH	00137-0024-12
DEBRISAN BEADS 7 UNIT DOSES OF 4 GM	GM	00137-0024-17
DEBRISAN BEADS 14 UNIT DOSES OF 4 GM	GM	00137-0024-27
DEBRISAN PASTE 6 UNIT DOSES OF 10GM	GM	00137-0024-10
DIAPHRAGM—ALL FLEX KIT ANY SIZE PKG.	EACH	00062-3301-00
DIAPHRAGM—KORO-FLEX KIT ANY SIZE PKG.	EACH	00027-0136-60
DIAPHRAGM—KORO-FLEX SET ANY SIZE PKG.	EACH	00027-0536-70
DIAPHRAGM—KOROMEX ANY SIZE PKG.	EACH	00027-0131-75
DIAPHRAGM—KOROMEX SET ANY SIZE PKG.	EACH	00027-0541-80
DIAPHRAGM—ORTHO KIT/COIL ANY SIZE PKG.	EACH	00062-3341-00
DIAPHRAGM—ORTHO KIT/FLAT ANY SIZE PKG.	EACH	00062-3381-00
ENVISAN TREATMENT MULTIPAK	EACH	00088-5000-02
GELFOAM STERILE POWDER IGM	EACH	00009-0433-01
HEALON INJ/DISP. SYRINGE (4 X .75CC)	EACH	00016-0311-04
INHAL-AID DRUG DELIVERY SYSTEM	EACH	00085-4600-01
INSPIREASE DRUG DELIVERY SYSTEM	EACH	00085-4602-02
INSPIREASE REPLACEMENT BAGS	EACH	00085-4602-12
INTAL SPINHALER INHALER	EACH	00585-1011-01
NOVOLIN PEN INSULIN DELIVERY DEVICE	EACH	00003-1875-35
ORTHO UNIVERSAL INTRODUCER	EACH	00062-3630-00

NON-LEGEND DEVICES

ACTIDERM DERMATOLOGICAL PATCH 5	EACH	00003-0375-05
AEROCHAMBER DEVICE	EACH	00456-3154-67
AEROCHAMBER WITH MASK	EACH	00456-8745-13
RESPIGARD II NEBULIZER 20	NEB.	00293-1240-30
RESPIGARD II NEBULIZER 50	NEB.	00293-1240-31
SWIVEL NUT AND TAIL PIECE CONNECTOR (For use with Respigard)	EACH	00293-1935-00

APPENDIX E
PROTEIN REPLACEMENTS AND OTHER SPECIAL ITEMS

The following products require prior authorization:

Instructions for use:

The following products have been added to the Medicaid File for claim processing purposes.

Contact the appropriate Medicaid District Office (MDO) for prior authorization.

When prior authorization has been obtained from the Medicaid District Office Unit, complete the claim form MC-6. Report the quantity dispensed only as total number of cans, bottles, capsules, nursettes, etc., dispensed. DO NOT report grams or cc. Use only the NDCs or product codes listed for each product.

APPENDIX E
PROTEIN REPLACEMENTS AND OTHER SPECIAL ITEMS

Product Description	Reporting Unit	Assigned Product Code
ALIMENTUM LIQUID 32OZ	EACH	70074-0602-37
CASEC POWDER 2.5 OZ	EACH	00087-0390-07
CITROTEIN POWDER 14OZ	EACH	00212-1700-08
COMPLEAT-B R.T.U. 8 OZ BOTTLE	EACH	00212-0200-40
COMPLEAT-B R.T.U. 8 OZ CAN	EACH	00212-0200-51
ENSURE LIQUID 8 OZ CAN ALL FLAVORS	EACH	00074-4014-08
ENSURE LIQUID 32 OZ CAN	EACH	00074-5564-32
ENSURE LIQUID 8 OZ BOTTLE	EACH	00074-5562-08
ENSURE LIQUID 14 OZ	EACH	00074-5561-14
ENSURE PLUS LIQUID 8 OZ BOTTLE	EACH	00074-3021-08
ENSURE PLUS LIQUID 8 OZ CAN ALL FLAVORS	EACH	00074-9780-08
GEVRAL PROTEIN 0.5 LB	EACH	00005-4223-61
GEVRAL PROTEIN 5 LB	EACH	00005-4223-70
ISOCAL LIQUID 8 OZ CAN	EACH	00087-0355-01
ISOCAL LIQUID 12 OZ CAN	EACH	00087-0355-02
ISOCAL LIQUID 32 OZ CAN	EACH	00087-0355-44
ISOCAL LIQUID 8 OZ BOTTLE	EACH	00087-0356-01
LACTRASE CAPSULES 100	CAP	00091-3500-01
LOFENALAC POWDER 1 LB	EACH	00087-0340-42
LOFENALAC POWDER 2.5 LB	EACH	00087-0340-01
LONALAC POWDER 1 LB	EACH	00087-0391-01
MEAT BASE FORMULA 15 OZ	EACH	00999-2504-01
MERITENE POWDER 1 LB ALL FLAVORS	EACH	00212-1220-02
MERITENE POWDER 4.5 LB ALL FLAVORS	EACH	00212-1220-03
MEYENBERG GOAT MILK LIQUID 14.5 OZ	EACH	00999-0400-01
MEYENBERG GOAT MILK POWDER 14 OZ	EACH	00999-0400-02
NURSOY CONCENTRATE 13 OZ	EACH	00008-0481-01
NURSOY R.T.U. 32 OZ	EACH	00008-0452-04
NUTRAMIGEN POWDER	EACH	00087-0338-01
OSMOLITE R.T.U. 8 OZ CAN	EACH	00074-0709-08
PEDIALYTE R.T.U. BOTTLES 240CC	EACH	00074-6470-08
PEDIALYTE R.T.U. BOTTLES 960CC	EACH	00074-6470-32
PEDIALYTE R.T.U. 960CC	EACH	00074-6471-32
PEDIASURE 8OZ CAN	EACH	70074-4037-30
POLYCOSE LIQUID 4 OZ	EACH	00074-5554-04
POLYCOSE POWDER 14 OZ	EACH	00074-5000-14
PORTAGEN POWDER 1 LB	EACH	00087-0387-01
PREGESTIMIL POWDER 1 LB	EACH	00087-0367-01
PROSOBEE CONCENTRATE LIQUID 13OZ	EACH	00087-0308-01
PROSOBEE R.T.U. LIQUID 8 OZ	EACH	00087-0309-42
PROSOBEE R.T.U. LIQUID 32 OZ	EACH	00087-0309-01
PULMOCARE 8OZ CAN (ANY FLAVOR)	EACH	70074-4069-90
RESOURCE CRYSTALS PACKETS 2 OZ	PKT	00212-3233-25

RESOURCE LIQUID 8OZ (ANY FLAVOR)	EACH	00212-3371-62
RESOURCE PLUS LIQUID 8OZ (ANY FLAVOR)	EACH	00212-3381-62
RICELYTE 32OZ	EACH	00087-1403-02
SIMILAC ISOMIL CONCENTRATE 13 OZ	EACH	00074-2110-01
SIMILAC ISOMIL R.T.U. 8 OZ	EACH	00074-0173-01
SIMILAC ISOMIL R.T.U. 32 OZ	EACH	00074-0230-01
SOYALAC CONCENTRATE 13 OZ	EACH	41470-0535-00
SOYALAC R.T.U. 32 OZ	EACH	41470-0527-00
SOYALAC POWDER 14 OZ	EACH	40470-0533-00
SUSTACAL LIQUID 8 OZ ALL FLAVORS	EACH	00087-0350-42
SUSTACAL LIQUID 12 OZ ALL FLAVORS	EACH	00087-0350-01
SUSTACAL LIQUID 32 OZ ALL FLAVORS	EACH	00087-0350-44
SUSTACAL POWDER 1 LB	EACH	00087-0353-44
SUSTAGEN POWDER 1 LB	EACH	00087-0394-01
SUSTAGEN POWDER 5 LB	EACH	00087-0393-03
TOLEREX PACKETS 6 × 80GM	EACH	00149-0458-01
VIVONEX DELIVERY SYSTEM 10 SYSTEM	EACH	00149-0050-10
VIVONEX FLAVOR PAK 2.33 GM ALL FLAVORS	EACH	00149-0058-02
VIVONEX T.E.N. PACKETS 10 × 80GM	EACH	00149-0067-01

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Hospital Services Manual, Special Hospital Services Manual

Reduction in Reimbursement for Covered Hospital Outpatient Services for General Hospitals, Special (Classification A and B) Hospitals and Private Psychiatric Hospitals

Adopted Amendments: N.J.A.C. 10:52-1.6 and 1.14; 10:53-1.5 and 1.13

Proposed: May 6, 1991 at 23 N.J.R. 1326(a)
Adopted: June 11, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: June 11, 1991 as R.1991 d.352, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4D-6(a)(2); 30:4D-7.

Effective Date: July 1, 1991.
Expiration Date: February 8, 1995, N.J.A.C. 10:52;
April 27, 1995, N.J.A.C. 10:53.

Summary of Public Comments and Agency Responses:
The following persons commented on the proposal:

James W. Heflin, Senior
Vice President—Fiscal Affairs
Our Lady of Lourdes Medical Center

Richard Henwood, Manager of Reimbursement
Community Medical Center

Robert Ragona, Chief Financial Officer
Bergen Pines County Hospital

Gerald Tofani, Vice President for Finance
St. Peters Medical Center

Gary J. Mann, Senior Manager
KPMG Peat Marwick

Louis P. Scibetta, FACHE, President
New Jersey Hospital Association

Michael Kochka
Director of Reimbursement Services
Health Care Finance
University of Medicine and Dentistry of New Jersey

Anthony Y. Kite
Director of Finance
St. Francis Medical Center

Edward J. Sekula, Jr.
VP/Chief Financial Officer
Wallkill Valley Hospital and Health Centers

The commenters opposed the 4.4 percent reduction in outpatient services for State fiscal year 1992. In general, the commenters feel that the reduction will have a clear negative impact on the hospitals financially and that this will hinder their ability to render services to the poor and needy. Two hospitals also feel that this Division is in violation of State law by not going through the Hospital Rate Setting Commission for approval of the reduction.

The Division of Medical Assistance and Health Services is bound by the proposed State Appropriations for 1992 which includes this reduction. Regarding the comment on participation by the Hospital Rate Setting Commission, reimbursement for Medicaid covered outpatient services is not governed by Chapter 83 Reimbursement System. Therefore, approval by the Hospital Rate Setting Commission is not needed.

Summary of Changes Between Proposal and Adoption:

The Division is making one change upon adoption which relates to the public comments but is really a Division-initiated change. Language is being added to N.J.A.C. 10:52-1.6 and 1.14 and N.J.A.C. 10:53-1.5 and 1.13 which indicates that only the outpatient services subject to the cost-to-charge ratio will be subject to the 4.4 percent reduction. This amendment upon adoption prevents outpatient services that are reimbursed on a fee-for-service basis from being subject to the 4.4 percent reduction. The outpatient services that all remain at their current reimbursement level are outpatient dental services, end-stage renal disease, some laboratory and some Healthstart services. This change is not considered to be a substantive change because it does not enlarge or curtail the person(s) who will be affected, nor does the change impose any additional burden on the person(s) affected. The two major groups affected by the rules are Medicaid recipients and hospital outpatient departments treating Medicaid recipients. The rules, when proposed, reduced payment for all outpatient services by 4.4 percent when read literally. The change upon adoption clarifies the fact that the services reimbursed on a fee-for-service basis will retain their current level of reimbursement and will not be subject to the 4.4 percent reduction. The retention of this current level of reimbursement for such services will be less burdensome to providers. Medicaid recipients will continue to receive services because there is no change in the availability of services.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***).

10:52-1.6 Outpatient hospital services—basis of payment

(a) (No change.)

(b) The New Jersey Medicaid Program shall reimburse providers for covered services in a hospital outpatient department consistent with the following conditions and reimbursement methodology:

1.-2. (No change.)

3. Effective for services rendered on or after July 1, 1991, and until further notice, the Division shall reduce the reimbursement rates for covered outpatient services ***subject to the cost-to-charge ratio*** in general hospitals by 4.4 percent. Also, the final settlement for covered outpatient services ***subject to the cost-to-charge ratio*** shall be the lower of costs or charges minus 4.4 percent.

(c) (No change.)

10:52-1.14 Hospital benefits in an approved private psychiatric hospital

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

(c) Effective for services rendered on or after July 1, 1991, and until further notice, the Division shall reduce the reimbursement rates for covered outpatient services ***subject to the cost-to-charge ratio*** in the private psychiatric hospitals by 4.4 percent. Also, the final settlement for covered outpatient services ***subject to the cost-to-charge ratio*** shall be the lower of costs or charges minus 4.4 percent.

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

10:53-1.5 Outpatient hospital services: general provisions and basis of payment

(a) Outpatient hospital services in special hospitals are:

1.-2. (No change.)

3. Effective for services rendered on or after July 1, 1991, and until further notice, the Division shall reduce the reimbursement rates for covered outpatient services ***subject to the cost-to-charge ratio*** in the special (Classification A and B) hospitals by 4.4 percent. Also, the final settlement for covered outpatient services ***subject to the cost-to-charge ratio*** shall be the lower of costs or charges minus 4.4 percent.

10:53-1.13 Hospital benefits in an approved private psychiatric hospital

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

(c) Effective for services rendered on or after July 1, 1991, and until further notice, the Division shall reduce the reimbursement rates for covered outpatient services ***subject to the cost-to-charge ratio*** in the private psychiatric hospitals by 4.4 percent. Also, final settlement for covered outpatient services ***subject to the cost-to-charge ratio*** shall be the lower of costs or charges minus 4.4 percent.

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

(a)

DIVISION OF MEDICAL ASSISTANT AND HEALTH SERVICES

Medically Needy Manual

Readoption with Amendments: N.J.A.C. 10:70

Proposed: April 1, 1991 at 23 N.J.R. 964(a).
Adopted: June 6, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: June 7, 1991 as R.1991 d.331, **without change.**

Authority: N.J.S.A. 30:4D-3i(8), 30:4D-6g, 30:4D-7, 7a, b and c.

Effective Date: June 7, 1991, Readoption;
July 1, 1991, Amendments.
Expiration Date: June 7, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:70.

Full text of the adopted amendments follows.

10:70-2.1 Application

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

(c) As part of the application process, the program applicant has the responsibility to:

1. (No change.)

2. Assist the county welfare agency in securing evidence that verifies his or her statements;

3.-5. (No change.)

(d)-(f) (No change.)

10:70-2.6 Redetermination of medical factors

(a) Except for persons receiving Social Security benefits as a result of disability or blindness, the factors of disability and blindness will be redetermined at intervals established by the Division of Medical Assistance and Health Services, Disability Review Section.

(b) (No change.)

10:70-3.3 Residency

In order to be eligible for the Medically Needy Program, an individual must be a resident of the State of New Jersey. State residence shall be determined in accordance with the rules at N.J.A.C. 10:71-3.5, 3.7 and 3.8.

10:70-3.4 Eligibility group criteria

(a) (No change.)

(b) AFDC-related: The following eligibility groups are within the AFDC-related eligibility category:

1. Pregnant women: Needy women of any age during the term of a medically verified pregnancy, through the end of the month during which the 60th day from delivery occurs.

i. A child born to a woman eligible as a pregnant woman under the provisions of this chapter shall remain eligible for a period of not less than 60 days from his or her birth, and up to one year so long as the mother remains eligible for Medicaid, or would remain eligible if pregnant, whether or not application has been made, if the child lives with his or her mother.

2. (No change.)

(c) SSI-related: The following eligibility groups are within the SSI-related eligibility category:

1.-2. (No change.)

i. (No change.)

ii. Except for persons described in (c)2i above, the determination of statutory blindness is the responsibility of the Division of Medical Assistance and Health Services, Disability Review Section.

3. Disabled: Needy persons who are disabled. Disability is the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. The severity of impairment must be such that the individual is unable to do his or her previous work or any other substantial gainful activity which exists in the national economy. In the determination of a person's ability to do any other work, residual functional capacity, age, education, and work experience are considered.

i.-ii. (No change.)

iii. Except for persons described in (c)3ii above, the determination of disability is the responsibility of the Division of Medical Assistance and Health Services, Disability Review Section.

(d) (No change.)

10:70-3.5 Budget unit

(a) (No change.)

(b) For AFDC-related persons (pregnant women and children under the age of 21), the budget unit shall be consituted as follows:

1. A pregnant woman shall comprise a budget unit of two (except in medically verified cases of multiple pregnancy, where the budget unit shall consist of the pregnant woman and the confirmed number of fetuses). If the pregnant woman is married and living with her husband, the budget unit shall consist of one additional person. The woman's natural or adoptive children under the age of 21, living in the same household, shall be included in the budget unit. If the pregnant woman is under the age of 21 and resides in the same household as her natural or adoptive parents, the parents shall be included in the budget unit.

2.-3. (No change.)

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

10:70-4.2 Eligibility periods

(a) (No change.)

(b) The prospective eligibility period is the six calendar months beginning with the month of application. Once established, the prospective eligibility period will not be changed unless the case becomes ineligible for the Medically Needy program during the eligibility period. Upon reapplication for the program, a new prospective eligibility period will be established.

1. Except for certain pregnant women, eligibility does not extend beyond the end of the eligibility period. A pregnant woman, who delivers her child near the end of the six-month eligibility period, may be eligible for a period exceeding six months if her post-partum extended eligibility exceeds the last day of the prospective eligibility period (see N.J.A.C. 10:70-3.4(b)1). In all other cases, continuation of program benefits is contingent upon a redetermination of all factors of eligibility (see N.J.A.C. 10:70-2.5). Any period of eligibility for a pregnant woman which exceeds the prospective eligibility period under the provisions of N.J.A.C. 10:70-3.4(b)1 shall be without regard to income or resources for such additional period of time.

10:70-4.6 Countable income: SSI-related cases

(a) Except as specified below, countable income for SSI-related cases shall be determined in accordance with rules applicable to income in Medicaid Only—Aged, Blind, and Disabled (see N.J.A.C. 10:71-5).

1. The disregard of cost-of-living increases in Social Security benefits provided for in N.J.A.C. 10:71-5.3(a)7x and xi do not apply in the Medically Needy program.

2. The deeming of the income of an alien's sponsor as provided for at N.J.A.C. 10:71-5.7 does not apply.

(b) (No change.)

(c) In circumstances as follow, an SSI-related case will have the value of in-kind support and maintenance counted as unearned income.

1. Any SSI-related adult, who would in accordance with rules at N.J.A.C. 10:71-5.6(c) be determined to be "living in the household of another", shall be considered to have unearned income in the amount specified at N.J.A.C. 10:71-5.4(a)12 less $20.00. The amount of income so assigned is not rebuttable.

2. Any SSI-related person or other than those addressed in (c)1 above, to whom food, clothing, or shelter is given or paid for by someone other than by a spouse, a parent, or a minor child residing in the same household, shall be presumed to receive in-kind support and maintenance. The presumed value of the support and maintenance will be the values specified at N.J.A.C. 10:71-5.4(a)12. The presumed value so assigned may be rebutted in accordance with the provisions of that subsection.

(d) Deeming of income: In accordance with the rules at N.J.A.C. 10:71-5.5, the income of an ineligible spouse shall be deemed to the eligible spouse when they are residing in the same household. Income of the parent(s) of an SSI-related child under the age of 18 residing in the same household shall be deemed available to the child in the determination of eligibility for Medically Needy benefits. Income shall not be deemed from any person whose income is counted in determining income eligibility for an AFDC-related case which is eligible for the Medically Needy program.

1.-2. (No change.)

10:70-5.3 SSI-related cases

(a) For SSI-related cases, the resource provisions of the Medicaid Only (Aged, Blind, and Disabled) program shall apply in determining countable resources for the Medically Needy program.

1. Medicaid Only provisions requiring the deeming of the resources of an alien's sponsor (N.J.A.C. 10:71-4.6(f), do not apply in the Medically Needy program.

(b) The provisions relating to deeming of resources found at N.J.A.C. 10:71-4.6 apply in SSI-related cases. In the deeming of resources from one parent to a child, the countable parental resource in excess of the Medicaid Only resource limit for an individual shall be deemed to the child. When the resources of two parents must be deemed to a child, countable parental resources in excess of the Medicaid Only resource limit for a couple shall be deemed to the child.

10:70-5.4 Transfer of resources

(a) (No change).

(b) For SSI-related cases, the Medicaid Only program policy regarding the transfer of resources (N.J.A.C. 10:71-4.7) shall apply to all members of the budget unit.

10:70-6.2 Allowable incurred medical expenses

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

(d) To the extent that payment of any bill for medical service is the responsibility of a third party (for example, a health insurer), the expense shall not be applied against spend-down liability. An exception would be made for any medical expense paid by a State or territory, or a subdivision of a State or territory (except for a Medicaid program), if the program is financed by a State or territory.

