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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: DECEMBER 17, 1990
See the Register Index for Subsequent Rulemaking Activity.
NEXT UPDATE: SUPPLEMENT JANUARY 22, 1991

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until March 21, 1991. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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**NEW JERSEY REGISTER**

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Executive Orders

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


WHEREAS, the State prisons and other penal and correctional institutions of the New Jersey Department of Corrections continue to house populations of inmates in excess of their capacities and remain seriously overcrowded; and
WHEREAS, these conditions continue to endanger the safety, welfare and resources of the residents of this State; and
WHEREAS, Executive Order No. 226 of January 12, 1990 will expire on January 20, 1991; and
WHEREAS, the conditions specified in Executive Order No. 106 of June 19, 1981, continue to prevent a substantial likelihood of disaster;
NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby declare a continuing state of emergency and ORDER and DIRECT as follows:

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

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

Expiration: Indefinite.

WHEREAS, on January 16, 1991, the President of the United States launched a military attack against Iraq; and
WHEREAS, the President had previously authorized the Secretary of Defense to call up select members of the Reserve and National Guard to active duty, and authorized the Secretary of Transportation to call up members of the Coast Guard Reserve, during the Middle East crisis; and
WHEREAS, Reserve and National Guard members who are activated during this crisis serve a vital national interest for which they deserve the full support of the citizens of this State; and
WHEREAS, the State of New Jersey recognizes that a strong, ready Reserve and National Guard are essential to the defense of this country and vital to this State in a time of emergency such as exists now; and
WHEREAS, the State of New Jersey recognizes the personal and economic sacrifices of its employees serving in the Reserve and the National Guard who are called to active duty during the Middle East crisis, and recognizes the sacrifices of their families;
NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby Order and Direct:

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

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

Expiration: Indefinite.

WHEREAS, Christopher J. Jackman first graced the State capital some 30 years ago as a staff member for the New Jersey Senate and Assembly; and
WHEREAS, he rose from his staff position to be elected to the General Assembly in 1967, an office to which he was re-elected seven times; and
WHEREAS, during his service in the General Assembly, his colleagues exhibited their respect and faith in his leadership by electing him their Majority Leader and Speaker; and
WHEREAS, after distinguished service in the Assembly, Christopher J. Jackman was elected to serve in the New Jersey Senate in 1982 and re-elected to a second term in 1987; and
WHEREAS, as a State legislator, Christopher J. Jackman was a tenacious proponent of the causes he espoused and a consistently strong voice for senior citizens and all the people he represented; and
WHEREAS, his good humor and inimitable style, which so often diffused difficult situations, brought diverse groups together and immeasurably improved the legislative process; and
WHEREAS, he brought the same vigor and commitment which he demonstrated as a legislator to his work in union affairs and in his community activities; and
WHEREAS, in spite of his significant stature among his colleagues and admirers, both in the Legislature and throughout the State, he was the embodiment of humility and sincerity, and a friend to all who had the privilege to know him; and
WHEREAS, his dedication to public and community service have never detracted from his devotion to his family and friends; and
WHEREAS, it is fitting and appropriate for the State of New Jersey to mark the passing of Christopher J. Jackman, an irreplaceable leader and public servant;
NOW, THEREFORE, I JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:
1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half mast at all State departments, offices, agencies and instrumentalities during appropriate hours beginning on Wednesday, January 30, 1991, through and including Friday, February 1, 1991 in recognition and mourning of the passing of a distinguished legislator and leader, Christopher J. Jackman.
2. This Order shall take effect immediately.
RULE PROPOSALS

STATE BOARD OF EDUCATION

Speech Language Specialist Endorsement

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

Authorized By: John Ellis, Commissioner, Department of Education; Secretary, State Board of Education.


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

The agency proposal follows:

Summary

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

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

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

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

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

Social Impact

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

Economic Impact

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

Regulatory Flexibility Statement

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

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

6:11-11.9 Speech-language specialist
(a)-(b) (No change.)
(c) The requirements for the speech-language specialist endorsement are as follows:
1. (No change.)
2. Graduate or undergraduate coursework in the areas listed below which is taken within or in addition to the Master's program. Job candidates who possess a Master's degree[s] in [speech language pathology] Speech-Language Pathology and meet all other requirements for certification except the following three study areas may be employed provisionally for a period of two years until these requirements are met.
   i-ii. (No change.)
   iii. Applications of speech-language pathology to the school setting[s], including such topics as Speech Program Development, Clinical Problems in the Public Schools and Administration of Speech and Hearing Programs in the Public Schools.
3.-4. (No change.)
(d) Individuals who hold a valid New Jersey speech correctionist endorsement and a Master's degree in Speech-Language Pathology shall be issued the speech-language specialist endorsement upon submission of a completed application and payment of fees pursuant to N.J.A.C. 6:11-3.

STATE BOARD OF EDUCATION

School Employee Physical Examinations

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

Authorized By: John Ellis, Commissioner, Department of Education; Secretary, State Board of Education.


Proposal Number: PRN 1991-93.

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

The agency proposal follows:

Summary

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

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

N.J.A.C. 6:29-7.3 has been expanded to clarify district board of education procedures required to implement the rules, including the basing of...
policies on the advice and recommendations of the district medical inspector; providing for notification to school employees regarding the requirements for physical examinations; and the establishing procedures to assure confidentiality during the collection, transmission and storage of employee medical records.

N.J.A.C. 6:29-7.4(b) and (c) require school staff to indicate current medications as part of the required physical examination. The requirements for staff to submit a list of current medications is being eliminated. However, a new subsection, N.J.A.C. 6:29-7.4(d), is being added to allow the individual school employee to provide health status information, including medications, which may be important to medical staff in the event of an emergency requiring treatment. N.J.A.C. 6:29-7.4(b) and 3 have been amended to include immunization status. N.J.A.C. 5:29-7.4(d), (e), and (g) have been recodified.