(e) (No change.)

10:70-7.3 Case records

(a) (No change.)

(b) The case record shall include:

1. (No change.)

2. All medical reports and a record of action of the Disability Review Section as appropriate.

3.-4. (No change.)

(c)-(e) (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

Classification Process
Restoration of Forfeited Commutation Time
Adopted Amendment: N.J.A.C. 10A:9-5.5

Proposed: May 6, 1991 at 23 N.J.R. 1261(a).
Adopted: June 10, 1991 by Richard A. Seidl, Acting Commissioner, Department of Corrections.
Filed: June 10, 1991 as R.1991 d.346, **without change.**

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

Effective Date: July 1, 1991.
Expiration Date: January 20, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10A:9-5.5 Restoration of forfeited commutation time

(a) (No change.)

(b) An inmate who receives a parole date or will reach the expiration of his or her maximum sentence, at any point in the third one year period and has been charge free during both the first and second one year periods may, at the discretion of the Superintendent, have the commutation credits which the inmate could earn in the third year period restored on a prorated basis.

1. A grant of credits on a prorated basis is applicable only when the parole date or expiration of maximum sentence falls in the third one year period and only where the inmate has had 50 percent of the forfeited credits already restored.

2. (No change.)

(c) Any inmate who feels that he or she meets the qualifications for restoration must submit an application for restoration of commutation credits to the Institutional Classification Committee (I.C.C.) for consideration at the appropriate time intervals. The I.C.C. will not act unless an inmate submits an application. A recommendation on restoration shall be made in accordance with this subchapter by the I.C.C. and forwarded to the Superintendent, who shall then order the restoration.

Example: An inmate commits a disciplinary infraction on June 30, 1987. The sanction imposed includes a forfeiture of 160 commutation credits. The inmate receives no findings of guilty through the disciplinary process between June 30, 1987 and June 30, 1988. The inmate, therefore, has 40 credits restored on June 30, 1988. The inmate is again free of guilty findings from June 30, 1988 through June 30, 1989 and has another 40 credits restored. The inmate is to be paroled or will reach the expiration of his or her maximum sentence on March 30, 1990. Thus, he or she will only serve nine months (or ¾) of the third year. The Superintendent, in his or her discretion, may restore 75 percent of the 40 credits or 30 credits as of March 30, 1990.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Plumbing and Energy Subcodes
Adopted Amendments: N.J.A.C. 5:23-3.15 and 3.18

Proposed: March 18, 1991 at 23 N.J.R. 804(a).
Adopted: May 31, 1991, by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: June 4, 1991 as R.1991 d.326, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: July 1, 1991.
Operative Date for N.J.A.C. 5:23-3.15(b)18i: January 1, 1992.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:

The Department received a total of 113 comments on the proposed amendments to the plumbing subcode. There were 99 comments from wholesale distributors, six comments from manufacturers, two comments from governmental agencies or departments, and six comments from other interested parties. A list of the commenters follows:

David H. Koenig
Pineland Plumbing & Heating Supply, Inc.

Robert A. Palko
Palko Engineering & Supply Co.

Marc Zitcer, President
Sachs & Zitcher Supply Corp.

Anthony DeChellis
Westfield Plumbing & Heating Supply Com.

Barry Ratner
Atlantic Plumbing Supply Corp.

Brian J. Skowronek
E & B Distributors

Norman Starr, President
Community Plumbing Supply

Karl D. Miller
Vice-President
Gerber Plumbing Fixtures Corp.

Charles T. Lyons, Jr.
East Brunswick Supply, Inc.

Wayne Lyons, Sec.
East Brunswick Supply, Inc.

Richard Lyons
East Brunswick Supply, Inc.

Mrs. Helen Lyons, President
East Brunswick Supply, Inc.

Mr. A. Lauer, Sr.
Garber Supply, Inc.

Theodore Van Schoist
Hargill Supply Co., Inc.

Bruce Tucker, President
GPS Plumbing Supply, Inc.

George Richard Connolly
Ferguson Enterprises, Inc.

D.H. Behrenel
BHR, Inc.

Emil Matera, President
Davidson Supply Corp.

Kenneth DeFillippo
Phillips Plumbing Supply

Alexander DelGrosso, President
Master Plumbing & Heating Supply Co.

Steven S. Gordon
Somerset Plumbing Supply Co.

James Mitchell
Sussex County Plumbing & Heating Supply Co.

Thomas D. Palermo
Palermo Supply 6

Morris Schalef
Roselle Plumbing & Heating Supply Co.

Hackettstown Supply Co.

Frank Gbor
Boro Supply Co.

Lawrence Zitomer
American Plumbing & Heating Supply, Inc.

Frederick A. Hartel
John M. Hartel & Co., Inc.

Ronald Vernon
Penn Supply, Inc.

Tom Halleran, Sales
Hudson Heating Wholesaler, Inc.

Robert H. Kessler, President
Hudson Heating Wholesaler, Inc.

Jerry Connell, President
Hudson Heating Wholesaler, Inc.

David Vaccaro, Vice-President
Hudson Heating Wholesaler, Inc.

Jules Levine, Vice-President
Hudson Heating Wholesaler, Inc.

Barbara Lechleiter, Secretary
Hudson Heating Wholesaler, Inc.

Steve Jennings, Regional Sales Manager
Hudson Heating Wholesaler, Inc.

Bill Sharlow, Sales Manager-Plumbing
Hudson Heating Wholesaler, Inc.

Barbara Lechleiter, Secretary
Kessler Industries, Inc.

Jules Levine, Treasurer
Kessler Industries, Inc.

Mark Lasser, Regional Sales Manager
Kessler Industries, Inc.

Neil Kessler, Vice-President
Kessler Industries, Inc.

Stanley Gartinele, Vice-President
Kessler Industries, Inc.

Alan Cohen, Vice-President
Kessler Industries, Inc.

Robert Kessler, President
Kessler Industries, Inc.

R.J. McPell
R & S Plumbing, Inc.

M. Mauro
R & S Plumbing, Inc.

Frank McCambly
R & S Plumbing, Inc.

Pearl Lermoin
R & S Plumbing, Inc.

F. Robert Graff, Jr.
R & S Plumbing, Inc.

Michael Zahn
R & S Plumbing, Inc.

Joseph Levinson
R & S Plumbing, Inc.

Kathleen Hilliard
R & S Plumbing, Inc.

Jill Freedman, President
Environmental Distribution Services

Andrew Cattano
New Jersey Builders Association

Jack Eisenberg, Vice-President
Ridgewood Corporation

Clark Brinkerhoff
Ridgewood Corporation
Susan Weisman
Delaware River Basin Commission
George Schillington
Universal Rundel
Ecenque Kiquefeuer
Mario Supply Co.
Allan J. Dickson, Jr.
Dickson Supply Co.
Norman B. Glaser, President
Omega Plumbing & Heating Supply Co.
Richard Egbert
James A. Sargent, Supervisor
Codes and Standards
Kohler Company
James L. McMahon
L & H Plumbing & Heating Supplies
Kent Laufer
Shore Industrial & Plumbing Supply Co.
William Stanbach
Grant Supply Company, Inc.
Thomas Cerini, President
Essex Plumbing Supply Co.
Carole McLean
Freewood Acres Plumbing Supply
Ginny Lyons
Freewood Acres Plumbing Supply
R.J. McLean
N.V. Egbert & Company
Ronnie Glassman
Bloomfield Plumbing & Heating Supply Co.
Stanley Depczek
Bloomfield Plumbing & Heating Supply Co.
Nelson Aida
Bloomfield Plumbing & Heating Supply Co.
Gina Lamberschire
Bloomfield Plumbing & Heating Supply Co.
Al Lassera
Bloomfield Plumbing & Heating Supply Co.
Andrew Whitehead
Hanover Supply Co.
William Jericho
E.D.S.
R.B. Martin
w/c Technology Corporation
Myron R. Arment
Director, Product & Development
Eljer
Leroy Cattaneo, P.E., P.P.
Deputy Director
Division of Water Resources
Department of Environmental Protection
Milton Chinitz, President
NJ Plumbing Supply Co., Inc.
Charles Schlat, President
Van Houten Plumbing & Heating Supply Company
Lawrence Kantor, Jr.
Tom Howard
Ridgewood Corp.—Tenafly
Jere Lawrence
MAWA
Michael Hartel
John M. Hartel & Co.
Veronica Poole
Caldwell Plumbing & Heating Supply Co.
Barbara Cassera
Caldwell Plumbing & Heating Supply Co.
Alfred Cassera, Sr.
Caldwell Plumbing & Heating Supply Co.
Harry Berris
Caldwell Plumbing & Heating Supply Co.
Al Cassera
Caldwell Plumbing & Heating Supply Co.
Peter Cassera
Caldwell Plumbing & Heating Supply Co.
Walter E. Gregg, III
Caldwell Plumbing & Heating Supply Co.
Chris Cassera
Caldwell Plumbing & Heating Supply Co.
Tony Scole
Sanitary Supply Co.
Robert Pisner
Roberts Plumbing Supply Co.
Jeffrey Aaron
Aaron and Co.
Samuel Weinstock
Weinstock Supply Co.
Ann Hutchinson
Hutchinson, Inc.
Alan Gazzard
Caldwell Plumbing & Heating Supply Co.
Timothy Hagan
Ridgewood Corporation
The Honorable Arthur Albohn
Assemblyman, 25th District
Wayne B. McMullin
W.V. Egbert & Co.
Sarah L. Healey, President
Pompton Plumbing & Heating Supply Co.
Leonard Campagna
USCO Inc.
Bryan A. Wallace, Manager
Bridgeton Plumbing & Heating Supply

COMMENT: The Department received the same comment 84 times from various wholesale distributors, and also received 15 additional comments from other wholesale distributors. All protested a phase-in period that they considered to be inadequate and requested additional time to sell existing stock. Several commenters mentioned that luxury units present a difficult business problem because they remain in stock much longer than do the less expensive models. Two commenters requested phase-in periods of one year.

RESPONSE: The Department understands that new requirements can result in difficulties. However, although commenters declared that the current phase-in period would cause business hardship, none presented data to support this statement. Therefore, the Department has adopted the amendments as proposed, with an operative date of January 1, 1992 for N.J.A.C. 5:23-3.15(b)18i. However, the Department also asks for clear data from the wholesale distributors depicting the extent of the problem. Upon receipt and review of that data, the Department will consider extending the effective date in areas of New Jersey outside the Delaware River Basin Commission jurisdiction.

COMMENT: Several commenters expressed support for the limitation of gravity low volume water closets to residential applications. Several manufacturers requested that the Department allow the use of gravity low volume water closets in R-2 and R-1 use groups. One manufacturer requested that the Department only distinguish the heavy use applications, such as sports arenas or transportation facilities, and allow the use of 3.5 gallon per flush commercial water closets in those applications. Two commenters requested that the Department limit the requirement of pressurized low volume water closets to a single, isolated unit with a long, horizontal run. Three commenters expressed support for the proposal, but stated that there is no need to make a distinction between residential and commercial applications. One commenter stated that the distinction should be made in the effectiveness of the unit and not by the kind of mechanism used.

RESPONSE: The Department agrees that gravity low volume water closets should be allowed in residential applications and in those settings similar to residential applications. Therefore, the Department withdraws

the requirement of pressurized low volume water closets in R-1, R-2, and I use groups. The Department is also persuaded that the pressurized units are needed in those applications with little water from other sources as well as in those applications that have single, isolated fixtures with a long horizontal run. Therefore, the Department withdraws the pressurized low volume water closet requirement in the U use group; this extends the Department's reasoning in having omitted S and F use groups from the pressurized water closet requirement in the proposal. The Department has made the distinction in the application of gravity and pressurized water closets based on technical information from the ANSI tests and from the latest technical research. It is not the Department's policy to make technical determinations that are not substantiated by technical research or performance standards. Therefore, the Department declines the suggestion that it make determinations of effectiveness.

COMMENT: Two commenters asked that the appropriate ANSI (American National Standards Institute) standard be included in the rule.

RESPONSE: The ANSI standards (ANSI A112.19.2 and A112.19.6) are referenced in the 1990 National Standard Plumbing Code. Therefore the standards do not also need to be specified in this amendment, since they are already incorporated by reference.

COMMENT: Many wholesale distributors suggested that the Department use the date of manufacture included on the water closet as the effective date and allow units manufactured before the effective date to be sold until inventory is exhausted.

RESPONSE: The Department has a well-established and effective enforcement procedure based on the date of application for plan review or permit. To introduce a different enforcement mechanism for one product would be confusing and ineffective. Therefore, the Department declines to implement this suggestion. However, as previously stated, the Department seeks data on supply problems from wholesale distributors and other affected groups. Upon receipt of the data, the Department will consider extending the effective date in the areas of the state outside Delaware River Basin Commission jurisdiction.

COMMENT: One commenter expressed concern with product performance and asked that the Department wait until all results of field studies are available. This commenter also suggested that the effect of the reduced water on the plumbing system is uncertain and asked that the Department delay adoption until the results of further studies are available.

RESPONSE: The Department has sought the most recent technical data and is satisfied that the rules, as amended, reflect the latest technical information.

COMMENT: One manufacturer expressed concern that all types of pressurized water closets are not listed in the regulation and infers that this means that flush valve water closets are not eligible for commercial installation. The commenter requests that flush meter flush valve water closets be eligible for commercial installation.

RESPONSE: The Department is confused by this comment, since flush meter flush valve units are pressurized systems and therefore may be used in commercial applications, according to this rule.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

5:23-3.15 Plumbing subcode

(a) (No change.)

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

1.-17. (No change.)

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

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

ii.-v. (No change.)

19. (No change.)

5:23-3.18 Energy subcode

(a) (No change.)

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

1.-4. (No change.)

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

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

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

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

6.-8. (No change.)

(c) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Elevator Safety Subcode

Adopted New Rules: N.J.A.C. 5:23-12

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

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

Proposed: March 18, 1991 at 23 N.J.R. 805(a).

Adopted: May 31, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: June 4, 1991 as R.1991 d.325, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with N.J.A.C. 5:23-12.2(c) (proposed as 12.2(e)) not adopted but pending future adoption.**

Effective Date: July 1, 1991.

Expiration Date: March 1, 1993.

Summary of Hearing Officer's Recommendations and Agency Responses:

Charles M. Decker conducted a hearing on April 17, 1991 in Lawrenceville, New Jersey, which was attended by 15 people. Mr. Decker made no special recommendations, but agreed that Department staff would consider the issues raised at the hearing, prior to filing the adoption of the new rule and amendments.

Summary of Public Comments and Agency Responses:

The following provided comments on the proposed rulemaking:

Mark Anderson	Eastern Pennsylvania Association of Elevator Contractors
Glenn W. Ashford	National Elevator Industry, Inc.
Jeanne C. Bauer	ESIA
Chuck Buckman	NEIS
Robert F. Dieter	Dover Elevator Company
Bill Mason	Bell Atlantic Properties
Connie Des Rochers	Sandoz Pharmaceuticals
George Hoffman	Otis Elevator Company
Russell Bauer	Technical Inspection, Inc.
Joseph Castellon	Elevator Inspection Corp.
Dale Goodman	Security Elevator Company
Kennth Porro, Esq.	
John Weldin, PE	
Jay Berkley	United Technologies/Otis Elevator
James Filippone, PE	NJ/NY Port Authority
Paul Carrafa	Building Inspection Underwriters
Hubert Hayes	
Gerard Garofalow	
Frank Marinello	Approved Elevator Inspection Agency
Daniel Russell, AIA	
Jeffrey Horn	National Assn. of Industrial and Office Parks, N.J. Chapter
James Knittel	
Charles Smith	National Elevator Industry, Inc.
Richard Farley	General Elevator

COMMENT: While a few commenters agreed that State plan review would be efficient, allowing a specialized function to be done by a few qualified professionals, a volume of commenters objected to State plan review as a possible source of delay.

RESPONSE: To further streamline plan review, the Department agreed that where a municipality is doing plan review for a structure within its class, and that municipality has an elevator subcode official, it may perform plan review itself. Otherwise the State will perform the review. N.J.A.C. 5:23-3.11(b) was added upon adoption to reflect this revision.

COMMENT: ANSI/ASME has not accredited the Educational Testing Service (ETS) exam required by the Department.

RESPONSE: This accreditation is irrelevant because the exam to be required is within the Department's discretion. It may be, however, that ANSI/ASME will accredit the exam in the future. Courses from ANSI/ASME taken by applicants may be given due weight by the Department. Because it has been involved in the ETS exam since its inception, the Department is convinced that it is a valid, non-discriminatory test, both in conception and in administration.

COMMENT: Some questions arose because of the July 1, 1991 date on page 807 (23 N.J.R. 807, March 18, 1991) of the proposal.

RESPONSE: Registration requirements will be in effect, beginning July 1, 1991, although owners will have a year to be in compliance. A subcode official would need to be hired by July 1, 1992, the date on which the full subcode will be effective. Similarly, the conflict of interest provisions would become operative when licensed subcode officials begin to enforce the subcode.

COMMENT: Many commenters said that the imposition of the A17.3 Standard, concerning retrofit, would be economically burdensome and, in some instances, technically infeasible. They asked that this Standard be delayed. One commenter requested that the entire adoption be delayed.

RESPONSE: The Department has reserved the retrofit rule, proposed as N.J.A.C. 5:23-12.2(e). Separate hearings on its imposition and what effects it would have will be held on August 8, 1991 (see hearing notice published elsewhere in this issue of the Register). No substantiation was provided for the request that the entire adoption be delayed.

COMMENT: Commenters said that the conflict of interest standards in the proposed subcode were either too strict or not strict enough.

RESPONSE: After reconsideration of the structure of the elevator industry, the Department has decided to make the conflict of interest provision for this subcode the same as for the other subcodes, that is, municipal officials cannot have business or economic interests in adjacent municipalities; third party employees may not have interests within the State.

COMMENT: Many commenters criticized the "cross-licensing" of other subcode officials as elevator subcode officials because discretionary judgements about elevator hazards and repairs cannot be made by people without elevator experience.

RESPONSE: The Department has decided that, due to the specialized nature of the process of elevator inspection, and the public safety factors involved, elevator experience is necessary for licensure and has so amended N.J.A.C. 5:23-5.5(d)5 and 5.7(a)6 on adoption.

COMMENT: One commenter asked that the Department list conditions which would require that a code official seal an elevator out-of-service.

RESPONSE: Imminent hazard and other provisions in the code allow officials to use their discretion to respond flexibly to various hazards. While the Department or the Uniform Construction Code Advisory Board's Elevator Subcode Committee may later decide to provide more specific informal or formal advice to officials, this will not be undertaken in the subcode.

COMMENT: A commenter asked how rack and pinion elevators, which are under the subcode, can be inspected when no inspection standards exist.

RESPONSE: For elevator devices, for which no national referenced inspection standards exist, an inspector should use his or her expertise to inspect any parts or functions analogous to those for which standards do exist.

COMMENT: Some commenters requested new or changed departmental standard forms.

RESPONSE: Forms and computer systems (UCCARS) will be altered over the next year to accommodate all requirements of the subcode. The Department does not usually publish these documents or software specs; however, they will be made available upon request.

COMMENT: Commenters complained that fees were either too high or too low.

RESPONSE: The Department examined the fees charged and the costs incurred by numerous public and private entities before arriving at the proposed schedule. It is believed to be a reasonable, workable, intermediate schedule.

COMMENT: One commenter claimed that registration information for elevator devices is proprietary.

RESPONSE: While the Department has dealt with proprietary information in a special manner for other programs, it does not see a need for secrecy for information collected under this program.

COMMENT: One commenter was confused as to requirements for elevators in R-3 and R-4 uses.

RESPONSE: The intent of the rules is to require an acceptance test on installation of elevators in private residences (R-3 and R-4 uses). A subsequent inspection would only occur for a change of use, an alteration, the issuance of a Continued Certificate of Occupancy (CCO) where appropriate, or at the request of the owner. Where a so-called "private residence elevator" is installed in a building in a use group outside of R-3 or R-4, for example, an inclined stair in a church or school, where this so-called "private residence elevator" will be used by the public, it must be inspected every six months.

COMMENT: Some commenters have asked how enough inspectors may be employed to make inspections and witness tests. They cited problems they have experienced in the past with scheduling in an efficient manner.

RESPONSE: After the one year registration period, the Department will have a clearer idea of the exact number of elevators in the State and will be able to consider adjustments to accommodate scheduling if necessary.

COMMENT: A commenter disputed the need for an elevator safety subcode.

RESPONSE: For over a decade, the Department has received complaints and requests from the public and officials because there is no uniform enforcement throughout the State of an elevator subcode. News reports and data from the Consumer Product Safety Institute (CPSI) show that malfunctioning elevators in New Jersey cause deaths, injuries and inestimable inconvenience and delay every year. This is grounds enough for a subcode.

COMMENT: Some commenters asked what the licensure fees for inspectors and subcode officials are.

RESPONSE: As for the other subcodes, these fees are between $10.00 and $40.00, as per N.J.A.C. 5:23-5.22.

COMMENT: A few commenters seemed unsure how BOCA Building Code Article 2600 would relate to subchapter 12.

RESPONSE: The BOCA Building Code remains at N.J.A.C. 5:23-3.14, with some reference to Article 2600. Those portions of Article 2600 which create any apparent conflict with subchapter 12 or with the ANSI/ASME A17.1 Standard will be amended or deleted to cure those conflicts. Similarly, the edition of the A17.1 Standard referenced in subchapter 12 will be the one referenced in the BOCA Building Subcode.

COMMENT: One commenter saw subchapter 12 as in conflict with the Barrier-free Subcode.

RESPONSE: The Barrier-free Subcode covers many aspects of accessibility for the handicapped. While it contains some provisions regarding elevators and lifts, it does not duplicate subchapter 12. Revisions will be made to the Barrier-Free Subcode so that the barrier-free subcode's "platform lifts," which ANSI/ASME terms "vertical and inclined wheelchair lifts" are clearly seen to be the same devices and so that no confusion about requirements for them arises.

COMMENT: One commenter objected to describing elevators as "potentially hazardous equipment" and as a "significant potential hazard" on the grounds that any building system may be "potentially hazardous" if operated or maintained in an unsafe fashion and that insurors may use this characterization of elevators as a basis for raising rates.

RESPONSE: Elevators, as well as certain other types of equipment, are termed "potentially hazardous" because, to ensure proper functioning, they require periodic inspections and may need minor adjustments or calibrations. This does not reflect adversely on the equipment, since most machinery needs similar inspections and calibrations.

COMMENT: The commenter is also concerned about the ability of the Department to handle an initial rush of registration applications and about the effect on current inspection procedures of allowing a one-year period for registration.

RESPONSE: The Department expects that the one-year phase-in period will allow sufficient time for orderly processing of registration applications. Elevators will not be inspected under the U.C.C. rules until they are registered, but existing inspection procedures may continue for a year, thereby precluding the possibility of a gap in inspection.

COMMENT: The commenter objects to making the Department the sole plan review agency for elevators and contends that there are many local enforcing agencies that are capable of performing this function.

RESPONSE: The Department agrees and has amended the proposal accordingly (see N.J.A.C. 5:23-3.11(b)).

COMMENT: The commenter objects to the provision by which the Department will wait 120 days before transferring jurisdiction to a local enforcing agency that does not have an elevator subcode official on July 1, 1991, but decides to enforce the subcode at a later date.

RESPONSE: The 120 day requirement is consistent with the general rule concerning transfer of code enforcement responsibility to a municipality that has previously allowed the Department to serve as its construction official. It is founded upon the need for orderly transfer of authority. The date by which local enforcing agencies that intend to enforce the subcode must have elevator subcode officials has been changed to July 1, 1992.

COMMENT: The commenter objects to the conflict of interest provisions of the proposal as "unfair, overly restrictive, arbitrary and capricious" and likely to bar many qualified people without good reason.

RESPONSE: The Department has deleted the proposed text at N.J.A.C. 5:23-4.5(h) to make the text conform to the general rules applicable to construction code enforcement personnel.

COMMENT: The commenter recommends that local fees be limited to the amounts of the Department fees, except if the Department approves higher fees.

RESPONSE: Local enforcing agencies have the right to set fees that will cover their costs. The Department only has authority to intervene when there there is evidence that local fees are excessive.

COMMENT: The commenter would require an elevator inspector certified by the Department of Personnel to meet U.C.C. licensing requirements in order to be provisionally licensed.

RESPONSE: These inspectors have civil service protection that cannot be arbitrarily taken away. The whole point of provisional licensing is to allow them a reasonable time to complete the required courses and examination.

COMMENT: The commenter objects to the requirement that certain tests be witnessed by an elevator subcode official or inspector and contends that this is duplicative of the work of the elevator maintenance firm and would be an exception to the general practice in this country.

RESPONSE: The Department has checked with officials in Massachusetts, Connecticut and Maryland who are responsible for elevator inspections and all have indicated that their practice is similar to that set forth in the proposal. Therefore, no change has been made.

COMMENT: The commenter cautions the Department about the difficulties that may arise in determining what constitutes the "transfer" of a property and points to DEP's ECRA program as an example of confusion on this subject.

RESPONSE: The Department has been dealing with similar language in other statutes that it administers for many years, without difficulty, and does not anticipate any problem in applying the rule as written.

COMMENT: The commenter thinks that fees for buildings with multiple elevator devices are excessive and that there should be a sliding scale based on the number of elevator devices in a building.

RESPONSE: Work that must be done by the Department bears a closer relationship to the number of elevators than to the number of buildings. It would be unfair to give a discount to owners of large buildings with multiple devices, thereby passing more of the cost of the program to the owners of smaller buildings.

Summary of Changes Made between Proposal and Adoption:

The Department has revised N.J.A.C. 5:23-1.4 and 2.23 to include two separate definitions and a clarification to avoid ambiguous references to certificates of approval and certificates of compliance.

At N.J.A.C. 5:23-2.23(j), "minor" has been deleted to avoid confusion with the definition of "minor" which is used for other types of construction work. Amendments have been made to make clear that the meaning of minor is as defined in the ASME A17.1 standard (see N.J.A.C. 5:23-12.8(c)). The Department has also amended N.J.A.C. 5:23-2.23(j)3 to clarify that the construction official's approval is not required to take an elevator device out of operation, in conjunction with the changes made differentiating "major" and "minor."

The Department has amended N.J.A.C. 5:23-3.4(a)1 to differentiate between the enforcement required for elevators in private residences and those used in places of public access, notwithstanding the manufacturer's designation of the elevator as one for home use.

The Department has amended N.J.A.C. 5:23-4.3(a)3 to make clear that registration is required as of July 1, 1991 and that municipal enforcing agencies must comply with the requirements covering elevator inspectors after July 1, 1992.

The Department has amended N.J.A.C. 5:23-4.18(g) to add a cross-reference, conforming the rule to subchapter 12.

At N.J.A.C. 5:23-12.3, the Department has clarified the meanings of "periodic" and "routine" inspections and added a requirement that all elevator testing must be witnessed by the inspector. A related change at N.J.A.C. 5:23-12.6 adds a fee for the witnessing of acceptance tests and lowers fees at (b)3iii and (c)2iii to more accurately represent the time and effort involved. Changes to N.J.A.C. 5:23-12.6 also clarify terms used in this subchapter and in the Barrier-Free Subcode. Related changes to the Barrier-Free Subcode will be proposed in the near future.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

5:23-1.1 Title; division into subchapters

(a) (No change.)

(b) The chapter consists of the following subchapters:

1.-11. (No change.)

12. (Reserved)

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

5:23-1.4 Definitions

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

. . .

"Certificate of approval" means a certificate issued pursuant to N.J.A.C. 5:23-2 upon completion of work that requires a construction permit but not a certificate of occupancy.

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

. . .

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

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

. . .

5:23-2.14 Construction permits; when required

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

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

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

2.-12. (No change.)
(f) (No change.)

5:23-2.23 Certificate of Occupancy requirements
(a)-(h) (No change.)
(i) Equipment listed below, which has been determined by the Department to create a significant potential hazard to public health and safety, shall be granted a certificate of *[approval]* ***compliance*** by the ***construction official based upon the findings of the*** appropriate subcode official or approved agency for the time period specified. Such equipment shall periodically be reinspected or tested in accordance with the provisions of the regulations, prior to the expiration of a certificate of *[approval]* ***compliance***, and any violations ***shall be*** corrected***,*** before a new certificate may be issued. No device shall continue in operation unless a valid certificate of *[approval]* ***compliance*** has been reissued.
1. High pressure boilers: 12 months;
2. Refrigeration systems: 12 months;
3. Pressure vessels: 12 months;
4. Cross-connections and backflow preventers: three months.
(j) Elevator devices, as defined in N.J.A.C. 5:23-12, have been found by the Department to pose a significant potential hazard to public health and safety and shall therefore be tested or reinspected periodically in accordance with N.J.A.C. 5:23-12. A device shall be granted a certificate of compliance by the *[State or the municipality]* ***construction official*** for the time period specified. No device shall be operated unless a valid certificate of compliance has been issued. Any violation shall be corrected before a new certificate may be issued. A temporary certificate of compliance may be granted to keep in service a device on which *[minor]* repairs are being diligently performed, if the elevator subcode official finds that no hazard to the public is thereby created. A temporary certificate of compliance may be issued for no longer than 180 days. ***The elevator subcode official shall provide written notice to the construction official whenever temporary approval is granted.***
1. No certificate of compliance shall be issued for any elevator device in use on or before the *[effective date of N.J.A.C. 5:23-12]* ***July 1, 1991*** that is subject to these rules and is not registered with the Department in accordance with N.J.A.C. 5:23-12, except that elevator devices in structures classified as Use Group R-3 and R-4 shall be exempt from registration.
2. No certificate of occupancy shall be issued for any new structure in any use group other than R-3 or R-4 that contains an elevator device until each such device is registered in accordance with N.J.A.C. 5:23-12.
3. Elevator devices that have been temporarily taken out of operation *[with the approval of the construction official]*, so that modernization or *[major]* repair work can be performed, shall be exempt from periodic inspection requirements during the period of approved non-operation.
4. Elevator devices in structures classified as Use Group R-3 and R-4, excepting those elevator devices accessible to the public, shall be exempt from periodic inspection requirements. In addition, signed statements and supporting inspection and acceptance test reports, filed by an approved qualified agent or agency, for elevator devices in such structures, other than elevator devices accessible to the public, may be accepted by the construction official, in accordance with N.J.A.C. 5:23-2.19 and 2.20, in lieu of inspections performed by, and acceptance tests witnessed by, the enforcing agency.
Redesignate (j)-(k) as (k)-(l). (No change in text.)

5:23-2.25 Establishment of Fees
The municipality in accordance with this chapter shall by ordinance establish enforcing agency fees for the following activities: plan review; construction permit; certificate of occupancy; elevator device inspections and tests and certificate of compliance; certificate of approval; demolition permit; moving of buildings permit; and sign permit. The fee shall be collected prior to the issuance of the permit or certificate. A schedule of such fees shall be posted in the office of the construction official and shall be accessible to the public.

5:23-3.4 Responsibility
(a) Responsibility for enforcement of specific provisions of the building subcode shall be as follows:
1. Plan review functions of sections 513.0, 514.0, 601.0 through 604.0, 606.0, 607.0, 609.0 through 620.0, and 624.0, articles 8 and 9; sections 2002.0, 2301.0 and 2302.0, articles 24 and 25; sections 2606.0 through 2611.0 for elevator devices *[other than elevators, escalators and moving walks]* ***not accessible to the general public in structures classified as Use Group R-3 or R-4***; and 3018.0 and 3020.0 shall be enforced jointly by the building subcode official and fire protection subcode official.
i. Plan review functions of 2606.0 through 2611.0 for elevator devices in any use group other than R-3 or R-4, and for elevator devices that are accessible to the general public in structures classified as Use Group R-3 or R-4, shall be enforced jointly by the building, elevator and fire protection subcode officials.
2.-3. (No change.)
4. Construction inspection functions of sections 513.0, 601.0 through 601.8, 601.13 through 601.14.1, 601.14.3 through 624.0; articles 8 and 9; sections 2002.0 and 2302.0***;*** *[and]* article 24***; and sections 2607.1, 2607.2, 2607.4 through 2607.7, 2608.0, 2610.1 through 2610.2.1, 2610.2.3, 2610.4, 2611.1 and 2611.2*** shall be enforced exclusively by the building subcode official.
5. (No change.)
6. Construction inspection functions of sections 2606.0 *[through 2607.2 and 2607.4 through 2611.2]****,2609.0, 2610.3 and 2610.5*** shall be enforced *[jointly]* ***exclusively*** by *[the building subcode official and]* the elevator subcode official *[and the fire protection subcode official]*.
7. Section 2602.2 shall be enforced exclusively by the elevator subcode official.
Recodify 6.-7. as 8.-9. (No change in text.)
(b)-(g) (No change.)
(h) Enforcement of the elevator safety subcode shall be the sole responsibility of the elevator subcode official, unless otherwise specified in N.J.A.C. 5:23-12.

5:23-3.11 Enforcement activities reserved to the Department
(a) The Department of Community Affairs shall be the sole plan review agency for the following structures:
1.-6. (No change.)
[7. Elevators]
(b) The Department of Community Affairs shall be the sole plan review agency for elevators, escalators and moving walks in use groups other than R-3 or R-4 ***in all buildings and structures other than those that:***
1. Are in a municipality that has an elevator subcode official; and
2. Are otherwise within the plan review jurisdiction of the local enforcing agency*.
Recodify (b)-(f) as ***(c)-(g)*** (No change in text.)

5:23-3.14 Building subcode
(a) (No change.)
(b) The following articles or sections of the building subcode are modified as follows:
1.-13. (No change.)
14. The following amendments are made to Article 26 of the building subcode entitled "Elevators, Dumbwaiter and Conveyor Equipment, Installation and Maintenance":
i. Section 2600.1 is amended to delete the phrase "Except as otherwise provided by statute" in the first line, to add the words "and subchapter 12 of these rules" after the word "article" in the first sentence, to delete the phrase "and amusement devices" from the second sentence and to substitute "construction official" for "code official."
ii. Section 2600.2 is amended to substitute "these rules" for "this code" and the following sentence is added: "However, any education, experience or training requirements included or cited in reference standards shall not be binding in this State.";
iii. Sections 2601.1, 2601.2, 2601.3, 2602.5.4, 2603.1, 2603.2 (first line), 2603.3, 2604.4, 2604.5, and 2604.6 are amended to delete the

term "code official" and substitute in lieu thereof, "construction official";

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

v. Section 2602.2 is amended to delete the words ***"Section 2602.5" in the last sentence and to substitute in lieu thereof the words "N.J.A.C. 5:23-12" and to delete the words*** "code official" in the last sentence and substitute in lieu thereof "appropriate subcode official as designated by N.J.A.C. 5:23-3.4";

vi. Sections 2602.3***,*** *[and]* 2602.4 ***and 2602.5*** are deleted in their entirety;

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

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

*[ix.]****viii.*** Section 2604.3 is deleted in its entirety.

Recodify iii.-vi. as ix. through xii. (No change in text from proposal.)

15.-21. (No change.)

5:23-4.3 Municipal enforcing agencies; establishment

(a) Notice of intention to establish:

1.-2. (No change.)

3. A municipality may, by resolution, provide for the employment of an elevator subcode official, licensed in accordance with N.J.A.C. 5:23-5, to perform inspections and witness tests within its jurisdiction. If a municipality fails to employ such an official by July 1, *[1991]* ***1992***, the Department shall have exclusive jurisdiction to review plans and witness tests for, and inspect elevators within, the municipality. Thereafter, a municipality may acquire such jurisdiction by enacting the necessary resolution and employing an elevator subcode official, but the transfer of jurisdiction to the municipality shall not be effective until 120 calendar days after a certified copy of the resolution is received by the Department.

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

(d) Establishment by ordinance:

1. (No change.)

2. Such ordinance shall establish the construction official as the chief administrator of the enforcing agency. It shall establish as many subcode official positions as the Commissioner shall issue types of licenses for subcode officials. Any person who holds more than one subcode official position shall be qualified for each position pursuant to N.J.A.C. 5:23-5. Staffing procedures shall not result in an inadequate municipal inspection force.

3.-7. (No change.)

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

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

(a)-(e) (No change.)

(f) Duties of construction officials:

1. The construction official shall enforce the regulations and:

i.-xvii. (No change.)

xviii. Coordinate the activities of the subcode officials in enforcement of the energy, radon hazard, elevator safety and mechanical subcodes.

xix.-xx. (No change.)

2. (No change.)

(g) (No change.)

(h) Conflict of interest:

1. No person employed by an enforcing agency as a construction or subcode official, assistant to the construction or subcode official, trainee, inspector or plan reviewer, shall engage in, or otherwise be connected directly or indirectly for purposes of economic gain, with any business or employment furnishing labor, materials, products or services for the construction, alteration, or demolition of buildings or structures within any municipality in which he is so employed by an enforcing agency, and in any municipality adjacent to any municipality in which he is thus employed.

2.-3. (No change.)

4. *[No person employed as a licensed elevator subcode official or elevator inspector shall have any economic relationship with the elevator industry anywhere in the United States, except that any such official or inspector may perform consulting work on elevator devices for individuals or firms, provided the requirements of (h)1 above are met. For the purpose of this rule, "elevator" shall have the meaning given in N.J.A.C. 5:23-1.4.]* ***Prior to July 1, 1992, this subsection shall not apply to any person employed as an elevator inspector who is not licensed under this chapter.***

5:23-4.12 Private on-site inspection and plan review agencies; establishment

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

1. No person shall undertake the service herein described or enter into any contract pursuant to this chapter without first receiving the authorization of the Department.

i. (No change in text.)

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

(d) The application shall contain information relating to:

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

(e) (No change in text.)

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

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

2. (No change in text.)

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

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

(h) (No change in text.)

5:23-4.13 Private on-site inspection and plan review agencies; organization

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

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

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

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

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

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

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

5:23-4.18 Standards for municipal fees

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

(g) Elevator fees are as follows:

1. The fee for a permit to install an elevator device shall be a flat fee. The fee may vary for different types of inspections, tests and elevator devices.

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

3. The categories of municipal elevator fees shall be identical to the categories of elevator fees listed at N.J.A.C. 5:23-12.6(a) and (b).

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

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

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

i.-iv. (No change.)

v. Elevator safety subcode: Fees charged to the municipality when a private on-site agency performs inspections and witnesses tests shall be identical to the fees established by the Department at N.J.A.C. 5:23-*[12.5]* ***12.6***(a) and (b).

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

2.-5. (No change.)

5:23-4.20 Department fees

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

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

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

2. (No change.)

3. Certificates and other permits: The fees shall be as follows:

i.-vi. (No change.)

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

viii.-xi. (No change.)

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

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

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

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

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

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

(a) Rules concerning establishment are:

1. (No change.)

2. Plan review:

i. (No change.)

ii. Special or hazardous uses and types of construction:

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

(5) Installations of elevators, escalators, and moving walks, except in structures of use group R-3 or R-4 ***and except as otherwise provided in N.J.A.C. 5:23-3.11(b)***, shall require Departmental plan review and release.

iii. (No change.)

(b) (No change.)

5:23-5.1 Title; scope; intent

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

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

5:23-5.3 Types of licenses

(a) (No change.)

(b) Rules concerning classification of code enforcement officials are:

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

i.-v. (No change.)

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

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

i.-v. (No change.)

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

5:23-5.5 General license requirements

(a) (No change.)

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

1.-3. (No change.)

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

5.-7. (No change.)

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

1.-2. (No change.)

3. Inspectors with civil service status or tenure:

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

(d) Special provisions:

1.-4. (No change.)

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

5:23-5.7 Subcode official requirements

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

1.-5. (No change.)

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

7. (No change.)

5:23-5.19 Elevator inspector H.H.S. requirements

(a) A candidate for a license as an elevator inspector of high-rise and hazardous structures (H.H.S.) shall meet the following educational and/or experience requirements:

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

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

ii. Experience in inspecting elevators; or

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

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

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

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

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

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

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

5:23-5.20 Standards for educational programs

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

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

1.-10. (No change.)

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

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

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

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

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

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

iii. Subject 3: Plan review and inspection techniques:

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

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

5:23-5.23 Examination requirements

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

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

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

1.-11. (No change.)

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

i. (No change.)

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

SUBCHAPTER 12. ELEVATOR SAFETY SUBCODE

5:23-12.1 Title; scope; intent

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

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

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

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

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

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

5:23-12.2 Referenced standards

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

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

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

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

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

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

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

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

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

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

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

(c) (Reserved)

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

*[(g)]***(e)*** Inspection and testing procedures for equipment within the scope (section 1) of the *[ANSI/]*ASME A17.1 Safety Code for Elevators and Escalators shall be performed in accordance with the latest edition of *[ANSI/]*ASME A17.2.

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

***5:23-12.3 Inspection and test schedule**

(a) Routine, periodic and acceptance inspections and tests of elevators shall be conducted as follows:

1. Routine and periodic inspections shall be made at intervals of not more than six months for all manlifts, and at intervals not exceeding those set forth in ASME A17.1 referenced in the most recent edition of the building subcode for elevators, escalators and dumbwaiters and moving walks. Stairway chairlifts and wheelchair lifts shall be inspected at intervals not exceeding one year.

2. Routine tests shall be made and periodic tests shall be witnessed at intervals not exceeding those set forth in the most recent edition of ASME A17.1 referenced in the building subcode.