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

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

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

Social Impact

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

Economic Impact

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

Regulatory Flexibility Statement

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

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

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

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

6:29-7.4 Requirements of physical examinations

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

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

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

i. III. (No change.)

iv. [Current medications] Immunization status.

2. (No change.)

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

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

1. An updated employee health history:

i. Current health problems;

ii. Current medications.

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

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

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

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

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


[(g)] (h) Cost for examinations made by a physician or institution designated by the board shall be borne by the board. The cost shall be borne by the employee.

New Jersey Register, Tuesday, February 19, 1991 (Cite 23 N.J.R. 337)
ENVIRONMENTAL PROTECTION

ENVIRONMENTAL PROTECTION

DIVISION OF COASTAL RESOURCES

Freshwater Wetlands Protection Act Rules
Implementation of Section 401 of the Federal Clean Water Act (Water Quality Certification)

Proposed New Rules: N.J.A.C. 7:7A-4
Proposed Amendments: N.J.A.C. 7:7A-1 through 17

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


DEP Docket Number: 002-91-01.


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

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

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

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

Submit written comments by April 20, 1991 to:

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

The agency proposal follows:

Summary


N.J.S.A. 13:9B-27 requires the Department to take all appropriate action to secure the assumption of the permit jurisdiction exercised by the United States Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 et seq.). The United States Environmental Protection Agency requires a state seeking assumption of jurisdiction to have a program in place that is at least as stringent as the program implemented by the United States Army Corps of Engineers pursuant to the Federal Act. In order to achieve this objective, changes have been proposed to the definition section (N.J.A.C. 7:7A-14), the standard conditions for Statewide general permits (N.J.A.C. 7:7A-9.5), and review of applications (N.J.A.C. 7:7A-12).

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

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

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

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

Social Impact

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

Economic Impact

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

Environmental Impact

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

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that of the approx-
SEVENTY-SEVEN A.1 Scope and authority

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

7:7A-1.2 Construction

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

7:7A-1.3 Forms and information

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

7:7A-1.4 Definitions

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

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

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

“Adjacent” means bordering, contiguous, or neighboring.

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


“Critical habitat” means a mature, well developed natural ecological community. See N.J.A.C. 7:7A-14.

“Commissioner” means the Commissioner of the Department of Environmental Protection.

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

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

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

“Critical habitat for fauna or flora” means:

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

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

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

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

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

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

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

iii. Greenwood Lake.

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

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

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

"Disturbance of the water level or water table" a term used to define regulated activity in N.J.A.C. 7:7A-2.3(a)(2), means the alteration of the existing elevation of groundwater or surface water, regardless of duration of such alteration, by:
1. Adding or impounding a sufficient quantity of stormwater or water from other sources to modify the existing vegetation, values or functions of the wetland; or
2. Draining, ditching or otherwise causing the depletion of the existing groundwater or surface water levels such that the activity would modify the existing vegetation, values or functions of the wetland; or
3. The draw down of greater than 12 inches of the water table in a wetland.

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

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

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

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

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

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

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

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

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

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

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

"Offsite" means the area not onsite.

"Onsite" means the area located within the legal boundary of the property or properties on which the regulated activity or activities are proposed, are occurring, or have occurred, as set forth in the deed for that area, plus any contiguous land owned by the same [individual] person as set forth in the deed or deeds for that contiguous land, as these boundaries existed [at the commencement of the regulated activity or activities] on July 1, 1988 or on the date of submission of the application if lots and blocks were merged subsequent to July 1, 1988.
"Open water fill permit" means the type of New Jersey Pollution Discharge Elimination System permit issued pursuant to this chapter and N.J.S.A. 58:10A-1 et seq., which governs the discharge of dredged or fill material into State open waters [that are not freshwater wetlands].

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

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

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

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

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

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

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

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

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

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

1. Waters which are subject to the ebb and flow of the tide;
2. Waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement, as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark;
3. Wetlands adjacent to waters in paragraph 2 of this definition; or
4. Freshwater wetlands as defined by this chapter.

["Substantial hardship" or "extraordinary hardship" means the subject property is not susceptible to a reasonable use as is, or developed as authorized by the provisions of the Act, and that this results from unique circumstances peculiar to the subject property which:
1. Do not apply to or affect other property in the immediate vicinity; and
2. Relate to or arise out of the subject property rather than the personal situation of the applicant, and are not the result of any action or inaction by the applicant or the owner or the owner's predecessors in title.]

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

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

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

1. Transition area [waiver] permit, Reduction. This [waiver] permit may be approved on the basis of a finding of no substantial impact or if the [waiver] permit is necessary to avoid an extraordinary or substantial hardship as defined at N.J.A.C. 7:7A-7.2(g) or 7.3(f), respectively. The [waiver] permit would result in a reduction in the standard width of a transition area without requiring an expansion of the remaining transition area for compensation;
2. Transition area [waiver] permit, Special Activities. This [waiver] permit may be issued to approve the partial elimination of the standard transition area, without requiring an expansion of the remaining transition area for compensation for the special activities set forth below:
   i. Stormwater management facilities as defined at N.J.A.C. 7:7A-7.4(b); ii. Linear development as defined at N.J.A.C. 7:7A-1.4; and iii. Activities permitted under the specific Statewide general permits listed at N.J.A.C. 7:7A-7.4(e). The Statewide general permits themselves are set forth at N.J.A.C. 7:7A-9.2(a); or iv. Activities defined as redevelopment pursuant to N.J.A.C. 7:7A-7.4(f); or 3. Transition area [waiver] permit, Averaging Plan. This [waiver] permit may be issued to approve a plan to modify the overall shape of the standard transition area without reducing the total square footage of the standard transition area.