3. Routine and periodic inspections, including any applicable acceptance inspections, shall be made by the elevator subcode official or elevator inspector. Routine tests shall be made and periodic tests, including any applicable acceptance tests, shall be witnessed by the elevator subcode official or elevator inspector.*

5:23-*[12.3]***12.4*** Registration of elevator devices

(a) *[Within one year after the effective date of this subchapter]* ***On or before July 1, 1992,*** and thereafter as required by (e) below, the owner of every existing structure containing one or more elevator devices, other than a structure in Use Group R-3 or R-4, shall register each elevator device with the Department on a form provided by the Commissioner.

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

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

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

11. The date of installation, if known, and date of last inspection performed; and

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

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

1. The name and mailing address of the owner or owner's representative of each device; and

2. The street address, including lot and block number, where the device is located.

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

5:23-*[12.4]***12.5*** Registration fee

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

5:23-*[12.5 Acceptance test]***12.6 Test*** and inspection fees

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

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

i. Traction and winding drum elevators:	
(1) One to 10 floors	$225.00;
(2) Over 10 floors	$375.00;
ii. Hydraulic elevators	$200.00;
iii. Roped hydraulic elevators	$225.00;
iv. Escalators, moving walks	$200.00;
v. Dumbwaiters*[, platform lifts]*	$ 50.00;
vi. *[Chairlifts]* ***Stairway chairlifts, inclined and vertical wheelchair lifts**** and manlifts	$ 50.00.

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

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

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

4. The fee for witnessing acceptance tests of, and performing inspections of, alterations shall be $50.00.

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

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

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

2. The fee for the one year periodic inspection and witnessing of tests of elevator devices***, which shall include a six month routine inspection,*** shall be:

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

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

i. Oil buffers (charge per oil buffer)	$ 40.00;
ii. Counterweight governor and safeties	$ 80.00;
iii. Auxiliary power generator	*[$150.00]* ***$50.00***.

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

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

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

1. Basic annual fee as follows:

i. Traction and winding drum elevators:	
(1) One to 10 floors	$370.00;
(2) Over 10 floors	$450.00;
ii. Hydraulic elevators	$270.00;
iii. Roped hydraulic elevators	$300.00;
iv. Escalators, moving walks	$460.00;
v. Dumbwaiters, *[platform lifts]*	$ 80.00;
vi. ***[Chairlifts]*** ***Stairway chairlifts, inclined and vertical wheelchair lifts****, manlifts	$120.00.

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

i. Oil buffers (charge per oil buffer)	$ 40.00;
ii. Counterweight governor and safeties	$ 80.00;
iii. Auxiliary power generator	*[$150.00]* ***$50.00***.

5:23-*[12.6]***12.7*** Licensing

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

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

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

5:23-*[12.7]***12.8*** Alterations, replacements, damages, increases in size, changes in use group, ordinary repairs

(a) In complying with this chapter, calculations concerning alterations, replacements, damages, increases in size and changes in use group, in N.J.A.C. 5:23-2, shall be performed using data for entire structures. The calculations in N.J.A.C. 5:23-2 shall not be applied to individual elevator devices.

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

(c) Alteration of elevator devices shall be deemed to be "minor work" within the meaning of N.J.A.C. 5:23-2.17A.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Rent Increases

Adopted Amendments: N.J.A.C. 5:80-9

Proposed: August 20, 1990 at 22 N.J.R. 2389(b).
Adopted: June 6, 1991 by the New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.
Filed: June 7, 1991 as R.1991 d.334, **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. 55:14K-5g.

Effective Date: July 1, 1991.
Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: Sencit Properties—Sencit Properties is the sponsor of two "market projects" wherein 20 percent of the units are occupied by low-income tenants and 80 percent are occupied by market rate tenants. The sponsor, in general, stated there was a greater need for flexibility in granting rent increases on "market projects" and proposed the following changes:

a. Implement rent increases upon 30 days' notice to tenants, coinciding with the expiration of the tenant's lease.

b. The new rent can be up to 30 percent of the income limitation on the market rate tenant.

c. Sponsors need only send the Agency a copy of the new rent schedule and the notice to tenants. The Agency can only reject the increase if the rents exceed 30 percent of the income limitation for market rate tenants, if 30 days' notice was not given to tenants or if the rents cause the project to exceed allowable return on equity.

RESPONSE: The Agency does not recommend adoption of any of the proposed changes by Sencit Properties, as they preclude the Agency from reviewing and determining the reasonableness and necessity for a rent increase. The objective of the rules is to provide a mechanism for balancing the sponsors' need to increase rents to cover operating expenses, future capital improvements and repairs and to provide a return on equity to the sponsor; while attempting to maintain rents at levels that are affordable to project tenants. Accordingly, the proposal by Sencit for an increase up to 30 percent of the income limit for market rate tenants, without submitting any justification to the Agency, is unacceptable. The Agency needs to review projected income and expense figures and other related documentation set forth in the current rules to determine if a rent increase is needed. Tenants should also have the opportunity to comment as currently provided in the rules. Based on the foregoing reasons, the Agency does not recommend any of the changes suggested by Sencit.

COMMENT: John Jennings and Associates—John Jennings and Associates is the sponsor of two Agency projects and has made the following comments:

a. They indicated that they would be unable to comply with the requirement to submit proposed rent increase determinations within three months prior to the fiscal year end.

b. They indicated concern over whether or not the return on equity limitations affecting rent increases would preclude their ability to pay 20 percent of surplus cash toward repayment of a HDAG and Affordable Housing Loan.

RESPONSE: With regard to the first comment, the Agency believes the sponsor overlooked the proposed amendment which eliminated the requirement to submit the rent increase determination three months prior to the fiscal year end. The proposed amendment requires the rent determination once each year, which can be made any time during the fiscal year that the sponsor chooses (see N.J.A.C. 5:80-9.3).

With regard to the second comment, the rules provide for rent increases of an amount not to exceed the CPI plus up to an additional 12 percent, if none of the increase will go toward providing the sponsor with return on equity; or, six percent if any of the rent increase is intended to pay return on equity. If any part of the sponsor's rent increase application would produce surplus cash, the increase amount could not exceed the CPI plus six percent. This procedure would not affect the sponsor's ability to pay 20 percent of the surplus cash in repayment of loans.

Based on the foregoing reasons, the Agency does not recommend any of the changes suggested by John Jennings and Associates.

COMMENT: Interstate Realty Management Company—Interstate Realty Management Company is the managing agent for several sponsors of Agency projects. They have suggested the following changes:

a. Include a time limitation for the Agency's review and determination of rent increase requests.

b. For HUD-assisted projects, it should only be required to provide notice of rent increases to tenants who are affected by the increase.

c. For HUD-assisted projects, rent increase should be effective the first month following approval.

d. For projects receiving HUD subsidies pursuant to a Housing Assistance Payments Contract (Section 8 projects), the commenter identified several changes to HUD regulations affecting the provisions of N.J.A.C. 5:80-9.4(b).

RESPONSE: The Agency concurs with the suggestions made by Interstate and made the following changes:

a. With regard to a time limitation for Agency review in HUD-subsidized projects, the Agency will review and forward rent increase requests to HUD within 10 business days after receipt of a complete rent increase package. For market projects, the Agency will review and make a determination on rent increase requests within 10 business days after receipt of a complete rent increase package and tenant comments (see N.J.A.C. 5:80-9.7(b).

b. With regard to notice to tenants in HUD-assisted projects, HUD does not require notice of rent increases to tenants receiving Section 8 subsidies. Those tenants pay 30 percent of their income as rent. Any rent increase would be borne by HUD, as HUD increases the subsidy amount to cover the amount of rent increase. Since these tenants are not actually affected by the rent increase, HUD does not require notice.

c. With regard to the effective date for rent increases, HUD permits rent increases for Section 8 subsidized tenants to be effective the first month following approval of the rent increase. As rent increases do not actually affect such tenants, there is no need to provide such tenants with a calendar month's notice prior to implementing the approved rent increase. The Agency concurs with the comments made but believes the current rules already provide for these procedures. N.J.A.C. 5:80-9.4(b) provides that projects which are subject to automatic annual rent adjustments (that is, Section 8 projects) do not have to meet the requirement to provide notice to tenants or to comply with the other rent increase procedures except for making the rent determination required by N.J.A.C. 5:80-9.3.

d. With regard to changes in HUD regulations affecting N.J.A.C. 5:80-9.4(b), staff has modified that section so that it will be consistent with current and future HUD changes. Staff has also added a provision at N.J.A.C. 5:80-9.2, which clarifies that if there are any inconsistencies between the Agency's rent rules and applicable HUD regulations, the HUD regulations will prevail.

COMMENT: Francine Christopher—Ms. Christopher is a tenant at one of the Agency's projects and makes the following comments:

a. Thirty days as a comment period for tenants on proposed rent increases is inadequate.

b. The automatic annual adjustment pursuant to N.J.A.C. 5:80-9.8 is objectionable as it provides blanket approval without safeguards.

c. Objects to N.J.A.C. 5:80-9.9, citing that it does not provide enough input for tenants and claiming that the amounts approvable by the Agency are excessive and contribute to owner's mismanagement.

d. Objects to the Executive Director's ability to approve a rent increase, claiming that only an elected official should have such authority.

RESPONSE: a. With regard to the tenant's comment period, the Agency believes 30 days is reasonable and sufficient. It is also consistent with HUD requirements.

b. With regard to automatic annual adjustments, the Agency believes the commenter misunderstands how such rent increases are implemented. Automatic annual adjustments are applicable only in projects where there is a valid Housing Assisted Payments contract (that is, Section 8 projects). Tenants at these projects pay 30 percent of their income as rent and HUD pays the difference between the approved rent and the portion the tenant pays. On an annual basis, HUD approves an increase in the approved rent at such projects, which is known as the automatic annual adjustment. As tenants continue to pay 30 percent of their income toward the rent amount, the entire amount of the rent

increase is paid by HUD through increased subsidy. Tenants are not affected by the increase. Accordingly, if sponsors are not seeking any more than the automatic annual adjustment which HUD implements, it is not necessary for the sponsor to submit a rent increase package.

c. With regard to the objection to N.J.A.C. 5:80-9.9, Agency staff believes the mechanism established for determining the amount of a rent increase is reasonable. The Agency may approve a rent increase in the amount of the Consumer Price Index (CPI) for rent and utilities plus up to an additional 12 percent to cover operating deficits; or, six percent if any part of the six percent is intended to enable the sponsor to pay return on equity. The CPI is a recognized and accepted standard for the area and represents a reliable source on which to base a rent increase. The additional 12 percent may only be approved to the extent there are operating deficits, debt sevice arrears and/or a need to fund reserves for repair and replacement accounts. The potential for up to an additional 12 percent may only be approved based on the demonstrated need to bring a project "out of the red."

Rent increases may also be approved in an amount of the CPI plus up to an additional six percent if all or part of the additional six percent will be allocated toward enabling the sponsor to pay return on equity. Many sponsors of Agency project have profit motivated status. Under the terms of the mortgage with the Agency they are entitled to a limited return on equity. If current rental income is insufficient to pay the return on equity that sponsors are entitled to, the Agency may approve up to an additional six percent to provide sponsors with the ability to earn a return. Agency staff believes that the six percent is a reasonable amount. In many cases the additional six percent will not provide enough rental income for sponsors to earn the full return to which they are entitled. The commenter also objected to this section citing a lack of tenant input and claims of owner mismanagement. In response Agency staff points out that tenants are given the opportunity to provide input by giving them notice of a proposed rent increase and a 30-day period in which to comment. If tenants can substantiate claims of owner mismanagement which contribute to the owner's proposed rent increase, the Agency will investigate such claims and if verified, will require remedial action and reject any portion of the rent increase which is not justified.

d. Finally, the commenter objects to the Executive Director's ability to approve a rent increase and proposes that only an elected official should have such authority. In response, the Agency points out that the Agency Board, through the Agency's present rent rules, has authorized the Executive Director to approve all rent increases.

Based on the foregoing reasons, the Agency does not recommend any of the changes suggested by Ms. Christopher.

COMMENT: HUD Tenants Coalition—HUD Tenants Coalition is an organization comprised of tenants from projects in which HUD subsidizes rents or holds the mortgage. The coalition:

a. Disagrees with the characterization of many of the sponsors as small businesses, claiming many sponsors are large, national real estate companies;

b. Objects to the proposed removal of certain documentation required in support of a rent increase;

c. Proposes an increase in the 30-day time period in which tenants may comment on a rent increase;

d. Proposes that the Agency respond, point by point, to comments received from tenants; and

e. Objects to the automatic annual adjustment provision of N.J.A.C. 5:80-9.9.

RESPONSE: a. With regard to the comment on small businesses, the Agency, pursuant to the Regulatory Flexibility Act, is required to prepare a Regulatory Flexibility Statement whenever it is proposing new or amended rules. This statement requires the Agency to determine whether the proposed rules will impact upon small businesses. If so, the Agency must determine whether the rules should be structured in a manner to differentiate the compliance aspects between small and large businesses. In the Agency's Regulatory Flexibility Statement for the rent rules, the Agency concluded that many of the sponsors are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Although some sponsors may not fit within the definition, there are many that do. As the Agency acknowledges that many sponsors are small businesses, it had to determine whether or not the proposed amendments should be restructured to differentiate the compliance aspects between small and large businesses. As the amendments did not impose any new compliance aspects, the Agency concluded that no differentiation was required and that the proposed amendments should apply equally to both large and small business sponsors.

b. With regard to the removal of certain documentation in support of a rent increase, the proposed amendments eliminated the following: (i) list of rent and carrying charges; (ii) maintenance and inspection report performed by the Agency; (iii) fuel supplier statements; (iv) utility statements; (v) tax bills or in lieu payments; and (vi) insurance statements. This documentation was eliminated because it was repetitive. Rent charges, fuel supplier and utility statements, tax bills or in lieu payments and insurance statements are already included within the annual budget and certified audit report. The annual budget and certified audit are part of the documentation required for submission and available for inspection by tenants. Accordingly, there is no actual elimination of documentation which sponsors are required to submit in support of a rent increase.

c. With regard to the tenant comment period, the Agency believes 30 days is reasonable and sufficient. It is consistent with HUD requirements.

d. With regard to an individual, point by point, response to tenant comments, the Agency believes that the current provisions requiring the Agency to consider all comments in making its review of a rent increase, to be sufficient. Due to the number of projects and tenants residing therein, it would be an administrative burden to require an individual response, as proposed.

e. With regard to automatic annual adjustments, the Agency's response can be found under the response to Ms. Francine Christopher's comments.

Based on the foregoing reasons, the Agency does not recommend any of the changes suggested by the HUD Tenants Coalition.

Summary of Agency-Initiated Changes:

N.J.A.C. 5:80-9.6(c): In order to alleviate concerns of tenants, this subsection was added, at the request of former Board member Glen Scotland, which ensures that no action on a rent increase application will be taken until there is substantial compliance with the tenant notice requirements.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

SUBCHAPTER 9. RENTS

5:80-9.1 Purpose

It is the express purpose of the following regulations to promote the statutory functions and obligations of the Agency by ensuring that the rents and/or carrying charges applied in housing projects are sufficient to pay normal operating, maintenance and utility costs; provide an adequate rate of return to individuals or corporations that provide capital to assist in the development of housing projects; provide debt service payments adequate to protect the financial interest of the Agency and its bondholders; provide reserves for repair and replacement; and ensure adequate, safe and sanitary housing for the low and moderate income families that the Agency was created to serve.

5:80-9.2 Applicability

The rules within this subchapter shall apply to all housing projects. In the event the housing project is assisted, directly or indirectly, by the Department of Housing and Urban Development (HUD) or is financed by a loan from the Agency which is insured or guaranteed by the United States, or any agency thereof, the Agency may utilize the rent regulations, requirements or criteria for such project which is prescribed, utilized or required by HUD or such guarantor or insurer. ***In the event there are any inconsistencies between these rules and the regulations, requirements or criteria of HUD or other United States agency insuring or guaranteeing the Agency loan, the latter shall prevail.***

5:80-9.3 Rent determination

(a) At least once each year, each housing sponsor shall make a determination of the rents and/or carrying charges to be applied in the housing project. Hereinafter, the term "rent" shall be construed to include carrying charges and the term "housing sponsor" shall be construed to include a properly authorized representative of the

housing sponsor. An annual rent determination shall be made regardless of whether or not a rent increase is being requested.

(b) The rent determination shall be in the form of a resolution or letter from the sponsor.

5:80-9.4 Rent increase application

(a) Housing sponsors desiring to implement a rent increase shall submit a rent increase application to the Agency's Director of Management. The application shall consist of the rent determination and the following supporting documents:

1. Name of sponsor, location of housing project, number of apartments of each type;
2. Date of initial occupancy;
3. For Section 236 developments, a status report on the housing project's implementation of its current energy conservation plan;
4. A narrative statement of the reasons for the rent increase;
5. Most recent certified audit report prepared in accordance with Agency regulations;
6. Summary of income and expenses for the preceding 12 month period prepared on an accrual basis for non-federally subsidized housing projects. For all projects with Federal subsidy, monthly operating reports will be required for the preceding three months.
7. Annual budget on which the requested rent increase is based;
8. Copy of notice to tenants in accordance with 5:80-9.6;

(b) In housing projects where there is a valid Housing Assistance Payments contract, in accordance with which rents are or may be *[automatically]* adjusted, the sponsor is not required to submit a rent increase application. ***Rents will be adjusted in accordance with the contract without resort to the rules within this subchapter, except that*** *[This shall not, however, relieve]* the sponsor ***shall still be obligated*** *[of the obligation]* to make the rent determination as required by N.J.A.C. 5:80-9.3. *[Upon submission of the rent determination, rents will be adjusted in accordance with the contract without resort to any of the approvals or procedures set forth in N.J.A.C. 5:80-9.6 through 5:80-9.12, provided the rent determination conforms to the schedule of rents which result from the automatic annual adjustment. If the automatic annual adjustment factor covering the period of the next fiscal year is unavailable at the time the sponsor makes its annual determination of rents, the sponsor may request that the Agency provide an estimated factor to be used in making the required calculations. Housing sponsors desiring to implement a rent increase greater than the amount which would result from the automatic annual adjustment must submit a request to the Agency specifying the additional amount required and the reasons for the request.]*

5:80-9.5 Additional rent increases in given fiscal year

The submission of a rent increase application for any given fiscal year shall not preclude any sponsor from making additional or revised rent increase applications in the same fiscal year, provided that they are submitted in accordance with all the procedures set forth in this subchapter.

5:80-9.6 Notice to tenants and cooperators

(a) Prior to or simultaneous with the submission of the rent increase application to the Agency, each housing sponsor shall provide, in writing, to each tenant and cooperator and conspicuously post at the housing project, a notice, in a form prescribed by the Agency, setting forth the following:

1. The rent determination;
2. A statement that the rent determination is subject to the review and approval of the Agency and, if applicable, subject to the review and approval of HUD;
3. Reasons for the increase;
4. A statement that tenants and cooperators will have 30 days to inspect the rent increase application submitted by the housing sponsor pursuant to N.J.A.C. 5:80-9.4(a); and
5. A statement that written comments on the proposed rents may be submitted to the housing sponsor, managing agent or the Agency's Director of Management, at their current address within 30 days of the rent increase application being available for review.

(b) Upon expiration of the comment period, the housing sponsor shall submit a certification to the Agency, in the form prescribed by the Agency, that it has complied with the requirements of N.J.A.C. 5:80-9.6(a).

(c) If the housing sponsor fails to substantially comply with the notice requirement of (a) above, the Agency shall withhold processing of the rent increase application until there is substantial compliance with such requirements.

5:80-9.7 Agency review

(a) The Agency will review the rent increase application to verify the need for the rent increase requested. If the application contains errors or omissions of a material nature, the Director of Management shall require the housing sponsor to submit the corrected or omitted material and provide tenants and cooperators with notice that they will have 15 days to inspect and comment upon the corrected or omitted material.

(b) *[After review]* ***Within 10 business days*** after ***receipt*** of the ***complete*** rent increase application and any comments thereto, the Agency shall:

1. For housing projects receiving subsidies under HUD, submit the rent increase application to HUD for approval pursuant to N.J.A.C. 5:80-9.8;
2. For all other projects, process the application in accordance with N.J.A.C. 5:80-9.9 and, if applicable, 5:80-9.10. ***The 10 business day requirement in (b) above shall not apply to rent increases subject to a hearing as provided by N.J.A.C. 5:80-9.10.***

(c) Prior to submission of any rent increase application to HUD, the Agency may attach its comments and recommend a rent increase different from that requested by the housing sponsor. If the Agency reduces or eliminates that portion of the requested increase that would provide return on owner's equity, written notice of such reduction or elimination will be provided to the housing sponsor by the Executive Director of the Agency.

5:80-9.8 Rent increases approvable by the Department of Housing and Urban Development

(a) In all housing projects receiving subsidies under the Section 236 Interest Reduction Payments Program or Section 8 Housing Assistance Payments Program, rent increase applications shall be submitted to and are subject to approval by HUD, unless the rent increase is automatically authorized pursuant to N.J.A.C. 5:80-9.4(b).