"Waters of the United States" means:
1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), wetlands, mudflats, sandflats, sloughs, [prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:]
   i. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
   ii. From which fish[,] or shellfish [or migratory birds] are or could be taken and sold in interstate or foreign commerce; or]
   iii. Which are used or could be used for industrial purposes by industries in interstate commerce[;]
4. Which are or would be used as habitat by birds protected by Migratory Bird Treaties;
5. Which are or would be used as habitat by other migratory birds which cross state lines;
6. The territorial seas; and
7. Wetlands adjacent to waters identified in paragraphs 1 through 6 of this definition other than those that are themselves wetlands.

The following waters are generally not considered "waters of the United States". However, the right is reserved to determine on a case
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by case basis, if particular watercourses or waterbodies are "waters of the United States": 1. Non-tidal drainage and irrigation ditches excavated on dry land; 2. Artificially irrigated areas which would revert to upland if the irrigation ceased; 3. Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing; 4. Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons; 5. Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the above definition of "waters of the United States"; 6. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds); and 7. Erosional channels less than two feet wide and six inches deep in upland areas resulting from poor soil management practices. "Water Quality Certification (WQC)" is the determination that the Department shall make pursuant to Section 401 of the Federal Act and N.J.S.A. 58:10A-1 et seq. in the evaluation of a proposed activity which requires a Federal license or permit.

7:7A-1.6 Other statutes and regulations
(a)- (b) (No change.)
(c) This section shall not, however, preclude municipal advice to the Department concerning letters of interpretation pursuant to N.J.A.C. 7:7A-[8.4] 8.5.
(d)- (e) (No change.)

7:7A-1.7 Effective and operative dates
This chapter [shall be], with the exception of N.J.A.C. 7:7A-6 and 7, became effective June 6, 1988, and [shall become] became operative on July 1, 1988. N.J.A.C. 7:7A-6 and 7 became operative on July 1, 1989.

SUBCHAPTER 2. APPLICABILITY

7:7A-2.1 Jurisdiction
(a) (No change.)
(b) Except when an activity is authorized by [the Department] the board of health having jurisdiction or its authorized agent acting on its behalf pursuant to [a Statewide general permit as set forth in this chapter] N.J.A.C. 7:7A-9.2(a)25, a person proposing to engage in a regulated activity shall apply to the Department for a Statewide general permit authorization or a freshwater wetlands permit, and a person proposing to discharge dredged or fill material into State open waters shall apply to the Department for an open water fill permit. The discharge of dredged or fill material in a State open water or wetland may also need a stream encroachment permit pursuant to the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., or a Water Quality Certification pursuant to N.J.A.C. 7:7A-4.
(c)- (d) (No change.)
(e) Where a proposed project requires more than one permit from the Division, applicants are strongly encouraged to acquire a permit under the Act and this chapter first. If a project requires both a permit under this chapter (freshwater wetlands or open water fill permit), and a permit governed by what is commonly known as the 90-day construction law, N.J.S.A. 13:1D-29 et seq., any permit issued under the 90-day construction law will be conditioned upon the granting of a permit under the Act and this chapter.) apply for all required permits at one time. In most cases this will allow the Department to issue joint permits.

7:7A-2.2 Subchapters which apply to freshwater wetlands permits or, open water fill permits, and Water Quality Certificates
(a) Any person proposing to engage in a regulated activity in a freshwater wetlands or State open water shall comply with the provisions of subchapters 1 (General information), 2 (Applicability), 3 (General standards for granting individual freshwater wetlands and open water fill permits), (b) Any person proposing to discharge dredged or fill materials into State open waters shall comply with the provisions of subchapters 1 (General information), 2 (Applicability), 3 (General standards for granting open water fill permits), 5 (Emergency permits), 9 (General permits), 10 (Pre-application conferences), 11 (Application procedure), 12 (Review of applications), 13 (Permit contents), 14 (Mitigation), and 15 (Enforcement), and 16 (Fees) of this chapter.

7:7A-2.3 Regulated activities
(a) The following activities in a freshwater wetland are regulated pursuant to the Act and are subject to the requirements of this chapter as set forth in N.J.A.C. 7:7A-2.2:
1. (No change.)
2. The drainage or disturbance of the water level or water table including the diversion of surface waters or subsurface waters that would alter the hydrology of a wetland or which would result in the draw down of greater than twelve inches of the water table in a wetland;
3.-5. (No change.)
6. The destruction of plant life which would alter the character of a freshwater wetland, including the cutting of trees except the approved harvesting of forest products pursuant to N.J.A.C. 7:7A-[2.5a](2) 2.7(b).
(b) (No change.)
(c) For the purposes of this chapter, the following activities are not considered to result in the alteration of the character of a freshwater wetland:
1. Surveying or wetlands investigation activities, for the purpose of establishing or reestablishing a boundary line or points, which do not involve the use of motorized tools or vehicles to either clear vegetation or extract soil borings. The clearing of vegetation along the survey line or around the survey points shall not exceed three feet in width or diameter respectively and shall not be kept clear or maintained once the survey or delineation is completed;
2. The placement of temporary structures (those not requiring permanent foundations nor the deposition of fill material) not to exceed 32 square feet for the purposes of observing or harvesting fish or wildlife. These activities include the construction of observation or waterfowl blinds and the placement of traps;
3. The placement of water level or monitoring devices that require the disturbance of 10 square feet or less of wetlands and/or open water.
7:7A-2.4 Designation of freshwater wetlands
The designation of freshwater wetlands shall be based upon the three-parameter approach (that is, hydrology, soils and vegetation) enumerated in the [April 1, 1987 interim-final draft "Wetland Identification and Delineation manual" developed by the USEPA] "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" and any subsequent amendments thereto.
(b) (No change.)
(c) To aid in determining the presence or absence of freshwater wetlands, the Department may refer to any of the following sources of information:
1. New Jersey Freshwater Wetlands maps (as they become available);
2. Recodify existing 1.-6. as 2.-7. (No change in text.)
(d) Vegetative species classified as hydrophytes and indicative of freshwater wetlands shall be included, but not be limited to, those plants listed in "National List of Plant Species that Occur in Wetlands: 1988-New Jersey," [I, compiled by the United States Fish and Wildlife Service in cooperation with the United States Army Corps of Engineers, USEPA, and the United States Soil Conservation Service, and any subsequent amendments thereto.