(b) Upon verification of the completeness, accuracy and validity of the rent increase application pursuant to its review under N.J.A.C. 5:80-9.7, the Agency will forward the rent increase application to HUD for final action. The Agency will notify the housing sponsor of HUD's final decision.

5:80-9.9 Increases approved by Agency

(a) If the rents are not subject to review and approval by HUD nor subject to automatic annual adjustments pursuant to a valid Housing Assistance Payments contract, then the Executive Director may make or approve a rent increase without a hearing as long as the resulting rents do not exceed the rents in effect for the same units in the housing project at any time in the previous 12 months by more than the combined percentage of paragraphs 1 and 2 below:

1. The percentage increase in the Consumer Price Index for rent and utilities for the most recently preceding 12 month period for which information has been published by the United States Department of Labor; plus
2. Either of:

i. The percentage, up to a maximum of 12 percent annually, needed to fund operating deficits, debt service arrears or reserves for repair and replacement incurred at the housing project during the preceding 12 months, provided that no part of the rent increase includes an amount allocated toward providing a return on equity to the sponsor; or

ii. The percentage, up to a maximum of six percent annually, needed to offset an inability to provide a return on equity and to offset operating deficits, debt service arrears or reserves for repair and replacement delinquencies incurred during the preceding 12 months, if all or a portion of the requested increase is intended to pay return on equity.

(b) For housing projects receiving subsidies under the New Jersey Urban Multi-Family Production Program (JUMPP), the Agency shall

consider the amount by which the JUMPP subsidy decreases annually, as well as any operating deficits existing after distibution of the annual JUMPP subsidy, in determining the amount of rent increase needed pursuant to (a) above.

*[(b)]**(c)* The Agency shall provide the housing sponsor with a copy of its calculations done pursuant to (a) above.

5:80-9.10 Increase subject to hearing

(a) In projects not subject to HUD approval nor subject to automatic annual adjustments, if the Executive Director of the Agency approves a rent increase which exceeds the amounts specified in N.J.A.C. 5:80-9.9(a), in order to cover any purpose including but not limited to operating deficits, debt service arrears, reserves for repair and replacement delinquencies incurred during the preceding 12 months, inability to pay return on equity, increases in permitted return on equity and accelerated amortization of any supplemental financing, then any person, association or corporation aggrieved by such determination may file for a hearing by submitting a written request to the Executive Director. Housing sponsors shall give written notice to all tenants and cooperators affected by such rent increase approved by the Executive Director and of their opportunity to request a hearing. Persons, associations or corporations aggrieved by the increase must file their request for a hearing within 21 days of said notice.

(b) Upon receipt of a request for a hearing or upon his or her own initiative, the Executive Director shall request that the Office of Administrative Law conduct same. All hearings shall be conducted according to the procedures established by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-10. When the date of the hearing has been established, housing sponsors shall provide notices, in a manner approved by the Agency, of the date, time, place and nature of said hearing to all tenants, cooperators and other persons requesting notice of said hearing. The scope of the hearing shall be limited to consideration of the amount in excess of the increases approvable by the Executive Director under N.J.A.C. 5:80-9.9(a). Upon review of the record submitted by the administrative law judge, the Agency Members shall adopt, reject or modify the recommended decision and issue a final written order.

(c) The request for a hearing, or the hearing itself, shall in no way affect or delay the authority of the Executive Director to approve increases up to the amounts specified pursuant to N.J.A.C. 5:80-9.9(a). If the Executive Director approves an amount equal to or less than the amount calculated in accordance with N.J.A.C. 5:80-9.9(a), then no hearing is required.

5:80-9.11 Notice of final approval

(a) Upon final action by HUD or the Agency, the Agency will provide written notice to the housing sponsor of the finally approved rent increase. Such notice will set forth in writing the reasons for the Agency's decision with regard to the finally approved rent increase.

(b) The housing sponsor shall provide written notice of the finally determined rent increase and the reasons for the Agency's decision with regard thereto and, if applicable, the Agency's calculations pursuant to N.J.A.C. 5:80-9.9(a) to all tenants and cooperators, as well as all other interested parties. Written notice shall be provided to each tenant by mail or by hand delivery to the tenant/cooperator's apartment or by personal service and shall be posted in conspicuous places throughout the housing project. Other interested parties may receive a copy of the final notice if they provide a written request for same to the sponsor.

5:80-9.12 Effective date of increase

The new rents shall be effective on the first day of the month following one calendar month's written notice to the tenants, cooperators and other interested parties which submitted a written request for the notice.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Rent Increases

Jersey Urban Multi-Family Production Program (JUMPP)

Adopted Amendment: N.J.A.C. 5:80-9.9

Proposed: March 4, 1991 at 23 N.J.R. 646(a).

Adopted: June 6, 1991 by the New Jersey Housing and Mortgage Finance Agency, Kevin Quince, Executive Director.

Filed: June 7, 1991 as R.1991 d.335, **without change.**

Authority: N.J.S.A. 55:14K-5g.

Effective Date: July 1, 1991.

Expiration Date: April 20, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: Division of Housing, Department of Community Affairs. The Division comments that the proposed amendment does not reflect the underwriting assumptions that form the underlying premise of JUMPP. The Division states that the underwriting criteria assume that JUMPP projects will not generate positive cash flow during the early years of operation. However, if rent increases can stay even with or exceed the rise in operating costs, while debt service remains constant, the project will eventually show a positive cash flow. The Division further states that the Agency and DCA arrived at a mutual agreement which made an assumption that annual rent increases of six percent would be needed.

The Division indicates that the proposed amendment, rather than reflecting these assumptions, relies on the availability of the total annual subsidy and tailors the rent increase to what is needed to avoid a deficit. If rent increases are implemented in this way, the project sponsor would be unable to get increased return on equity (available under JUMPP). It would guarantee the exhaustion of all JUMPP subsidies instead of the possibility of putting some in reserve if increased expenses in any one year were less than the six percent rent increase which should be implemented.

RESPONSE: The Agency concurs with the underwriting assumptions stated by the Division but does not agree that this means that there should be an automatic annual rent increase of six percent. The Agency has been advised by the Attorney General's office that it has an obligation under its existing rules to review rent increases and determine, at a minimum, that they are reasonable. For example, if a JUMPP project is continually meeting its expenses without using the maximum annual JUMPP subsidy available, it would be counter to the Agency's objective (to maintain affordable housing) to approve an automatic six percent rent increase.

In addition, the Agency does not believe that the amendment concerning JUMPP is inconsistent with the JUMPP underwriting assumptions and program guidelines. The rule currently permits a rent increase in the amount of the Consumer Price Index (CPI) for rent and utilities. There does not have to be a need to fund existing or projected deficits in order to increase rents by the CPI. Accordingly, rents can be increased by the CPI when the project is on a break even budget or producing a surplus. Such rent increases will reduce the annual JUMPP subsidy for that year and build reserves. While the CPI is often less than six percent, Agency staff does not believe that the JUMPP guidelines require rent increases for the purpose of assuring that the total available annual subsidy would not be used each year. On the contrary, the Agency believes that the underwriting criteria and guidelines permit the use of the total available subsidy on an annual basis.

With regard to providing for an increased return on equity for the sponsor, the rule permits up to a six percent increase in addition to the CPI if needed to pay return on equity to which the sponsor is entitled.

The rule also permits up to a 12 percent increase in addition to the CPI, if needed to fund operating deficits. If necessary to fund operating

deficits, the increase can be more than 12 percent plus CPI, but such increases would be subject to a hearing.

Finally, the JUMPP amendment was intended to apply to rent increases needed to fund operating deficits. Agency staff wanted to make it clear that even though JUMPP projects were receiving operating deficit subsidies which were supposed to permit the project to break even and hopefully produce an eventual surplus, it was possible that the project might still experience operating deficits after distribution of the annual subsidy. If that event occurred, the Agency would be approving rent increases to cover such additional deficit and proposed the amendment to make it clear that such rent increases were permissible under the rule.

Based on the foregoing reasons, the proposed amendment has been adopted without the modifications suggested by the Division of Housing.

Full text of the adoption follows.

5:80-9.9 Increases approved by Agency

(a) (No change.)

(b) For housing projects receiving subsidies under the New Jersey Urban Multi-Family Production Program (JUMPP), the Agency shall consider the amount by which the JUMPP subsidy decreases annually, as well as any operating deficits existing after distribution of the annual JUMPP subsidy, in determining the amount of rent increase needed pursuant to (a) above.

(a)

COUNCIL ON AFFORDABLE HOUSING

Procedural Rules
Petition for Substantive Certification
Municipal/Developer Incentives
Adopted New Rule: N.J.A.C. 5:91-4.5
Adopted Amendment: N.J.A.C. 5:91-4.1

Proposed: April 15, 1991 at 23 N.J.R. 1088(a).

Adopted: June 5, 1991 by the Council on Affordable Housing, Charles Griffiths, Chairman.

Filed: June 10, 1991 as R.1991 d.344, **without change.**

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Effective Date: July 1, 1991.

Expiration Date: February 7, 1996.

Summary of Public Comments and Agency Responses:

The following persons commented on the proposal:

Carl Bisgair, Esq., Bisgair and Pancotto

Kenneth Meiser, Esq., Frizell, Pozycki & Meiser

Patrick O'Keefe, Executive Vice President, New Jersey Builders Association

Robert Karen, President, New Jersey Builders Association

David Gladfelter, Esq., Kessler, Tutek and Gladfelter

COMMENT: The proposed rule precludes an award of site specific relief to a developer who sues a municipality prior to November 30, 1991 if the municipality has filed a housing element with the Council prior to November 30, 1989. Such a policy can only be implemented prospectively. It cannot preclude cases that have already been transferred to the Council under N.J.S.A. 52:27D-316(b). Developers who initiated litigation that resulted in the review of filed housing element never were guaranteed relief; but such relief should not be precluded.

RESPONSE: The rule shall apply to petitions for substantive certification or cases transferred under N.J.S.A. 52:27D-316(b) subsequent to the effective date of this rule. The rule does not alter existing Council decisions, resolutions or policies regarding the use of developer's sites in municipal housing elements.

COMMENT: Municipalities that petition in a timely manner should be rewarded by receiving stronger assurances that their fair share housing plans will not be delayed or disrupted while the Council review is pending by an award of site specific relief to an objector. This procedure, together with the proposal to place the burden of proof in an OAL-transferred matter on an objector to a municipal plan, carries out the legislative goal of encouraging voluntary municipal compliance with the Fair Housing Act and substituting the local planning process for the builders remedy as the preferred method of producing affordable housing.

RESPONSE: The intent of the rule proposal is to encourage planning and improve the Council's administrative process. It is also intended to add clarity to the administrative process for its participants.

COMMENT: Will municipalities maintain the benefits offered in (a) and (b) of the proposed rule if they petitioned for substantive certification in a timely manner as defined in the rule proposal and are required to amend their plan during the Council's review process?

RESPONSE: Yes. However, municipalities that do not develop housing elements addressing the Council's criteria within the deadlines imposed by the Council may be denied substantive certification and lose the benefits of the Council's administrative process.

COMMENT: Under the amendment to the Fair Housing Act, municipalities have two years to petition for substantive certification from the date of filing its housing element. If a developer files an exclusionary zoning lawsuit after this two year period has elapsed, the Council no longer has jurisdiction. Jurisdiction reverts to the courts.

RESPONSE: The Council recognizes that the court may have jurisdiction in these cases. However, the rule proposal specifies that the Council shall presumptively require municipalities to include the developer site in its housing element if the Council receives jurisdiction of such a case.

COMMENT: Developers should have the same rights as any other objector in the process to establish that municipally designated sites are not viable.

RESPONSE: All objectors have the same rights in establishing that municipally designated sites are not viable.

COMMENT: In those instances, where a municipality has filed a housing element with the Council and is sued, within the allotted two year time frame, prior to petitioning for substantive certification, the Council should presumptively award the litigant/developer relief.

RESPONSE: The Fair Housing Act provides municipalities with discreet time limits for petitioning for certification. The Act also states a clear direction away from the use of the "builder's remedy." Therefore, the Council believes to award developer's relief during the deadlines imposed by the Fair Housing Act would be inappropriate. However, the Council believes it is quite appropriate to award developers relief when a community has not complied with the Fair Housing Act. The Council believes that the clarity created by the rule proposal will benefit all parties in the Council's administrative process.

Full text of the adoption follows:

5:91-4.1 Petition

(a) (No change.)

(b) (No change in text.)

5:91-4.5 Municipal/developer incentives

(a) When a municipality files a housing element and petitions for substantive certification or is sued for exclusionary zoning within two years of filing a housing element, the Council shall not award relief to a developer except in extraordinary situations. Extraordinary situations include, but are not limited to, the lack of suitable alternative sites in the municipality to produce the required low and moderate income housing. If contested issues are transferred to the Office of Administrative Law pursuant to N.J.A.C. 5:91-8, the burden of proof shall be on the objectors to the municipal housing element, unless the Council has made a determination that an extraordinary situation exists.

(b) When a municipality has filed a housing element prior to November 30, 1989, a peititon for substantive certification or an exclusionary zoning lawsuit filed prior to November 30, 1991 shall result in the considerations outlined in (a) above.

(c) If a developer files an exclusionary zoning lawsuit against a municipality prior to a municipal petition for substantive certification, the Council shall presumptively require the municipality to include the developer's site as a component of its plan if:

1. The developer offers a site that is suitable pursuant to N.J.A.C. 5:92-9; and

2. The municipality has filed a housing element but has not petitioned in a timely manner as defined in (a) and (b) above.

(d) The Council shall consider awarding relief to developers that object to a municipal plan when:

1. The municipality has filed a housing element and petitions for substantive certification prior to an exclusionary zoning lawsuit but does not petition in a timely manner as defined in (a) and (b) above;

2. The Council determines the municipal plan does not adequately address the municipal fair share; and

3. The developer offers a site that is suitable, pursuant to N.J.A.C. 5:92-9.

(e) Municipalities that have filed housing elements with the Council may amend their housing elements prior to petitioning for substantive certification and prior to the initiation of an exclusionary zoning suit. However, such an amendment shall not extend the period in which a community may petition for certification and receive the considerations outlined in (a) and (b) above.

PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Public Hearing
Uniform Construction Code
Elevator Safety Subcode
Retroactive Requirements for Existing Elevators and Escalators

Take notice that a public hearing on the subject of retroactive requirements for existing elevators and escalators will be held on August 8, 1991 at 10:00 A.M. at the office of the Construction Code Element, 3131 Princeton Pike, Lawrenceville, New Jersey.

EDUCATION

(b)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session
July 17, 1991

Take notice that the following agenda item is scheduled for Notice of Proposal in the July 15, 1991 New Jersey Register and is, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, July 17, 1991 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak, call the State Board Office at (609) 292-0739 by 12:00 noon Friday, July 12, 1991.

Rule Proposal: N.J.A.C. 6:8-1 and 6, Preventive and remedial programs in Reading, Writing and Mathematics.

Please Note: Publication of the above item is subject to change depending upon the actions taken by the State Board of Education at the June 5, 1991 monthly public meeting.

ENVIRONMENTAL PROTECTION

(c)

DIVISION OF WATER RESOURCES

Notice of Public Hearing for Proposed Easements on Department-Held Land
Proposed Water Transmission Main, Franklin Township, Somerset County

Take notice that, pursuant to the requirements of N.J.A.C. 7:36-8, Public Hearing for the Sale, Exchange of, Easement on or Lease of Department-Held Land, the New Jersey Department of Environmental Protection (Department) hereby provides notice that a public hearing will be conducted concerning the proposed granting of five land easements on State-owned land to the Township of Franklin, Somerset County, New Jersey.

The State-owned land in question was purchased by the State of New Jersey pursuant to the 1969 Water Conservation Fund as part of the lands needed for the proposed Six-Mile-Run Reservoir project located in Franklin Township, Somerset County. The land is currently idle pending completion of feasibility studies for the proposed reservoir.

Franklin Township is currently seeking five land easements from the Department in order to allow the construction of a proposed 42-inch to 12-inch diameter water transmission main. Most of the proposed water transmission main will traverse the reservoir site via public rights-of-way owned by Franklin Township; however, five land easements will be necessary, typically at stream crossings.

The purpose of the proposed water transmission main is to deliver potable water to the Franklin Park District of Franklin Township in furtherance of the Township's obligation to satisfy affordable housing requirements.

The five proposed land easements for the water transmission main will total to about one acre of land, valued at about $8,750.

The affected lands in Franklin Township which are the subject of the easement requests are as follows:

Block	Lot	Acres	Appraised Value
74	17	0.141	$1,400.00
74	15	0.078	$750.00
85	62.02	0.08	$1,050.00
57	41.01	0.688	$5,300.00
57	32.02	0.08	$250.00

The public hearing is set for 10:00 A.M. on July 31, 1991 at the Franklin Township Municipal Building, 475 Demott Lane, Franklin Township, Somerset County, New Jersey. The Department will accept oral comments from the public at the public hearing, but may limit the time allotted to each speaker if necessary to ensure the participation of all interested parties.

The public may submit written comments to the Department on or before the date of the public hearing. Written comments or requests for additional information, including appraisals of fair market value, may be submitted to Steven Nieswand, Assistant Director of the Water Supply Element, New Jersey Department of Environmental Protection, Division of Water Resources, CN-029, Trenton, New Jersey 08625.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Monmouth County Water Quality Management Plan
Public Notice

Take notice that on May 24, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Monmouth County Water Quality Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for the Bayshore Regional Sewerage Authority (BRSA) wastewater management planning area. The BRSA WMP area is a portion of the WMP area for the Monmouth County Bayshore Outfall Authority (MCBOA) and the BRSA WMP is submitted on behalf of MCBOA; MCBOA retains WMP responsibility for this area. The municipalities addressed by the BRSA WMP are: Union Beach, Keansburg, Keyport, and Matawan Boroughs, Hazlet and Aberdeen Townships, and the northern portions of Holmdel and Marlboro Townships. Wastewater management planning responsibility for the remainder of Holmdel Township is retained by Holmdel Township and the Western Monmouth Utilities Authority (WMUA) retains WMP responsibility for the remainder of Marlboro Township.

The WMP makes provision for the conversion of the three Aberdeen Township sewage treatment plants to pumping stations with treatment at the BRSA regional plant, eliminating these discharges in Aberdeen Township. The sewer service area in Aberdeen is expanded to include the entire Township. The Comdata facility (NJPDES NJ 0001775) will be abandoned and the flow conveyed to the BRSA facility. The Holmdel WMP, adopted January 31, 1990, is amended to include in the service area that area bounded in part by the Garden State Parkway and Telegraph Hill Road which was not included in the service area; the flow projections for the year 2008 for the area sewered by BRSA in the Holmdel WMP are amended by extrapolation to the year 2010. The WMUA WMP, adopted March 14, 1989, is amended to realign the WMP and service area boundary between BRSA and WMUA to reflect the line as shown in "Schedule A" from the service agreement between BRSA and WMUA.

An expansion of the BRSA facility is proposed to allow for the treatment of a planned flow for the facility of 10.673 million gallons per day average annual flow, exclusive of infiltration and inflow.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on May 22, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment updates the Winslow Township Wastewater Management Plan (WMP). The amendment removes the 13,650 gallon per day, 17 acre Kings Highway Commerce Center site (Block 502, Lots 4A and 4B) from the Winslow Township (Sicklerville) sewage treatment plant (STP) sewer service area and adds this site to the Camden County Municipal Utilities Authority's Delaware No. 1 STP sewer service area via the Gloucester Township Municipal Utilities Authority's collection system.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would modify the Atlantic Basin-Pinelands Area Wastewater Management Plan (WMP) by expanding the sewer service area of the Camden County Municipal Utilities Authority Delaware No. 1 sewage treatment plant (STP) and the Waterford Township Municipal Utilities Authority (MUA) STP to serve the Archway Program facilities located on Block 45, Lots 1, 2, 4, 4A, 5, 9, and 11A in Waterford Township, Camden County and Block 91, Lots 17 and 20 in Evesham Township, Burlington County. This amendment also would modify the Evesham Township WMP which presently identifies the Evesham Township portion of the proposed amendment site as unsuitable for sewer service. The proposed sewer service area expansion would serve only existing Archway Program buildings. The proposed wastewater flow from these facilities is 12,115 gallons per day. The wastewater flow from the Archway project would be applied against the Waterford Township MUA's allocation identified in the Atlantic Basin–Pinelands Area WMP. The Archway Program sites contain wetlands; however, wetlands issues will be addressed during the Pinelands Commission approval process.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment, is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel of the Bureau of Water Quality Planning, at the NJDEP address cited above. A copy of the comments should be sent to Joseph McCully, Archway Programs, 197 Jackson Road, Atco, N.J. 08004. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt the Elk Township Wastewater Management Plan (WMP). This WMP proposes to expand the sewer service area of the Gloucester County Utilities Authority's (GCUA) regional sewage treatment plant (STP) in West Deptford Township to serve the Planned Unit Development Overlay (Block 36-40, 44-269, 276, and 277) in Elk Township. Wastewater flow from Elk Township would be accepted by the GCUA regional STP on a first come, first served basis. The existing Aura School wastewater treatment system would be abandoned once connection to the GCUA regional STP sewer system became available. Areas of Elk Township zoned as Commercial Neighborhood and Recreational Residential, not in the proposed GCUA regional STP sewer service area, would be designated as areas to be served by subsurface sewage disposal systems less than 20,000 gallons per day (GPD). The remainder of Elk Township would be designated as areas to be served by subsurface sewage disposal systems less than 2,000 GPD.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment, is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel of the Bureau of Water Quality Planning, at the NJDEP address cited above. A copy of the comments should be sent to James F. Sickels, Jr., President, Sickels & Masteller, Inc., North Pointe Commons, 9 East Stow Road, Marlton, N.J. 08053-3118. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(d)

PINELANDS COMMISSION

Notice of Receipt of Petition for Rulemaking Pinelands Land Capability Map

N.J.A.C. 7:50-5.3(a)24

Petitioners: P. West, Jr., J. Weiss, 270 Development Group, Burnt Pine Investors, Long Road Investors and First National Bank of Toms River.

Authority: N.J.S.A. 13:18A-65.

Take notice that on May 15, 1991, the above noted petitioners filed a complete rulemaking petition with the Pinelands Commission requesting an amendment to the Pinelands Comprehensive Management Plan. This amendment would result in a revision to the Pinelands Land Capability Map, adopted at N.J.A.C. 7:50-5.3(a)24, to redesignate approximately 75 acres of land in Manchester Township, Ocean County from a Rural Development Area to a Regional Growth Area designation.

The Land Capability Map graphically depicts Pinelands Management Areas which form the basis upon which different uses and the intensity

of those uses are permitted in the Pinelands. The standards governing permitted land uses and intensities of uses are set forth in N.J.A.C. 7:50-5; specifically N.J.A.C. 7:50-5.26 for Rural Development Areas and N.J.A.C. 7:50-5.28 for Regional Growth Areas. In general, the types of land uses permitted in each of these two management areas are similar; however, the intensity with which those uses can be developed is substantially higher in Regional Growth Areas.

The properties subject to the petition total approximately 75 acres and are generally located in the easterly section of Manchester Township on the southerly side of State Route 37. Included are: Block 46, Lots 7, 8, 10 and 10.02; and Block 46.01, Lots 1.01, 1.02 and 1.03. The properties are bounded to the east by Alexander Avenue and a subdivision commonly known as Summit Park, to the west by the eastern property line of Block 46, Lot 4, to the south by the Central Railroad of New Jersey right-of-way and to the north by State Route 37.

The lands subject to the petition are located within the Pinelands National Reserve but outside of the State Pinelands Area. As such, the Pinelands Comprehensive Management Plan includes land use recommendations governing the future use and development of the properties but the Pinelands Commission does not exercise regulatory jurisdiction to implement the Plan's recommendations. Instead, the Department of Environmental Protection abides by the Comprehensive Management Plan's land use recommendations in administering the Coastal Area Facility Review Act.

The petitioners request the redesignation to permit commercial development at an intensity which would not otherwise be permitted within a Rural Development Area. The petitioners argue that the amendment is justified since these properties exhibit the same characteristics as other lands included in Regional Growth Areas and are located in a "natural growth corridor" surrounded by existing and proposed development. The petitioners further argue that the requested redesignation is consistent with the goals of the Pinelands Protection Act and the Pinelands Comprehensive Management Plan.

Take further notice that, pursuant to N.J.A.C. 7:50-7, this petition is being reviewed by the Executive Director and the staff of the Pinelands Commission for the purpose of formulating a recommendation to the Pinelands Commission as to how the Commission should respond.

Interested persons who wish to comment on the petition before the Executive Director completes his review may do so by submitting written comments on or before August 7, 1991. Comments should be addressed to:

John C. Stokes
Assistant Director
Pinelands Commission
Post Office Box 7
New Lisbon, New Jersey 08064

A copy of the petition and supporting documents are on file at the offices of the Pinelands Commission, Springfield Road, Pemberton Township, New Jersey and are available for inspection between 9:00 A.M. and 5:00 P.M. on regular business days.

The Pinelands Commission will not consider or propose an amendment to the Comprehensive Management Plan until it reviews the recommendation of the Executive Director. After such consideration, the Commission shall determine whether or not to proceed with a rulemaking proposal pursuant to the Administrative Procedure Act, N.J.S.A. 52:14A-1 et seq., and N.J.A.C. 7:50-7.

HEALTH

(a)

DIVISION OF EPIDEMIOLOGY AND DISEASE CONTROL

Notice of Availability of Grants Tuberculosis Control in Drug Treatment Centers and State Correctional Facilities

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq. (P.L. 1987, c.7), the Department of Health hereby publishes notice of the availability of the following grant:

Name of Grant Program: Tuberculosis Control in Drug Treatment Centers/State Correctional Facilities, Grant Program No. 92-8-TB Revised.

Purpose: To conduct tuberculosis surveillance and preventive treatment activities in drug treatment centers and State correctional facilities.

Amount of Money in the Grant Program: The availability of funds for this program is contingent on appropriation of funds to the department. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

Groups or Entities which may Apply for Funding: Applications are accepted from drug treatment centers (DTC) in high tuberculosis incidence areas and qualified State correctional facilities.

Qualifications Needed by an Applicant to be Considered for a Grant: The DTC must have a methadone maintenance program and be located in a high tuberculosis incidence area. The DTCs and State correctional facilities must also be approved, in advance, by the Centers for Disease Control to participate in this special project.

Procedures for Eligible Entities to Apply for Grant Funds: Complete and submit a New Jersey State Department of Health application for a Health Service Grant.

For Information Contact:

Chief, Tuberculosis Control Program
New Jersey State Department of Health
University Office Plaza
CN-369
Trenton, New Jersey 08625-0369
(609) 588-7522

Deadline by which Applications Must be Submitted: August 1, 1991.

Date by which Applicant shall be notified whether they will receive funds: August 31, 1991.

(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of a One Time Only Deletion of the August 15, 1991 Batching Cycle (July 1, 1991 submission date) for Certificate of Need Applications involving Surgical Facilities and Services (inpatient and freestanding)

N.J.A.C. 8:33-1.5

Take notice that the Department of Health, with the approval of the Health Care Administration Board (HCAB), is deleting the next batching cycle that is scheduled in accordance with N.J.A.C. 8:33-1.5 to be submitted on or before July 1, 1991 (August 15, 1991 batching cycle).

This deletion of the next Surgical Facilities cycle will permit the Department of Health to propose amendments/revisions to the State's current Surgical Facilities rule at N.J.A.C. 8:33A and permit the updating and simplification of the need methodology, while allowing time for the public planning process to complete the necessary amendments in the New Jersey Administrative Code. The Department anticipates that these amended surgical facility policies will be in effect prior to the next available certificate of need batching cycle (Febraury 15, 1992).

Any inquiries should be sent to:

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

LAW AND PUBLIC SAFETY

(c)

OFFICE OF THE ATTORNEY GENERAL

Notice of the Availability of the Quarterly Report of Legislative Agents for the First Quarter of 1991, ending March 31, 1991

Take notice that Robert J. Del Tufo, Attorney General of the State of New Jersey, in compliance with N.J.S.A. 52:13C-23(h), hereby publishes Notice of Availability of the Quarterly Report of Legislative Agents for the First Quarter of 1991, accompanied by a Summary of the Quarterly Report.

At the conclusion of the First Quarter of 1991, the Notices of Representation filed with this office reflect that 548 individuals are registered as legislative agents. Legislative agents are required by law to submit in writing a quarterly report of their activity in attempting to influence legislation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter for such activity that occurred during the preceding calendar quarter. (N.J.S.A. 52:13C-22(b)).

A complete quarterly report of legislative agents, consisting of the summary and copies of all quarterly reports filed by legislative agents for the First Calendar Quarter of 1991, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Attorney General, the Office of Legislative Services (Bill Room), the Office of Administrative Law, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

- The names of registered agents, their registration numbers, their business addresses and whom they represent.
- A list of agents who have filed quarterly reports by statutory and compilation deadlines for this quarter.
- A list of agents whose quarterly reports were not received by the compilation deadline for this quarter.

Following is a listing of all new legislative agents who have filed Notices of Representation during the First Calendar Quarter of 1991:

No. 35 Eileen N. Kean representing Thomas J. Kean Co.
No. 75 Ralph M. Shrom representing Marcus Group Inc.
No. 280 William R. Abrams representing NJ Ass'n of Health Care Facilities
No. 291 Catherine E. Miller representing Nancy H. Becker Associates
No. 551 Christopher Olszewski representing MWW/Strategic Communications
No. 583 Judith Shaw Berry representing Public Policy Advisors Inc.
No. 650 Raymond L. Zawacki representing American Legion
No. 651 Carolyn Forcina representing NJ Hospital Ass'n
No. 652 Christopher D. Kniesler representing Kniesler Consultant Group
No. 653 Carla J. Israel representing Chemical Industry Council of NJ
No. 654 Kathleen Charette representing NJ Dental Ass'n
No. 655 Robert Angelo representing American Federation of State, County & Municipal Employees, AFL/CIO, Council #1
No. 656 Donald S. Weir representing Carpenters District Council of South Jersey
No. 657 Donna C. Bocco representing American Cancer Society NJ Division
No. 658 James J. Ross representing Independent Insurance Agents of NJ
No. 659 John W. McGrath Sr. representing NJ Warehousemen & Movers Ass'n
No. 660 John W. English representing Special Vehicle Institute MIC/MSF
No. 661 John P. Bugel representing Brotherhood of Maintenance of Way Employees
No. 662 Patricia A. Tumulty representing NJ Library Ass'n
No. 663 Anita Leone representing Family Planning Advocates of NJ
No. 664 Paul A. Schultz representing Site Management Consultants
No. 665 Lisa Gaede Verniero representing Building Contractors Ass'n of NJ
No. 666 Stephen Philip Matthews representing Distilled Spirits Council of the US Inc. (DISCUS)
No. 667 Richard V. Hollyer representing Dolan & Dolan, Sussex Rural Electric Cooperative and Public Power Ass'n of NJ
No. 668 Greg Thomas representing Syntex Laboratories Inc.
No. 669 Kathleen P. Galop, Esq. representing Donington, Karcher, Leroe, Salmond, Luongo, Ronan & Connell PA, O'Brien Energy Systems Inc. and Robert Plan
No. 670 Katherine E. Cooney representing Westland Associates
No. 671 Laura Bowne Barry representing LeBoeuf, Lamb, Leiby & MacRae
No. 672 Susan Elizabeth Russell representing Society for Animal Protective Legislation

Following is a listing of all legislative agents who have filed Notices of Termination during the First Calendar Quarter of 1991:

Legislative Agent	Registration Number
George G. Britt Jr.	14
William A. Carey	16
Edward T. McDonald	44
Philip J. Cocuzza	94
Richard E. Moeller	107
Frank C. Nicholas	142
Vincent J. Zecca	148
Terry Evanko	155
Wayne J. Oppito	155
Roger Simonds	187
Joseph Semrod	188
Philip P. Schepel	208
Stephen H. Hoefer	213
Howard Banks	308
Lillian Benton	308
Laura Clark	308
Ellen Jackson	308
Charlie Mae Outsey	308
Leonys Owens	308
Dula Pittman	308
Mary Shivers	308
Cleo P. Thompson	308
Vera Watson	308
Johnnie Mae Williams	308
Pearl Wilson	308
James R. White	346
Everett J. Landers	361
Charles Nelson	363
Kenneth Butko	388
Adrienne Bliss Brown	393
Sally Anne Goodson	393
Judith L. Johnston	393
Ann Marlow	393
Jan McLachlan	393
Mildred M. Neylon	393
Elizabeth H. Schuyler	393
Jean Louise Willis, PhD	393
Ronald H. Doughty	434
John Hoff III	488
Elizabeth Tindall	488
Christopher Bateman	518
Sidney Glaser	566
Charles J. Irwin	584
Daniel N. Fedeli	608
Arthur F. Brown	609
Ralph Buchanan Pears	614
John J. Fay Jr.	618

For further information contact the Legislative Agents Unit at (609) 984-9371.

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 May 6, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT APRIL 15, 1991

NEXT UPDATE: SUPPLEMENT MAY 20, 1991

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
22 N.J.R. 1965 and 2062	July 2, 1990
22 N.J.R. 2063 and 2202	July 16, 1990
22 N.J.R. 2203 and 2386	August 6, 1990
22 N.J.R. 2387 and 2622	August 20, 1990
22 N.J.R. 2623 and 2860	September 4, 1990
22 N.J.R. 2861 and 3072	September 17, 1990
22 N.J.R. 3073 and 3182	October 1, 1990
22 N.J.R. 3183 and 3274	October 15, 1990
22 N.J.R. 3275 and 3420	November 5, 1990
22 N.J.R. 3421 and 3606	November 19, 1990
22 N.J.R. 3607 and 3666	December 3, 1990
22 N.J.R. 3667 and 3896	December 17, 1990
23 N.J.R. 1 and 144	January 7, 1991
23 N.J.R. 145 and 248	January 22, 1991
23 N.J.R. 249 and 332	February 4, 1991
23 N.J.R. 333 and 636	February 19, 1991
23 N.J.R. 637 and 798	March 4, 1991
23 N.J.R. 799 and 924	March 18, 1991
23 N.J.R. 925 and 1048	April 1, 1991
23 N.J.R. 1049 and 1226	April 15, 1991
23 N.J.R. 1227 and 1482	May 6, 1991
23 N.J.R. 1483 and 1722	May 20, 1991
23 N.J.R. 1723 and 1854	June 3, 1991
23 N.J.R. 1855 and 1980	June 17, 1991
23 N.J.R. 1981 and 2078	July 1, 1991

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.3	Return of contested cases: failure of party to appear at hearing	23 N.J.R. 1728(a)		
1:1-3.3, 14.4, 14.14	Return of cases; failure to appear; sanctions	23 N.J.R. 639(a)	R.1991 d.279	23 N.J.R. 1786(a)
1:1-5.4	Representation by non-lawyers	23 N.J.R. 1053(a)	R.1991 d.296	23 N.J.R. 1919(a)
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
1:10-8.1	Transmission of Economic Assistance cases	23 N.J.R. 3(a)		
1:13-1.1, 4.1	Division of Motor Vehicle cases	23 N.J.R. 928(a)	R.1991 d.330	23 N.J.R. 2010(a)
1:13-14.4	Motor Vehicle cases: failure to appear	23 N.J.R. 639(a)	R.1991 d.279	23 N.J.R. 1786(a)
1:13A-14.1	Lemon Law hearings: failure to appear	23 N.J.R. 639(a)	R.1991 d.279	23 N.J.R. 1786(a)
1:14	Board of Public Utility hearings	23 N.J.R. 640(a)		
1:14	Board of Public Utility hearings: extension of comment period	23 N.J.R. 1230(a)		
	Most recent update to Title 1: TRANSMITTAL 1991-2 (supplement February 19, 1991)			
AGRICULTURE—TITLE 2				
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
2:9-1	Avian influenza: indemnification of poultry losses	23 N.J.R. 1485(a)		
2:17-7.1	Movement into State of pepper transplants	Emergency (expires 7-30-91)	R.1991 d.317	23 N.J.R. 1966(a)
2:18	Nursery inspection fees	23 N.J.R. 1230(b)		
2:21-7	Fees for seed testing	23 N.J.R. 1231(a)		
2:32-2.3, 2.11, 2.22, 2.27	Sire Stakes Program	23 N.J.R. 252(a)	R.1991 d.241	23 N.J.R. 1408(a)
2:50-1.1, 2.1	Dairy farmers and milk dealers notice to discontinue sale or purchase of milk	23 N.J.R. 929(a)	R.1991 d.323	23 N.J.R. 2010(b)
2:51	Milk prices to dairy farmers	Emergency (expires 7-30-91)	R.1991 d.322	23 N.J.R. 1966(b)
2:69-1.11	Commercial values of primary plant nutrients	23 N.J.R. 1728(b)		
2:73-2	Seal of Quality for Eggs program	23 N.J.R. 1729(a)		
	Most recent update to Title 2: TRANSMITTAL 1991-2 (supplement February 19, 1991)			
BANKING—TITLE 3				
3:1-2.17	Closing of branch offices	23 N.J.R. 801(a)		
3:1-2.25, 2.26	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)	R.1991 d.294	23 N.J.R. 1919(b)
3:1-2.25, 2.26, 17	Automated teller machines	23 N.J.R. 642(a)	R.1991 d.244	23 N.J.R. 1408(b)
3:1-6.1, 6.2, 6.6	Assessments on trust assets	23 N.J.R. 1073(b)	R.1991 d.350	23 N.J.R. 2028(a)
3:1-18	Foreign banks and associations: registration of service facilities	23 N.J.R. 1233(a)	R.1991 d.347	23 N.J.R. 2029(a)
3:3-2	Nonpublic records	23 N.J.R. 253(a)	R.1991 d.287	23 N.J.R. 1921(a)
3:3-2.1	Department records designated nonpublic	23 N.J.R. 1858(a)		
3:6-8	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)	R.1991 d.294	23 N.J.R. 1919(b)
3:6-13	Repeal (see 3:1-2.25, 2.26, 17)	23 N.J.R. 642(a)	R.1991 d.244	23 N.J.R. 1408(b)
3:16-2.1	Pawnbroker service charges	23 N.J.R. 1729(b)		
3:17	Consumer Loan Act rules	23 N.J.R. 1234(a)		
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
3:17-1.1, 1.4	Consumer loan licensees: check solicitations	23 N.J.R. 931(a)	R.1991 d.329	23 N.J.R. 2031(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
3:17-3.4	Location of consumer loan records	23 N.J.R. 803(a)		
3:18-2.1	Location of secondary mortgage loan records	23 N.J.R. 803(a)		
3:18-10.5	Surety bonding of secondary mortgage loan licensees	23 N.J.R. 802(a)	R.1991 d.272	23 N.J.R. 1661(a)
3:23-2.1	License fees for motor vehicle installment sellers and home repair contractors	23 N.J.R. 1073(b)	R.1991 d.350	23 N.J.R. 2028(a)
3:24-2.7	Posting of general ledger by check cashers	23 N.J.R. 932(a)	R.1991 d.324	23 N.J.R. 2032(a)
3:29-1.1–1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	23 N.J.R. 1485(b)		
3:32-1.11, 2	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)	R.1991 d.294	23 N.J.R. 1919(b)
3:38-1.2, 1.4, 1.9	Mortgage banker and broker net worth standards	23 N.J.R. 643(a)		
3:38-1.5	Surety bonding of mortgage loan licensees	23 N.J.R. 802(a)	R.1991 d.272	23 N.J.R. 1661(a)
3:38-2.1	Location of mortgage loan records	23 N.J.R. 803(a)		

Most recent update to Title 3: TRANSMITTAL 1991-3 (supplement April 15, 1991)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)

PERSONNEL—TITLE 4A

4A:6-5.3	PAR use and review: administrative change	———	———	23 N.J.R. 1410(a)

Most recent update to Title 4A: TRANSMITTAL 1990-5 (supplement November 19, 1990)