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

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

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

(a) (No change.)

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

1. Those which discharge into FW-1 waters [and] or FW-2 trout production (TP) waters or their tributaries; or
2. (No change.)

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

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

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

ii. For the purposes of this subsection, “development” shall mean:
   (1) Lawns;
   (2) Maintained landscaping;
   (3) Impervious surfaces; and
   (4) Railroad rights-of-way;

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

2. Drainage ditches;
3. Swales; or
4. Detention facilities.

(d)(e) (No change.)

7:7A-2.6 Designation of State open waters

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

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

7:7A-2.7 Activities exempted from permit requirement

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

[(a)] (b) Subject to the limitations of this section, the following activities, when part of an established, ongoing farming, ranching or silviculture operation,] on properties which have received or are eligible for a farmland assessment, are exempt from the requirement of a freshwater wetlands permit or [an], open water fill or transition area permit:
1. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food and fiber, or [upland] soil and water conservation practices;
2. For the purposes of this paragraph “minor drainage” means:
   (1)-(4) (No change.)
3. (No change.)

(5) Minor drainage in wetlands is limited to drainage within areas that are part of an established farming or silvicultural operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (for example, wetlands species to upland species not typically adapted to life in saturated soils, 40:40, or conversions from one wetland to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area. Any discharge of dredged or fill material into the wetlands or [on floodplains] State open waters incidental to the construction of any such structure or waterway requires a freshwater wetlands or State open water permit, and will not be considered minor drainage.

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

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

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

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

(4) Subject to the limitations of this section, the following are exempt from the requirements of a freshwater wetlands permit or open water fill permit the Act until the State assumes the Federal 404 program. These activities may need Federal 404 permits and/or a WOC:
1. Projects for which preliminary site plan or property for which subdivision applications have received formal preliminary approvals from local authorities pursuant to the “Municipal Land Use Law,” N.J.S.A. 40:55D-1 et seq., prior to July 1, 1987; and
2. Projects for which preliminary site plan or property for which subdivision applications as defined in N.J.S.A. 40:55D-1 et seq. have been submitted to the local authorities prior to June 8, 1987 and subsequently approved [Persons with projects governed by this paragraph which are not initiated within five years of enactment of the Act shall no longer be exempt from the requirement of a freshwater wetlands permit or open water fill permit];
3. Projects for which preliminary site plan or property for which subdivision applications as defined in N.J.S.A. 40:55D-1 et seq. have been submitted to the local authorities prior to June 8, 1987 and subsequently approved [Persons with projects governed by this paragraph which are not initiated within five years of enactment of the Act shall no longer be exempt from the requirement of a freshwater wetlands permit or open water fill permit];
4. Projects for which preliminary site plan or property for which subdivision applications as defined in N.J.S.A. 40:55D-1 et seq. have been submitted to the local authorities prior to June 8, 1987 and subsequently approved [Persons with projects governed by this paragraph which are not initiated within five years of enactment of the Act shall no longer be exempt from the requirement of a freshwater wetlands permit or open water fill permit];
5. Projects for which preliminary site plan or property for which subdivision applications as defined in N.J.S.A. 40:55D-1 et seq. have been submitted to the local authorities prior to June 8, 1987 and subsequently approved [Persons with projects governed by this paragraph which are not initiated within five years of enactment of the Act shall no longer be exempt from the requirement of a freshwater wetlands permit or open water fill permit];
6. Projects for which preliminary site plan or property for which subdivision applications as defined in N.J.S.A. 40:55D-1 et seq. have been submitted to the local authorities prior to June 8, 1987 and subsequently approved [Persons with projects governed by this paragraph which are not initiated within five years of enactment of the Act shall no longer be exempt from the requirement of a freshwater wetlands permit or open water fill permit];
7. Projects for which preliminary site plan or property for which subdivision applications as defined in N.J.S.A. 40:55D-1 et seq. have been submitted to the local authorities prior to June 8, 1987 and subsequently approved [Persons with projects governed by this paragraph which are not initiated within five years of enactment of the Act shall no longer be exempt from the requirement of a freshwater wetlands permit or open water fill permit].
no longer be exempt from the requirement of a freshwater wetlands permit or open water fill permit; or
3. Projects for which permit applications have been approved and Individual permits have been issued by the United States Army Corps of Engineers prior to July 1, 1988 shall not require transition areas.

Environmental Protection

(cite 23 N.J.R. 344)

ENVIRONMENTAL PROTECTION

New Jersey Register, Tuesday, February 19, 1991

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

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

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

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

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

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

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

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

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

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

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

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

7:7A-3.2 Requirements for water-dependent activities

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

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

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

[b] To be acceptable, an alternative shall not]

3. Not have other significant adverse environmental consequences, that is, it would not merely substitute other significant environmental consequences for those attendant on the original proposal.

7:7A-3.3 Requirements for non-water dependent activities

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

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

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

[b] To be acceptable, an alternative shall not]

3. Not have other significant adverse environmental consequences, that is, it would not merely substitute other significant environmental consequences for those attendant on the original proposal.

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

(a) In order to rebut the presumption established for non-water dependent activities (see N.J.A.C. 7:7A-[3.2(c)] 3.3(b)) when the activity will take place in wetlands of exceptional resource value or in trout production waters, an applicant, in addition to complying with the provisions of N.J.A.C. 7:7A-[3.2]3, shall also demonstrate both:

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

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

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

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

1. [No change.]

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

3. [No change.]