COMMUNITY AFFAIRS—TITLE 5

5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)	Expired	
5:10-1.12	Hotels and multiple dwellings: administrative correction regarding Uniform Fire Code inspections	———	———	23 N.J.R. 1410(b)
5:14-1.1–1.6, 2.1, 2.2, 2.3, 3.1–3.12, 3A, 4.10, App. A–D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)		
5:18-1.5	Fire official and fire inspector certification	23 N.J.R. 1235(a)		
5:18-3.2	Uniform Fire Code: hotel-casinos	23 N.J.R. 1237(a)		
5:18A-1.4, 2.3, 3.3, 4.3–4.7, 4.9, 4.10	Fire official and fire inspector certification	23 N.J.R. 1235(a)		
5:20-1	Meetings of governing board of a condominium association	23 N.J.R. 1901(a)		
5:23-1.1, 1.4, 2.14, 2.23, 2.25, 3.4, 3.11, 3.14, 4.3, 4.5, 4.12, 4.13, 4.18, 4.20, 4.24, 5.1, 5.3, 5.5, 5.7, 5.19, 5.20, 5.23, 12	Elevator Safety Subcode	23 N.J.R. 805(a)	R.1991 d.325	23 N.J.R. 2046(a)
5:23-2.38	Barrier Free Recreational Standards: appeals regarding facility noncompliance	23 N.J.R. 1730(a)		
5:23-3.11A, 4.2	Uniform Construction Code: plan review of proposed school facilities	23 N.J.R. 1084(a)	R.1991 d.309	23 N.J.R. 1922(a)
5:23-3.14, 3.18, 3.20, 10.3	Uniform Construction Code: 1991 subcode references; Energy and Radon Hazard subcodes	23 N.J.R. 1487(a)		
5:23-3.15, 3.18	Uniform Construction Code: plumbing and energy subcodes	23 N.J.R. 804(a)	R.1991 d.326	23 N.J.R. 2044(a)
5:23-5.3, 5.15, 5.20, 5.23	Uniform Construction Code: fire inspector RCS license	23 N.J.R. 1085(a)	R.1991 d.308	23 N.J.R. 1923(a)
5:23-7.3, 7.11	Barrier Free Subcode: exemptions and Use Group R-2 and R-3	23 N.J.R. 1902(a)		
5:23-11	Uniform Construction Code: Indoor Air Quality Subcode	23 N.J.R. 1730(b)		
5:24-2.3, 2.5	Dwelling unit conversions: senior citizens and disabled protected tenancy	23 N.J.R. 645(a)	R.1991 d.252	23 N.J.R. 1662(a)
5:27-1.3	Rooming and boarding houses: proof of fire code compliance	23 N.J.R. 932(b)	R.1991 d.288	23 N.J.R. 1925(a)
5:33-4	Property tax and mortgage escrow account transactions	23 N.J.R. 1903(a)		
5:34-7.1–7.4, 7.7	Cooperative pricing and joint purchasing systems by local governmental units	23 N.J.R. 933(a)	R.1991 d.284	23 N.J.R. 1787(a)
5:70-6.3	Congregate Housing Services Program: service subsidies	23 N.J.R. 934(a)	R.1991 d.295	23 N.J.R. 1925(b)
5:80-2.2	Housing and Mortgage Finance Agency: consultation with housing sponsors	22 N.J.R. 3669(b)		
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)	R.1991 d.334	23 N.J.R. 2055(a)
5:80-9.9	Housing and Mortgage Finance Agency: JUMPP project net increases	23 N.J.R. 646(a)	R.1991 d.335	23 N.J.R. 2058(a)
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 3670(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
5:91-4.1, 4.5	Council on Affordable Housing: petition for substantive certification; municipal/developer incentives	23 N.J.R. 1088(a)	R.1991 d.344	23 N.J.R. 2058(a)
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 6.1, 6.2, 6.3, 14.4	Council on Affordable Housing: credits for rehabilitation and new construction; rental housing	23 N.J.R. 1488(a)		
	Most recent update to Title 5: TRANSMITTAL 1991-4 (supplement April 15, 1991)			
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
5A:3	Military service medals	23 N.J.R. 1490(a)		
5A:4	Brigadier General Willaim C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)		
	Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)			
EDUCATION—TITLE 6				
6:3-7.4, 7.7	Homeless children and youth: administrative corrections	_____	_____	23 N.J.R. 1410(c)
6:11-11.9	Speech language specialist endorsement	23 N.J.R. 336(a)	R.1991 d.282	23 N.J.R. 1816(b)
6:20-2.12, 2.13, 2.14, 2A.10, 2A.11, 2A.12, 4.1, 5.3, 5.6, 8.3	Financial management in local districts	23 N.J.R. 1733(a)		
6:20-4.3, 4.4	Private schools for handicapped: administrative corrections	_____	_____	23 N.J.R. 1410(c)
6:21-7, 19	Pupil transportation aid	23 N.J.R. 1737(a)		
6:22-1.2–1.7, 2, 3, 4, 5.4, 5.5, 6, 7, 8	School Facility Planning Service	23 N.J.R. 1238(a)		
6:24-7.1, 7.2, 7.7	Budget appeals: administrative corrections	_____	_____	23 N.J.R. 1410(c)
6:28-1.1, 1.3, 3.2, 3.5, 3.7, 4.2, 4.4, 6.5, 7.1, 7.2, 10.1, 10.2, 11.4	Special education	23 N.J.R. 1053(b)	R.1991 d.337	23 N.J.R. 2032(b)
6:29-7.3, 7.4	School employee physical examinations	23 N.J.R. 336(b)	R.1991 d.283	23 N.J.R. 1817(a)
6:30-4.4, 4.5	Reporting of enrollments in adult high schools	23 N.J.R. 1243(a)		
6:39-1.3, 1.4	Statewide assessment of pupil achievement: students with educational disabilities; State mandated tests	23 N.J.R. 1244(a)		
6:41	Repeal Advisory Council	23 N.J.R. 1244(b)		
6:43-1.1, 1.2, 3.3, 7.1, 8.1	Vocational and technical education: programs and standards	23 N.J.R. 1246(a)		
6:46-1.1, 2	Local area vocational school districts	23 N.J.R. 1247(a)		
6:47	Repeal Management Services	23 N.J.R. 1244(b)		
6:48	Repeal Professional Services	23 N.J.R. 1244(b)		
6:49	Repeal Occupational Research Development	23 N.J.R. 1244(b)		
6:50	Repeal Urban Education and Manpower Training	23 N.J.R. 1244(b)		
6:51	Vocational and technical education: administration and organization	23 N.J.R. 1250(a)		
6:52	Repeal Residential Schools	23 N.J.R. 1244(b)		
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7:0	Clean Water Enforcement Act: notice of intention to propose rules regarding civil administrative penalties	23 N.J.R. 935(b)		
7:1E	Discharges of petroleum and other hazardous substances	23 N.J.R. 1335(a)		
7:1I-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:5C-1.4, 3.1, 5.1	Endangered Plant Species Program	23 N.J.R. 812(a)		
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:7E-8.13	Buffers and compatibility uses: administrative correction	_____	_____	23 N.J.R. 1662(b)
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir Complex: schedule of rates	22 N.J.R. 3676(a)	R.1991 d.270	23 N.J.R. 1662(c)
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: schedule of rates	22 N.J.R. 3678(a)	R.1991 d.271	23 N.J.R. 1664(a)
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		

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7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)		
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)		
7:14-8	Water Pollution Control Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)		
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)	R.1991 d.307	23 N.J.R. 1926(a)
7:14A-1.9, 2.5, 3.10, 8.13	Water Pollution Control Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)		
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:18	Certification of laboratories analyzing drinking water and wastewater	23 N.J.R. 1109(a)		
7:18-1.1, 1.3, 1.4, 1.6, 1.7, 1.9, 2.1–2.4, 2.6, 2.7, 2.10–2.15, 5.2–5.5, 5.7, 5.8	Radon laboratory certification program	23 N.J.R. 29(b)	R.1991 d.246	23 N.J.R. 1423(a)
7:18-6.6	Water Pollution Control Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(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)	R.1991 d.307	23 N.J.R. 1926(a)
7:24	Dam Restoration Grant Program	23 N.J.R. 650(a)	R.1991 d.256	23 N.J.R. 1665(a)
7:24	Dam Restoration Grant Program: administrative correction to proposal	23 N.J.R. 935(a)		
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)	R.1991 d.277	23 N.J.R. 1788(a)
7:25-5	1991-92 Game Code	23 N.J.R. 1494(a)		
7:25-18.1	Winter flounder and red drum: size and possession limits	23 N.J.R. 43(a)	R.1991 d.348	23 N.J.R. 2011(a)
7:25-18.1	Taking of Atlantic sturgeon: preproposed amendment	23 N.J.R. 1111(a)		
7:25-18.5	Bait net and gill net regulation	22 N.J.R. 3685(a)	R.1991 d.328	23 N.J.R. 2011(b)
7:25-18.5–18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)	R.1991 d.278	23 N.J.R. 1792(a)
7:25-22.1–22.4	Menhaden fishing in Delaware Bay: notice of rule invalidation	————	————	23 N.J.R. 1432(a)
7:25-22.3	Fishing for Atlantic menhaden	22 N.J.R. 3611(a)	R.1991 d.327	23 N.J.R. 2012(a)
7:25A-1.4, 1.5, 1.6, 1.9	Oyster management	23 N.J.R. 1112(a)	R.1991 d.349	23 N.J.R. 2012(b)
7:26-4.3, 4.4, 4.6, 15.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)		
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)		
7:26-8.1	Mixtures of solid and listed hazardous wastes	23 N.J.R. 1113(b)		
7:26-8.2, 8.8, 8.12	Hazardous waste management: Toxicity Characteristic	23 N.J.R. 151(a)		
7:26-8.2, 8.8, 8.12	Hazardous waste management: reopening of comment period regarding Toxicity Characteristic of waste	23 N.J.R. 1401(a)		
7:26-8.13	Hazardous waste from non-specific sources: F019 exclusion	23 N.J.R. 153(a)	R.1991 d.243	23 N.J.R. 1432(b)
7:26-8.14	Hazardous waste management: methyl bromide production wastes	23 N.J.R. 154(a)		
7:26-8.14	Hazardous waste management: reopening of comment period regarding listing of methyl bromide production wastes	23 N.J.R. 1401(b)		
7:26-8.15, 8.16	Hazardous waste criteria, identification, and listing	23 N.J.R. 1114(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
7:26-12.4	Hazardous waste facility permits: administrative correction	————	————	23 N.J.R. 1432(c)
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:26B-1.3, 1.5	ECRA "cleanup plan" and applicability: validity of rules	————	————	23 N.J.R. 1797(a)
7:27-8.1, 8.2, 8.11, 16, 17.1, 17.3–17.9, 23.2, 23.3, 23.5, 23.6, 25.2	Air pollution by volatile organic compounds	23 N.J.R. 1858(b)		
7:27-13.1, 14.1, 15.1	Air pollution control: administrative corrections	————	————	23 N.J.R. 1432(d)
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution by vehicular fuels	23 N.J.R. 45(b)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:27A-3.2, 3.10, 3.11	Air pollution by volatile organic compounds: civil administrative penalties	23 N.J.R. 1858(b)		

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7:27B-3.1, 3.2, 3.4–3.12, 3.14, 3.15, 3.17, 3.18	Air pollution by volatile organic comounds: sampling and analytical procedures	23 N.J.R. 1858(b)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)		
7:28-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)		
7:28-16.2	Dental radiographic installations: qualified individual	22 N.J.R. 3303(a)	R.1991 d.305	23 N.J.R. 1937(a)
7:31-2.16	Toxic Catastrophe Prevention Act Program: annual registration fees	23 N.J.R. 818(a)		
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		
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8:20-1.2	Birth Defects Registry: reporting requirements	23 N.J.R. 820(a)		
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:22-1	Campground sanitation	23 N.J.R. 1252(b)		
8:24	Retail food establishments	23 N.J.R. 168(b)		
8:25	Youth Camp Safety Act standards	23 N.J.R. 651(a)	R.1991 d.269	23 N.J.R. 1665(a)
8:26	Public recreational bathing	23 N.J.R. 376(a)	R.1991 d.245	23 N.J.R. 1433(a)
8:33I	Megavoltage radiation oncology units	23 N.J.R. 1906(a)		
8:33J-1.1, 1.2, 1.3, 1.6	Magnetic Resonance Imaging (MRI) services	23 N.J.R. 1906(b)		
8:33M-1.6	Adult comprehensive rehabilitation services: bed need methodology	23 N.J.R. 1908(a)		
8:33P-2.1, 2.4	Designation of additional Level II trauma centers	23 N.J.R. 822(a)	R.1991 d.290	23 N.J.R. 1938(a)
8:41A	Emergency medical technician-defibrillation programs: certification and operation	23 N.J.R. 1254(a)		
8:43E-3.10, 3.15	Adult closed acute psychiatric beds: notice of rule invalidation regarding liaison services and discharge and transfer planning	———	———	23 N.J.R. 1439(a)
8:43G-5.6	Hospital licensure: reportable events	22 N.J.R. 3469(a)		
8:43G-6	Hospital licensure: anesthesia	22 N.J.R. 3470(a)		
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)	R.1991 d.291	23 N.J.R. 1939(a)
8:65	Controlled dangerous substances	22 N.J.R. 3190(a)	R.1991 d.292	23 N.J.R. 1943(a)
8:65	Controlled dangerous substances: reopening of comment period	23 N.J.R. 823(a)		
8:65-2.4, 2.5, 6.6, 6.13, 6.16	Controlled dangerous substances: handling of carfentanil, etorphine hydrochloride, and diprenorphine	23 N.J.R. 1911(a)		
8:65-10.3	Controlled dangerous substances: addition of anabolic steroids to Schedule III	———	———	23 N.J.R. 1943(b)
8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a), 3581(b))	22 N.J.R. 1214(b)	R.1991 d.161	23 N.J.R. 906(a)
8:71	Interchangeable drug products (see 22 N.J.R. 3582(a); 23 N.J.R. 206(a), 907(a))	22 N.J.R. 2501(a)	R.1991 d.254	23 N.J.R. 1672(a)
8:71	Interchangeable drug products	22 N.J.R. 3191(a)	R.1991 d.30	23 N.J.R. 206(b)
8:71	Interchangeable drug products	23 N.J.R. 178(a)	R.1991 d.255	23 N.J.R. 1670(a)
8:71	Interchangeable drug products	23 N.J.R. 1509(a)		
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9:7-3.2	Tuition Aid Grant Program: determining award levels	23 N.J.R. 1057(a)	R.1991 d.336	23 N.J.R. 2013(a)
9:9-7	New Jersey College Loans to Assist State Students (NJCLASS) Program	23 N.J.R. 1257(a)		
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	23 N.J.R. 1739(a)		
9:11-3	C. Clyde Ferguson Law Scholarship	22 N.J.R. 3439(a)	R.1991 d.306	23 N.J.R. 1944(a)
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10:3-4	Cognizant division contracting by community provider agencies	23 N.J.R. 1647(a)		
10:36	Patient supervision at State psychiatric hospitals	23 N.J.R. 1652(a)		

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10:38	Interim Assistance Procedures Manual	23 N.J.R. 261(b)	R.1991 d.268	23 N.J.R. 1686(a)
10:42	Use of mechanical restraints and safeguarding equipment on developmentally disabled individuals	23 N.J.R. 1653(a)		
10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
10:51-1.2, 1.13, 1.14, 1.20, App. B, C, D, E	Pharmaceutical services under Medicaid program	23 N.J.R. 1310(b)	R.1991 d.353	23 N.J.R. 2035(a)
10:52-1.1, 1.22	Bundled drug services	23 N.J.R. 281(a)		
10:52-1.6, 1.14	Reimbursement for Medicaid-covered outpatient hospital services	23 N.J.R. 1326(a)	R.1991 d.352	23 N.J.R. 2041(a)
10:53-1.1, 1.17	Bundled drug services	23 N.J.R. 281(a)		
10:53-1.5, 1.13	Reimbursement for Medicaid-covered outpatient hospital services	23 N.J.R. 1326(a)	R.1991 d.352	23 N.J.R. 2041(a)
10:54-1.1, 1.16	Bundled drug services	23 N.J.R. 281(a)		
10:56-1.1, 1.4	Bundled drug services	23 N.J.R. 281(a)		
10:57-1.1, 1.18	Bundled drug services	23 N.J.R. 281(a)		
10:66-1.2, 1.10	Bundled drug services	23 N.J.R. 281(a)		
10:68	Manual of Chiropractic Services	23 N.J.R. 1327(a)		
10:69A-6.11	PAAD program: release of eligibility files to Division of Motor Vehicles	23 N.J.R. 7(a)		
10:70	Medically Needy Manual	23 N.J.R. 964(a)	R.1991 d.331	23 N.J.R. 2042(a)
10:72-1.1, 3.4, 4.1, 4.3, 4.5	Medicaid eligibility: pregnant women and children	23 N.J.R. 1200(a)	R.1991 d.302	23 N.J.R. 1945(a)
10:72-2.5, 3.4	Extended Medicaid eligibility for newborns	23 N.J.R. 1889(a)		
10:73	Medicaid program case management services	23 N.J.R. 1328(a)		
10:81-2.17, 2.18	Public Assistance Manual: administrative changes	_____	_____	23 N.J.R. 1705(a)
10:81-8.22, 8.23	Extended Medicaid eligibility for newborns	23 N.J.R. 1657(a)		
10:81-15	Child Care Plus Demonstration	23 N.J.R. 8(a)		
10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:82-5.10	AFDC Emergency Assistance	23 N.J.R. 967(b)		
10:83-1	Special Payments Handbook: administrative changes	_____	_____	23 N.J.R. 1411(a)
10:84-1	Efficiency and effectiveness of program operations	23 N.J.R. 1740(a)		
10:85-1.1, 1.2, 1.3, 2.1, 2.2, 2.5, 2.6, 3.2, 3.3, 3.5, 3.6, 4.2, 4.3, 5.3, 6.1–6.9, 7.2, 9.4, 12.1, 12.2	General Assistance Program	23 N.J.R. 1741(a)		
10:85-3.2, 10.2	General Assistance: administrative changes	_____	_____	23 N.J.R. 1412(a)
10:85-4.1	General Assistance Program: Standard of Need	23 N.J.R. 286(a)		
10:85-4.1	General Assistance Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
10:87-2.3, 2.6, 2.23, 2.30, 2.31, 3.6, 4.8, 5.5, 5.6, 5.9, 5.10, 7.14, 9.5, 9.7, 10.3, 10.9, 10.10, 10.21, 10.24, 11.23, App. A	Food Stamp Program: miscellaneous requirements	23 N.J.R. 179(a)	R.1991 d.247	23 N.J.R. 1412(b)
10:97-1.3, 1.4, 2.1–2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 4.2, 4.6, 4.7, 4.8, 4.14, 4.15, 5.1, 5.3, 5.4, 6.1, 6.3, 6.4, 6.5, 7.1–7.4, 8.1, 8.2, 8.3, 9.1	Commission for Blind and Visually Impaired: Business Enterprise Program	23 N.J.R. 1749(a)		
10:120	Youth and Family Services administration	23 N.J.R. 1658(a)		

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10A:2-8	Inmate financial aid upon release from correctional facility	23 N.J.R. 1511(a)		
10A:2-9	Gifts to correctional facilities	23 N.J.R. 1754(a)		
10A:3	Security and control	23 N.J.R. 1259(a)		
10A:3-1.1–1.4, 2	Inmate "keep separate status"	23 N.J.R. 383(a)	R.1991 d.250	23 N.J.R. 1672(b)
10A:4	Inmate discipline	23 N.J.R. 658(a)	R.1991 d.276	23 N.J.R. 1797(b)
10A:5	Close custody units	23 N.J.R. 1260(a)		
10A:9-5.5	Restoration of forfeited commutation time	23 N.J.R. 1261(a)	R.1991 d.346	23 N.J.R. 2043(a)
10A:16-12	Inmates at risk of suicide	23 N.J.R. 1756(a)		
10A:16-13	Inmate commitment for psychiatric treatment	23 N.J.R. 1890(a)		

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10A:22-2.5	Inmate and parolee records: availability of information to correctional facility personnel	23 N.J.R. 1512(a)		
10A:34-3	Processing and housing juveniles in municipal detention facilities	23 N.J.R. 935(c)	R.1991 d.293	23 N.J.R. 1945(b)

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11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
11:1-6	New Jersey Property-Liability Insurance Guaranty Association: assessment premium surcharge	23 N.J.R. 823(b)		
11:1-32	Department fees	23 N.J.R. 825(a)	R.1991 d.303	23 N.J.R. 1948(a)
11:2-29	Orderly withdrawal of insurance business	23 N.J.R. 15(b)	R.1991 d.262	23 N.J.R. 1673(a)
11:2-35	Relief from insurer obligations under FAIR Act	23 N.J.R. 660(a)		
11:3-10.5	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
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)		
11:3-36.2, 36.4, 36.5, 36.6, 36.7, 36.11	Automobile physical damage coverage inspection procedures	23 N.J.R. 1262(a)		
11:3-39	Automobile physical damage coverage: rate reductions for anti-theft devices and safety features	23 N.J.R. 384(a)		
11:4-16.6, 16.8, 23	Medicare supplement coverage: minimum standards	23 N.J.R. 1264(a)	R.1991 d.345	23 N.J.R. 2014(a)
11:10-1.4	Dental plan organization: certificate of authority renewal fee	23 N.J.R. 825(a)	R.1991 d.303	23 N.J.R. 1948(a)
11:13-7	Commercial lines policy forms	23 N.J.R. 159(a)		
11:16-3	Automobile damage repair confirmation and reporting	22 N.J.R. 3442(b)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		
11:17A-1.3	Licensure of insurance producers and limited insurance representatives	23 N.J.R. 1912(a)		
11:18-1.4, 1.5, 1.7, App. A, B, C	Medical Malpractice Reinsurance Recovery Fund surcharge	23 N.J.R. 938(a)	R.1991 d.304	23 N.J.R. 1955(a)