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


10. Is otherwise lawful; and

11. Is in the public interest, as determined by the Department in consideration of the following:
7:7A-3.5 Determination of whether activity is in the public interest
(a) In determining whether a proposed activity in any freshwater
wetland is in the public interest, the Department shall consider the
following:

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

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

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

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

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

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

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

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

7:7A-4.1 General standards
The standards for granting or denying an open water fill permit
shall be the same as those followed by the Army Corps of Engineers
under section 404 of the Federal Act. These standards can be found
at 40 C.F.R. 230 et seq. commonly known as the “404 (b)(1) Guide-
lines”.

[SUBCHAPTER 4. GENERAL STANDARDS FOR
GRANTING WATER QUALITY CERTIFICATES]

7:7A-4.1 Jurisdiction
(a) This subchapter shall apply to all activities, including, but not
limited to, construction or operation of any facility or building, which:
1. May result in any discharge of any kind into “waters of the United
States” as defined at N.J.A.C. 7:7A-1.4; and
2. Require a Federal license or permit. Example of Federal permits
or licenses include, but are not limited to, permits issued pursuant to
Section 404 of the Federal Water Pollution Control Act (Clean Water
Act), 33 U.S.C.A. 1251 et seq. (1987), permits issued pursuant to
Section 10 of the Rivers and Harbors Act of March 3, 1899, 33 U.S.C.
403, or licenses issued by the Federal Energy Regulatory Commission
(b) Unless otherwise set forth in N.J.A.C. 7:7A-4.3,
(c) If an activity described at (a) above requires a New Jersey Pol-
lution Discharge Elimination System (NJPDES) permit pursuant to
N.J.A.C. 7:14A and does not involve the discharge of dredge or fill
material into waters of the United States, that is, does not require a
Federal 404 permit, the review for the issuance of a WQC may be made
concurrently with the review for the issuance of the NJPDES permit.
If the decision is made to issue a permit, the WQC may be appended
to the permit.
(d) If an activity described at (a) above requires a permit pursuant
to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.,
the review for the issuance of a WQC may be made concurrently with
the review for the issuance of the applicable permit. If the decision is
made to issue a permit, the WQC may be appended to the permit.
(e) If an activity described at (a) above requires a permit pursuant
to the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et
seq., or the Wetlands Act of 1978, N.J.S.A. 13:9A-1 et seq., the
review for the issuance of a WQC may be made concurrently with
the review for the issuance of either the CAFRA or Wetlands Act of 1970
permit. If the decision is made to issue a permit, the WQC may be
appended to the permit.

7:7A-4.2 Standards for granting a Water Quality Certificate
(a) The Department shall issue a WQC for a project only if it can
make the finding that all discharges will comply with the applicable
provisions of Section 301, 302, 303, 306 and 307 of the Federal Act.
In order for the Department to make this finding, the Department shall
issue a WQC for a project only if the activity meets all applicable water
quality standards pursuant to the Surface Water Quality Standards
(N.J.A.C. 7:9-4) and any subsequent amendments thereto. For projects
involving the deposition of fill into waters of the United States, the
Department shall use the appropriate rules listed below to assess com-
pliance with the antidegradation policies pursuant to N.J.A.C.
7:9-4.5(d):
1. For projects requiring either a CAFRA or Wetlands Act of 1970
permit, the standards outlined in the Coastal Resource and Development
Policies pursuant to N.J.A.C. 7:7E-2 through 8;
2. For projects requiring a freshwater wetlands permit, the standards
for granting Individual Freshwater Wetlands and State open water fill
permits at N.J.A.C. 7:7A-3, or the general provisions for granting
Statewide General Permits and authorization pursuant to N.J.A.C.
7:7A-9;
3. For projects not requiring any of the above-described permits and
requiring an Individual WQC, the general provisions for granting State-
wide General Permits and authorization pursuant to N.J.A.C.
7:7A-3, or the general provisions for granting
Statewide General Permits and authorization pursuant to N.J.A.C.
7:7A-9;
4. For projects requiring more than one of the permits listed above,
the most stringent standards of all of the applicable permits.
(b) The Department shall issue an Individual WQC only if it finds
that there is no practicable alternative to the proposed project. It shall be
a rebuttable presumption that a practicable alternative to the
proposed project exists.
1. An alternative shall be practicable if it is available and capable
of being carried out after taking into consideration cost, existing tech-
nology, and logistics in light of overall project purposes.
2. An alternative shall not be excluded from consideration under this
provision merely because it includes or requires an area not owned by
the applicant which could reasonably have been or be obtained, utilized,
expanded, or managed in order to fulfill the basic purpose of the
proposed project.
(c) The Department shall issue an Individual WQC for a proposed
project only if the project has no practicable alternative which would:
1. Not involve a water of the United States; or
2. Involve a different water of the United States but would have a
less adverse impact on the aquatic ecosystem;
(d) In order to rebut the presumption established in (b) above, an
applicant for an Individual WQC must demonstrate all of the follow-
ing:
1. That the basic project purpose cannot reasonably be accomplis-
hed utilizing one or more other sites in the general region that would avoid,
or reduce, the adverse impact on an aquatic ecosystem;
2. That the basic project purpose cannot reasonably be accomplis-
hed if there is a reduction in the size, scope, configuration, or density of
the project as proposed;
3. That the basic project purpose cannot reasonably be accomplis-
hed by any alternative designs that would avoid, or result in less adverse
impact on an aquatic ecosystem; and
4. That in cases where the applicant has rejected alternatives to the
project as proposed due to constraints such as inadequate zoning, in-
structure, or parcel size, the applicant has made reasonable attempts
to remove or accommodate such constraints.
(e) When the proposed project will impact waters of the United
States which discharge into FW-1 waters or FW-2 trout production
waters or their tributaries; or which are present habitats for threatened
or endangered species, or those which are documented habitats for
threatened or endangered species, and which remain suitable for breed-
ing, restocking, or feeding by these species during the normal period these
species would use the habitat, an applicant, in addition to complying
with the provisions of (d) above, shall also demonstrate either:
1. That there is a compelling public need for the proposed project
greater than the need to protect the waters of the United States and
that the need cannot be met by essentially similar projects in the region
which are under construction or expansion, or which have received the necessary governmental permits and approvals; or