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12:45-3	Vehicle modification requirements for mobility impaired: administrative correction	_____	_____	23 N.J.R. 1416(b)
12:51	Vocational Rehabilitation Services: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 1893(a)		
12:55-1.4	Voluntary wage deductions for repayment of debts to State	23 N.J.R. 1660(a)		
12:56-5.6	Wage and hour compliance: administrative correction regarding on-call time	_____	_____	23 N.J.R. 1416(c)
12:235	Workers' Compensation	23 N.J.R. 834(a)	R.1991 d.275	23 N.J.R. 1819(a)
12:235	Workers' Compensation system	23 N.J.R. 1759(a)		

Most recent update to Title 12: TRANSMITTAL 1991-3 (supplement April 15, 1991)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:10-2.9	Minority and female businesses: subcontracting targets	23 N.J.R. 395(b)		
12A:12-3	Tourism Matching Grant Program	23 N.J.R. 1513(a)		
12A:31-1	Development Authority for Small Businesses, Minorities' and Women's Enterprises: micro-loan program	23 N.J.R. 828(a)		
12A:31-1, 2, 3	Development Authority for Small Businesses, Minorities' and Women's Enterprises: extension of comment period on loan programs	23 N.J.R. 1769(a)		
12A:31-2	Development Authority: loan guarantee program	23 N.J.R. 830(a)		
12A:31-3	Development Authority: direct loans	23 N.J.R. 832(a)		
12A:80-2	Urban Development Corporation: public and nonpublic information	23 N.J.R. 20(a)	R.1991 d.257	23 N.J.R. 1682(a)
12A:100-1	Commission on Science and Technology: Innovation Partnership Grant Program	23 N.J.R. 1515(a)		
12A:121-1.2, 2	Urban Enterprise Zone program: extension of 50 percent sales tax exemption to qualified municipalities	23 N.J.R. 1893(b)		

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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)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R.CITATION)
13:18-6	Verification of automobile liability insurance coverage	23 N.J.R. 973(a)	R.1991 d.289	23 N.J.R. 1806(b)
13:20-10.1	Automatic vehicle identification systems: traffic management	23 N.J.R. 21(a)	R.1991 d.249	23 N.J.R. 1417(a)
13:20-31.1	Motor vehicle inspection: private center licensing	23 N.J.R. 387(a)	R.1991 d.253	23 N.J.R. 1417(b)
13:20-31.1	Private motor vehicle inspection center licensing: administrative correction	———	———	23 N.J.R. 1683(a)
13:23-1.1, 2.1–2.10, 2.12–2.28, 2.30–2.38, 3.1–3.10, 3.12, 4.1–4.4	Licensure of driving schools	23 N.J.R. 662(a)		
13:27-5.8	Architectural Registration Examination fees	23 N.J.R. 671(a)	R.1991 d.258	23 N.J.R. 1683(b)
13:27-5.8, 8.15	Licensure of architects and certification of landscape architects: fee schedules	23 N.J.R. 1059(a)	R.1991 d.318	23 N.J.R. 2021(a)
13:27-6.2–6.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)		
13:29-1.7	Accountant licensure: conditional credit and reexamination	23 N.J.R. 1060(a)	R.1991 d.310	23 N.J.R. 1959(a)
13:29-1.8, 1.11, 1.12, 1.13, 2.3	Board of Accountancy: fee schedule	23 N.J.R. 1061(a)	R.1991 d.319	23 N.J.R. 2022(a)
13:30-2.6	Registered dental assistant: laboratory fabrication of athletic mouthguards	23 N.J.R. 287(b)	R.1991 d.248	23 N.J.R. 1418(a)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)		
13:31-1.4	Exempt electrical work and use of qualified journeyman electrician	23 N.J.R. 979(a)		
13:32-1.3	Master plumbers licensing examination	23 N.J.R. 288(a)		
13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
13:35-3.6	Bioanalytical laboratories: acceptance by director of requests for test of human material	23 N.J.R. 23(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees	23 N.J.R. 161(a)		
13:35-6.4, 6.16, 6.17	Corporate medical practices and Medical Board licensees: public hearing	23 N.J.R. 1063(a)		
13:35-6.13	Board of Medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
13:35-6.13	Board of Medical Examiners: biennial registration fees	23 N.J.R. 833(a)	R.1991 d.286	23 N.J.R. 1815(a)
13:35-8.9, 8.17	Hearing Aid Dispensers Examining Committee: fee schedules; licensure reinstatement fee	23 N.J.R. 1895(a)		
13:36-1.6	Board of Mortuary Science: fee schedule	23 N.J.R. 1063(b)		
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)		
13:37-12.1	Board of Nursing fees	23 N.J.R. 672(a)	R.1991 d.311	23 N.J.R. 1959(b)
13:38-3.6, 5.1	Board of Optometrists: fee schedule	23 N.J.R. 1064(a)		
13:38-3.6, 5.1	Board of Optometrists fee schedule: correction to comments submission address	23 N.J.R. 1279(a)		
13:38-3.11	Practice of optometry: application for licensure	23 N.J.R. 166(a)	R.1991 d.228	23 N.J.R. 1418(b)
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
13:39A	Board of Physical Therapy rules	23 N.J.R. 1065(a)		
13:39A-1.4	Board of Physical Therapy: fees and charges	23 N.J.R. 388(a)	R.1991 d.240	23 N.J.R. 1418(c)
13:40-6.1	Engineering and land surveying services: certificate of authorization for general business corporations	22 N.J.R. 3315(a)	R.1991 d.285	23 N.J.R. 1816(a)
13:40-7.2–7.5	Certified landscape architects: site planning services	23 N.J.R. 1516(a)		
13:41-4.2–4.5	Certified landscape architects; site planning services	23 N.J.R. 1516(a)		
13:42-1.2	Board of Psychological Examiners: fee schedule	23 N.J.R. 980(a)	R.1991 d.312	23 N.J.R. 1960(a)
13:44-4.1	Board of Veterinary Medical Examiners: fee schedule	23 N.J.R. 1066(a)	R.1991 d.321	23 N.J.R. 2023(a)
13:44C-5.3	Audiology and speech-language pathology: clinical internship licensure	23 N.J.R. 167(a)	R.1991 d.227	23 N.J.R. 1419(a)
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: fee schedule	23 N.J.R. 1066(b)		
13:44E-2.1	Advertising of chiropractic services	23 N.J.R. 389(a)		
13:44E-2.2	Chiropractic patient records	23 N.J.R. 391(a)		
13:44E-2.3	Chiropractic practice: insurance claim forms	23 N.J.R. 1279(b)		
13:44E-2.4	Chiropractor of record: responsibility for patient care	23 N.J.R. 1280(a)		
13:44E-2.5	Board of Chiropractic Examiners: fee schedule	23 N.J.R. 1067(a)	R.1991 d.320	23 N.J.R. 2023(b)
13:44E-2.6	Chiropractic practice identification	23 N.J.R. 1896(a)		
13:63	Combat Auto Theft Program	23 N.J.R. 981(a)		
13:70-1.31	Thoroughbred racing: election of horsemen's organization	22 N.J.R. 3450(a)		
13:70-12.37	Thoroughbred racing: open claiming	23 N.J.R. 1068(a)	R.1991 d.313	23 N.J.R. 1960(b)
13:70-13A.1, 13A.2, 13A.3, 13A.5, 13A.7	Thoroughbred racing: hearings regarding license suspensions	23 N.J.R. 1281(a)		

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13:70-14.17	Thoroughbred racing: suspension of licensee pending disposition of racing-related indictment	23 N.J.R. 673(a)	R.1991 d.266	23 N.J.R. 1683(c)
13:70-14A.9	Thoroughbred racing: time on respiratory list	23 N.J.R. 674(a)	R.1991 d.263	23 N.J.R. 1684(a)
13:70-19.43	Thoroughbred racing: presence of veterinarian throughout racing program	23 N.J.R. 674(b)	R.1991 d.260	23 N.J.R. 1684(b)
13:70-29.57	Thoroughbred racing: pick-seven wager on Breeders' Cup	23 N.J.R. 1769(b)		
13:71-3	Harness racing: hearings regarding license suspensions	23 N.J.R. 1282(a)		
13:71-9.2	Harness racing: association of veterinarians	23 N.J.R. 675(a)	R.1991 d.259	23 N.J.R. 1684(c)
13:71-9.4	Harness racing: presence of veterinarian throughout racing program	23 N.J.R. 675(b)	R.1991 d.261	23 N.J.R. 1684(d)
13:71-14.36	Harness racing: open claiming	23 N.J.R. 1068(b)	R.1991 d.314	23 N.J.R. 1960(c)
13:71-16.3	Harness racing: error in declaration of horse	23 N.J.R. 1069(a)	R.1991 d.315	23 N.J.R. 1961(a)
13:71-23.8	Harness racing: time on respiratory list	23 N.J.R. 675(c)	R.1991 d.264	23 N.J.R. 1684(e)
13:71-26.9	Harness racing: suspension of licensee pending disposition of racing-related indictment	23 N.J.R. 676(a)	R.1991 d.265	23 N.J.R. 1685(a)
13:71-27.55	Harness racing: pick-eight wager on Breeders' Crown	23 N.J.R. 1770(a)		
13:75-1.27	Violent crimes compensation: counseling fees	23 N.J.R. 167(b)	R.1991 d.332	23 N.J.R. 2023(c)
13:75-1.28	Violent crimes compensation: secondary victim eligibility	23 N.J.R. 168(a)	R.1991 d.333	23 N.J.R. 2024(a)

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PUBLIC UTILITIES—TITLE 14

14:1	Rules of practice of Board of Public Utilities: waiver of expiration provision of Executive Order No. 66 (1978)	23 N.J.R. 24(b)		
14:3	All utilities	22 N.J.R. 1112(a)	R.1991 d.221	23 N.J.R. 1439(b)
14:3-3.2	Customer's proof of identity	22 N.J.R. 615(a)	R.1991 d.144	23 N.J.R. 1445(a)
14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)	R.1991 d.145	23 N.J.R. 1446(a)
14:3-4.5, 4.10	Billing disputes and meter test options	22 N.J.R. 617(a)	R.1991 d.146	23 N.J.R. 1448(a)
14:3-4.7	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)	R.1991 d.147	23 N.J.R. 1449(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)	R.1991 d.148	23 N.J.R. 1450(a)
14:3-7.13	Late payment charges	22 N.J.R. 619(b)	R.1991 d.149	23 N.J.R. 1450(b)
14:5	Electric service	23 N.J.R. 1519(a)		
14:5A	Nuclear generating plant decommissioning: preproposal new rules regarding periodic cost review	23 N.J.R. 942(a)		
14:6	Gas service	23 N.J.R. 944(a)		
14:9-3.3	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)	R.1991 d.147	23 N.J.R. 1449(a)
14:10-5	InterLATA telecommunications carriers	22 N.J.R. 2887(a)		
14:10-6	Alternate operator service: preproposed amendments	23 N.J.R. 676(b)		
14:10-6, 7, 8	Alternate operator service; resale of telecommunications services; customer provided pay telephone service: public hearings on preproposal rules	23 N.J.R. 946(a)		
14:10-7	Resale of telecommunications services: preproposed new rules	23 N.J.R. 679(a)		
14:10-8	Customer provided pay telephone service: preproposed new rules	23 N.J.R. 680(a)		
14:10-8, 9	Purchased water and sewerage treatment adjustment clauses	23 N.J.R. 946(b)		
14:12	Demand side management	23 N.J.R. 1283(a)		
14:12-6.1	Release of customer lists and billing information for demand-side management projects	23 N.J.R. 1282(b)		
14:17-6.22	Cable television: petitions for approval to curtail service	22 N.J.R. 2889(a)		
14:18-3.5	Cable television: outage credit	22 N.J.R. 2890(b)		
14:18-3.5	Cable television outage credit: withdrawal of proposed amendment	23 N.J.R. 24(c)		
14:18-3.13	Cable television: prompt restoration standards	23 N.J.R. 682(a)	R.1991 d.298	23 N.J.R. 1961(b)
14:18-7.6, 7.7	Cable television: telephone system information and performance	22 N.J.R. 2895(a)		
14:38-1.2, 2.1–2.3, 3.1–3.3, 4.1, 5.6, 6.2, 7.1, 7.3, 7.6, 8.1–8.4, 9.1, 9.2	Home Energy Savings Program	23 N.J.R. 1069(b)		

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ENERGY—TITLE 14A

Most recent update to Title 14A: TRANSMITTAL 1991-4 (supplement April 15, 1991)

STATE—TITLE 15

15:3	Management of public records	23 N.J.R. 1912(b)		

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16:4-1	Construction subcontracting: disadvantaged and female-owned businesses	22 N.J.R. 2898(a)		
16:27	Traffic engineering and safety programs	23 N.J.R. 395(a)	R.1991 d.234	23 N.J.R. 1419(b)
16:28-1.7, 1.49	Speed limit zones along Route 161 in Clifton and Route 35 in Brielle	23 N.J.R. 683(a)	R.1991 d.235	23 N.J.R. 1419(c)
16:28-1.10, 1.81	Speed limit zones along U.S. 46, 1 and 9 in Dover and Route 49 in Bridgeton	23 N.J.R. 950(a)	R.1991 d.280	23 N.J.R. 1799(a)
16:28-1.38	Speed limit zones along Route 57 in Mansfield	23 N.J.R. 1291(a)	R.1991 d.340	23 N.J.R. 2024(b)
16:28-1.39	Speed limit zone along Route 71-35 ramps in Brielle	23 N.J.R. 683(b)	R.1991 d.236	23 N.J.R. 1419(d)
16:28-1.45, 1.60, 1.93, 1.107	Speed limit zones along Routes 324 and 44 in Gloucester County, Route 79 in Monmouth County, and Route 48 in Salem County	23 N.J.R. 1291(b)	R.1991 d.338	23 N.J.R. 2025(a)
16:28-1.46	Speed limit zone along Cuthbert Boulevard in Cherry Hill	23 N.J.R. 1771(a)		
16:28-1.67, 1.76, 1.129	Speed limit zones along U.S. 202 in Somerset and Morris counties, Route 15 in Morris County, and Route 12 in Hunterdon County	23 N.J.R. 1293(a)		
16:28-1.83	Speed limit zone along Route 71 in Brielle and Manasquan	23 N.J.R. 684(a)	R.1991 d.237	23 N.J.R. 1420(a)
16:28-1.96	Speed limit zones along Route 45 in Salem and Gloucester counties	23 N.J.R. 1772(a)		
16:28-1.150, 1.151	Speed limit zones along U.S. 1 Business and U.S. 1 in Mercer and Middlesex Counties	23 N.J.R. 1072(a)	R.1991 d.297	23 N.J.R. 1962(a)
16:28-1.158	Speed limit zones along Route 179 in Hunterdon County	23 N.J.R. 1294(a)	R.1991 d.341	23 N.J.R. 2026(a)
16:28A-1.21	Handicapped parking space on U.S. 30 in Haddon Township	23 N.J.R. 1295(a)	R.1991 d.339	23 N.J.R. 2026(b)
16:28A-1A.1	No stopping or standing zones on roads under reconstruction or repair	23 N.J.R. 1524(a)		
16:30-10.1	Midblock crosswalk on Route 28 in Somerville	23 N.J.R. 684(b)	R.1991 d.238	23 N.J.R. 1420(b)
16:30-10.14	Midblock crosswalk on Route 161 in Clifton	23 N.J.R. 685(a)	R.1991 d.239	23 N.J.R. 1420(c)
16:31-1.4	Turn prohibition along Route 35 in Shrewsbury: administrative correction	———	———	23 N.J.R. 1420(d)
16:31-1.6	Turn prohibitions along Route 88 in Ocean County	23 N.J.R. 1524(b)		
16:31-1.17	Turn restrictions along Route 73 in Evesham	23 N.J.R. 1295(b)	R.1991 d.342	23 N.J.R. 2027(a)
16:31-1.30	U turn restriction along Route 49 in Millville	23 N.J.R. 1296(a)	R.1991 d.343	23 N.J.R. 2027(b)
16:41-2.2	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:41-2.2	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:47	State Highway Access Management Code	23 N.J.R. 1525(a)		
16:47	State Highway Access Management Code: public hearings and correction to proposal	23 N.J.R. 1913(a)		
16:54	Licensing of aeronautical facilities	23 N.J.R. 289(a)	R.1991 d.222	23 N.J.R. 1421(a)
16:74	NJ TRANSIT: destructive competition claims procedure for private route bus carriers	23 N.J.R. 1773(a)		
16:79	NJ TRANSIT: background checks of prospective employees	23 N.J.R. 1775(a)		
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17:3-1.13	Teachers' Pension and Annuity Fund: age, enrollment, retirement	23 N.J.R. 188(a)	R.1991 d.226	23 N.J.R. 1421(b)
17:3-5.6	Teachers' Pension and Annuity Fund: methods of payment of service credit purchases	23 N.J.R. 1073(a)		
17:5-4.3	State Police Retirement System: purchases of service credit	23 N.J.R. 1896(b)		
17:14-1.9	Minority and female businesses: subcontracting targets	23 N.J.R. 395(b)		
17:16	State Investment Council rules: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 26(a)		
17:16	State Investment Council rules	23 N.J.R. 983(a)	R.1991 d.274	23 N.J.R. 1800(b)
17:16-20.1, 20.2, 20.4	State Investment Council: international government and agency obligations	23 N.J.R. 1775(b)		
17:16-36	SIC: guaranteed income contracts	23 N.J.R. 1776(a)		
17:16-41.3	SIC: U.S. common and preferred stocks and issues convertible into common stocks	23 N.J.R. 1776(b)		
17:16-44.3	SIC: common and preferred stocks and issues convertible into common stock of international corporations	23 N.J.R. 1777(a)		
17:16-67.7, 67.8, 67.12	SIC: Common Pension Fund D	23 N.J.R. 1777(b)		

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17:16-81.2	SIC: purchase and sale of international currency	23 N.J.R. 1778(a)		
17:28-1.5, 2.4, 2.6, 2.7, 2.8, 3.2, 3.3, 3.4, 4.6	Public Employee Charitable Fund-Raising Campaign	23 N.J.R. 1897(a)		
17:32-4.7, 5	State Development and Redevelopment Plan: negotiation and issue resolution phases of cross-acceptance	23 N.J.R. 1778(b)		
17:34-1	Nonpublic records: Registered Bondholder Listing	23 N.J.R. 291(a)	R.1991 d.219	23 N.J.R. 1421(c)
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18:2-2.7	Abatement of penalty and interest for failure to pay tax or file return	23 N.J.R. 1899(a)		
18:7-5.1, 5.10, 14.17	Corporation Business Tax: intercompany and shareholder transactions	23 N.J.R. 1522(a)		
18:12-7.15	Homestead rebate: extension of filing date	Emergency (expires 6-15-91)	R.1991 d.251	23 N.J.R. 1464(a)
18:18A	Petroleum Gross Receipts Tax	22 N.J.R. 3715(a)		
18:24-16.6, 16.7, 16.9, 17.1–17.4	Vending machine sales	23 N.J.R. 396(a)		
18:26-2.14, 2.15, 3.4, 3.10, 7.10, 8.1, 8.2, 8.3, 8.6, 8.7, 8.8, 8.9, 8.11, 8.21, 9.1, 9.3, 9.4, 9.5, 9.6, 9.10, 10.1, 10.12, 11.4, 11.8, 11.15, 11.16	Transfer of Inheritance and Estate Tax: assessment and valuation	23 N.J.R. 188(b)		
18:26-11.20, 11.21, 11.22, 11.23, 11.27	Transfer Inheritance and Estate Tax: release of safe deposit box contents	23 N.J.R. 27(a)	R.119 d.242	23 N.J.R. 1422(a)
18:35-1.14, 1.25	Gross Income Tax: partnerships	23 N.J.R. 950(b)		
18:35-1.26	Service in combat zone: extension of time to file income tax return	23 N.J.R. 908(a)	R.1991 d.273	23 N.J.R. 1806(a)
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19:3A-1.3	Hackensack Meadowlands Development Commission: petitions for rulemaking	23 N.J.R. 1917(a)		
19:4-6.27, 6.29, 6.30	Hackensack Meadowlands Development Commission: District zoning and rule changes	23 N.J.R. 1917(a)		
19:6-1, 3	Hackensack Meadowlands District Building Code	22 N.J.R. 2126(a)	R.1991 d.233	23 N.J.R. 1451(a)
19:9-2.9, 2.10	License to cross Turnpike Authority property and resolution of related disputes	22 N.J.R. 3324(a)	R.1991 d.224	23 N.J.R. 1454(a)
19:12	Negotiations and impasse procedure	23 N.J.R. 1296(b)		
19:16	Labor disputes in public fire and police departments	23 N.J.R. 1298(a)		
19:25-11.10, 17.2	Political communications; reporting and recordkeeping violations	23 N.J.R. 1299(a)		
19:25-11.12	Fundraising through use of 900 line telephone service	23 N.J.R. 956(a)		
19:75-1.1, 4.4, 6.2, 9.2, 9.3, 9.4, 10	Fee schedule for review of applications	22 N.J.R. 1999(a)		
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