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

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

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

2. Will not jeopardize present or documented habitat or the continued existence of a local population of a threatened or endangered species listed pursuant to The Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., or those identified pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531 et al., as defined at N.J.A.C. 7:7A-14;

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

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

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

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

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

8. Is otherwise lawful.

7:7A-4.3 Application Procedures

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

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

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

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

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

2. For projects involving dredging activities, information regarding:
   i. The existing, proposed, and adjacent silt and sediment depths;
   ii. The method of disposal of solid or liquid waste “generated”;
   iii. The method of dredging (that is, clam shell, drag line, etc.);
   iv. The method of sedimentation (or turbidity) control;
   v. The method of and location for dewatering spoils prior to disposal;
   vi. The location of the spoils disposal site;
   vii. Documentation regarding the environmental sensitivity of the dredge and dredge disposal site including, but not limited to:
   (1) The location and description of all wetlands, special aquatic sites as defined at N.J.A.C. 7:7A-1.4, public use areas, wildlife refuges, and public water supply intakes that may require special protection or preservation; and
   (2) A list of plants, fish, shellfish and/or wildlife in the proposed dredge or dredge disposal site which may be dependent on water quality and quantity;
   viii. Chemical analyses on both water column and sediment samples may be required due to the nature and location of the project; and

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

7:7A-4.4 Review of Applications

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

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

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

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

7:7A-4.5 Mitigation

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

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

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

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

SUBCHAPTER 5. EMERGENCY PERMITS

7:7A-5.1 Emergency permits

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

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

2. (No change.)

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

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

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

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

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

(e) (No change.)
7:7A-5.2 Obtaining an emergency permit
(a) (No change.)
(b) After the State assumes the Federal 404 program, upon receiving the request for an emergency permit for a major discharge, the Director will notify the Regional Administrator prior to the issuance of an emergency permit and will send a copy of the written permit upon issuance.

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

[Subsection C] If verbal approval is not given, the Department may issue a written emergency permit approval at any time within 15 days of the initial request.

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

If required by the Act, mitigation shall be provided pursuant to N.J.A.C. 7:7A-14.

SUBCHAPTER 6. TRANSITION AREAS

7:7A-6.1 General provisions
(a) (No change.)
(b) Acts or acts of omission in a transition area that adversely affects a transition area’s ability to serve as any of the areas described below at (b) to 7 shall be deemed inconsistent with the provisions of (a) above and with N.J.S.A. 13:9B-16a:
1-5. (No change.)
6. A corridor area which facilitates the movement of wildlife to and from freshwater wetlands and from and to uplands, streams and other waterways; and
7. (No change.)
(c) (No change.)
(d) The standard width of a transition area adjacent to a freshwater wetland of exceptional resource value shall be 150 feet. This standard width shall only be modified through the issuance of a transition area [waiver] permit by the Department pursuant to the Act and this chapter. The types of transition area [waivers] permits are listed at N.J.A.C. 7:7A-7.1(c).
(e) The standard width of a transition area adjacent to a freshwater wetland of intermediate resource value shall be 50 feet. This standard width shall only be modified through the issuance of a transition area [waiver] permit by the Department pursuant to the Act and this chapter.
(f) A person shall not engage in activities [prohibited] regulated in a transition area as set forth at N.J.A.C. 7:7A-6.2 except pursuant to a transition area [waiver] permit issued by the Department pursuant to this chapter.
(g) A transition area shall be measured outward from a freshwater wetland boundary line on a horizontal scale perpendicular to the freshwater wetlands boundary line as shown in N.J.A.C. 7:7A-6. Appendix A, which is incorporated by reference in this chapter. The outside boundary line of a transition area shall parallel, that is, be equidistant from, the freshwater wetlands boundary line, unless a transition area [waiver] permit is approved under N.J.A.C. 7:7A-7.4 or N.J.A.C. 7:7A-7.5. The width of the transition area shall be measured as the minimum distance between the freshwater wetlands boundary and the outside transition area boundary.
(h) (No change.)

7:7A-6.2 [Prohibited] Regulated activities in transition area
(a) Except as provided in (b) and (c) below, a person shall not conduct the following [prohibited] regulated activities in transition areas:
1-5. (No change.)
(b) The following activities [may be conducted (that is,)] are no [prohibited] regulated in transition areas, provided that the activities are performed in a manner that minimizes adverse effects to the transition area and adjacent freshwater wetlands:
1. (No change.)
2. Minor and temporary disturbances of the transition area resulting from, and necessary for, normal construction activities on land adjacent to the transition area:
   (i) For the purposes of this paragraph, “minor and temporary disturbances resulting from, and necessary for, normal construction activities on land adjacent to the transition area,” means activities which do not result in adverse environmental effects on the transition area or on the adjacent freshwater wetlands and which activities do not continue for a period of more than six months. Normal construction activities which would be minor and temporary disturbances include, but are not necessarily limited to, the placement of scaffolds or ladders, the removal of human-made debris by non-mechanized means which does not destroy woody vegetation, and the placement of temporary construction supports, and the placement of utility lines over or under a previously authorized, currently serviceable existing paved roadway.
   (3. (No change.)
   (c) Projects or activities which are exempt from the requirement of a freshwater wetlands permit pursuant to N.J.A.C. 7:7A-2.7(a)[,]
   (b), (c) and (d), (f) and (g)] shall also be exempt from transition area requirements. These transition area exemptions are subject to the same limitations as the corresponding freshwater wetlands permit exemptions. These limitations can be found at N.J.A.C. 7:7A-2.7.
   (d) To confirm that an activity or project is exempt, an exemption letter may be requested from the Department through the procedures established for freshwater wetlands permit exemptions in N.J.A.C. 7:7A-2.9, including submittal of the fee specified at N.J.A.C. 7:7A-16 [7.]
7:7A-6.3 Determination of transition areas due to the presence of freshwater wetlands on adjacent property
(a) Any person engaging in [prohibited] regulated activities in a transition area without Department approval shall be in violation of the Act and this chapter. A transition area may be located on a property even though the freshwater wetlands adjacent to that transition area are located on a different property (see N.J.A.C. 7:7A-6.1(h)).
(b) To determine whether a transition area is required on a parcel, where freshwater wetlands may exist on other nearby parcels, a person may follow the procedures at (c) below or follow those procedures at (b) through [7] below as applicable.
1-3. (No change.)
4. If the freshwater wetlands on the subject parcel or within 150 feet of the subject parcel property boundary are freshwater wetlands of exceptional resource value, a transition area exists on the subject parcel. In order to determine the size and shape of the transition area, obtain a delineation of the freshwater wetlands on neighboring land within 150 feet of the subject parcel boundary and determine the shape and size of the standard transition area on the subject parcel according to N.J.A.C. 7:7A-6.1(d).
   (i) To avoid the necessity of delineating exceptional resource value freshwater wetlands on other properties, a person may ensure compliance with transition area requirements arising from freshwater wetlands on other properties by refraining from [prohibited] regulated activities on the subject parcel within 150 feet of [its] the wetland boundary.
   [5. If the freshwater wetlands on land within 150 feet of the subject parcel boundary are freshwater wetlands of intermediate resource value, determine whether any of the freshwater wetlands are within 50 feet of the subject parcel boundary.]
sition area exists on the subject parcel. In order to determine the size and shape on the transition area, obtain a delineation of the freshwater wetlands on neighboring land within 50 feet of the subject parcel boundary and determine the shape and size of the standard transition area on the subject parcel according to N.J.A.C. 7:7A-7 Appendix B, which may result from the negligent use of the site by the State of New Jersey subject to the following exceptions: (a) the State of New Jersey shall have no obligation to indemnify or hold harmless the GRANTOR; its heirs, successors or assigns, or any of them, for any claims or damages for which the State of New Jersey would have no liability under the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 seq.): (b) the liability, if any, of the State of New Jersey shall be subject to the availability of State of New Jersey funds; (c) the Agreement of the State of New Jersey to indemnify and hold harmless, as set forth in this paragraph, shall not apply to any claims, actions or damages which may arise out of, be occasioned by or result from any condition existing on, or which did exist on, the site at the time of the execution of this agreement, or at any time prior to the execution of this agreement.

This agreement shall take effect on the date executed by the GRANTOR: 

WITNESS: 

BY: 

DATE 

BY: 

DATE 

GRANTEE 

GRANTOR 

SUBCHAPTER 7. TRANSITION AREA [WAIVERS] PERMIT

7:7A-7.1 General provisions

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

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

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

1. (No change.)
2. A modification in the shape, but not the square footage, of the standard transition area through a transition area averaging plan pursuant to N.J.A.C. 7:7A-7.5. This [waiver] permit is available for transition areas adjacent to both exceptional and intermediate resource value freshwater wetlands;
3. A partial elimination of the standard transition area width along a portion of the freshwater wetland to allow special activities as established in N.J.A.C. 7:7A-7.4. This [waiver] permit is available for transition areas adjacent to both exceptional and intermediate resource value freshwater wetlands; or
4. Any combination of (c)1. 2, and 3 above.

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

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

(f) The Department's authorization of activities under a Statewide general permit, individual freshwater wetlands permit or mitigation
2, 4, or 6 (or 7).

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2.4.1 The freshwater wetland contains a present or "documented habitat for threatened or endangered species" as defined at N.J.A.C. 7:7A-1.4.

3.2.1 The freshwater wetland is located adjacent to FW1 waters or FW2 trout production waters;

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

5.1. The proposed activity would have no practicable alternative which would:

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

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

7.7A-7.2 Exceptional resource value freshwater wetlands: standards for transition area width reduction

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

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

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

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

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

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

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

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

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

5. Any soils in the transition area which are classified as acid soils as defined at N.J.A.C. 7:7A-5.10 will be disturbed by the proposed activity.

4. The proposed project would cause the disturbance or exposure of acid producing deposits as defined at N.J.A.C. 7:13-5.10;

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

6. The proposed activity or project includes one or more of the following:

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

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

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

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

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

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

1. The property or proposed project or activity does not fall into any of the categories indicating a substantial impact as listed at N.J.A.C. 7:7A-7.2(c).
2. (No change.)
3. The property has been part of an established ongoing farming, anchoring or silviculture operation” as defined at N.J.A.C. 7:7A-1.4
within the two years before the transition area [waiver] permit application is submitted; and
4. The proposed project will include the planting of native trees and shrubs in the reduced 100 foot transition area pursuant to a plan approved by the Department. The planting shall achieve no less than 85 percent area coverage in the entire 100 foot transition area and ensure no less than 85 percent survival of the plants for no less than three years; and.
5. The reduced 100 foot transition area is placed under permanent conservation easement or restriction, recorded as part of the deed to the property, which provides that the reduced transition area may not be improved, altered, or in any way disturbed or cleared except pursuant to the Department-approved planting project.

(e) The Department will consider the proposed project to have no substantial impact, and will issue a transition area permit reducing the standard transition area width to 75 feet, if all of the following transition area characteristics and proposed project factors are true:
1. The transition area to be reduced is adjacent to a tidally influenced wetland;
2. The applicant intends to construct a single family residence which will become their residence;
3. The area of proposed reduction is in an area of “infill residential development” meeting the following criteria:
   i. On the same side of the road as the proposed project, at least 75 percent of the upland lots within 200 feet of the property line and adjacent to the wetlands are developed with residential or commercial uses;
   ii. Lots are located directly adjacent to and have direct access to a paved public road (this criteria excludes flag lots); and
   iii. Lots are serviced by a municipal wastewater treatment system;
4. The applicant shall demonstrate that the reduced transition area is equivalent or wider than that observed by the structures on the adjacent lots and that a wider transition area cannot be feasibly accommodated onsite through alternative design or a variance to local set back requirements;
5. All new bulkheads and retaining structures shall be located upland of the required transition area;
6. The reduced transition area shall be an undeveloped, vegetated area where native vegetation is preserved or indigenous coastal species are planted as appropriate; and
7. The reduction of the transition area will not result in adverse impacts to threatened or endangered species or their habitats.

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

1.3. (No change.)
[(f)(g) An extraordinary hardship to the applicant will be considered to exist when:
1. The subject property is not susceptible to a reasonable use as is presently developed or as authorized by the provisions of the Act and this chapter and this limitation results from unique and extreme circumstances peculiar to the subject property which:
   i. ii. (No change.)
2. For single family residential lots which are unbuildable due to the presence of transition areas, the Department may grant a transition area reduction permit to reduce the transition area to a minimum of 75 feet based on hardship if the following conditions are met:
   i. The lot was subdivided prior to July 1, 1988 and was owned by the applicant since that time;
   ii. The applicant has not received a permit for a reduction of a transition area based on this hardship criteria for the past five years;
   iii. The applicant shall demonstrate that adjacent properties cannot be purchased for fair market value to create a buildable lot;
   iv. The applicant shall demonstrate that the subject property was offered for sale at market value to adjacent landowners and that the offer was refused;
   v. The subject parcel is not contiguous with an adjacent improved parcel which was owned by the applicant on July 1, 1988; and
   vi. The applicant shall demonstrate that the subject property was offered for sale at fair market value to interested public or private conservation organizations and that the offer was refused.

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

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

(a) This section addresses standards for overall width reduction of transition areas adjacent to intermediate resource value wetlands. A transition area adjacent to a freshwater wetland of intermediate resource value shall be 50 feet wide except pursuant to a transition area [waiver] permit approved by the Department.
(b) The Department shall grant a transition area [waiver] permit to reduce a transition area adjacent to a freshwater wetland of intermediate resource value from the standard transition area width only if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

   iii. The development intensity of the project, as determined N.J.A.C. 7:7A-7.2(e)(7.2)(f), is less than or equal to twenty percent.

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

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

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

   iii. The development intensity of the project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)(7.2)(f), is less than or equal to twenty percent.

3. A transition area [waiver] permit reducing the transition area width to 50 feet shall be granted if all of the following are true:

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

   ii. The development intensity of the project, as determined pursuant to N.J.A.C. 7:7A-7.2(e)(7.2)(f), is less than or equal to twenty percent.

4. A substantial impact on the freshwater wetland shall be deemed to exist when:

   i. The subject property is not susceptible to a reasonable use [as is developed] as authorized by the provisions of the Act and this chapter; and

   ii. The subject property [waiver] permit shall not be granted pursuant to this section, if the conditions in (d)(1), 2 or 3 above are not met.

[c][f] A substantial hardship to the applicant shall be considered to exist when:

1. The subject property is not susceptible to a reasonable use [as is developed] as authorized by the provisions of the Act and this chapter and

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

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

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

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

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

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

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

7.7A-7.4 Special activities: Standards for granting transition area [waivers] permits

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

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

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

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

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

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

1.-3. (No change.)

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

1. An alternative location shall be considered feasible when the proposed linear development can be located outside of the transition area by:
   i. Modifying the route of the linear development to avoid or reduce impacts to freshwater wetlands and transition areas; or
   ii. Reducing the width of the linear development.

2.-3. (No change.)

(d) (No change.)

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

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

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

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

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

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

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

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

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

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

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

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

7:7A-7.5 Transition area [waivers] permits, averaging plans:

   Standards for modifying the shape of a transition area

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

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

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

   i.-ii. (No change.)

   iii. The transition area averaging plan proposes to:

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

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

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

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

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

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

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

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

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

   ii. The transition area averaging plan proposes to:

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

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

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

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

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

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

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

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

   (c) (No change.)

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

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

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

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

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

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

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

   i. Note: [the] if the freshwater wetlands boundary shown on the site plan or subdivision map has not been verified by a letter of interpretation, the freshwater wetland boundary shall be visibly flagged and/or staked in the field [according to the procedure at N.J.A.C. 7:7A-8.8(c)(7)].

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

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

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

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

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

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

   Bureau of [Freshwater Wetlands] Regulation
   Division of Coastal Resources
   New Jersey Department of Environmental Protection
   CN 401
   Trenton, New Jersey 08625

   att: (County in which the property is located) Section Chief

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

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

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

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A-6.3(b)7); and
9. Any information establishing a claim of hardship as determined pursuant to N.J.A.C. 7:7A-7.2(f)(g) or 7.3 [c] (f), if applicable.
(b) If the freshwater wetlands boundary on the property has not been confirmed or delineated by the Department through a letter of interpretation pursuant to N.J.A.C. 7:7A-8 and the property is greater than one acre, the applicant shall also provide as part of the transition area [waiver] permit application the information required pursuant to N.J.A.C. 7:7A-8(2c) 5, 6, 7, 8, and 9) 8.3(a) and 8.3(b)2.
Application] concerning application for letters of interpretation.
(c) In addition to the information required in (a) and (b) above, the following information shall be submitted depending on the type of transition area [waiver(s)] permit(s) requested in the application:
1. To reduce the standard transition area which pursuant to N.J.A.C. 7:7A-7.2 and 7.3 (except pursuant to 7.2(c));
   i. A description of the dominant vegetational community in the standard transition area, as described at N.J.A.C. 7:7A-7.2(2)(e)(f); and
   ii. The slope of the standard transition area, as determined pursuant to N.J.A.C. 7:7A-7.2(e)(f); and
   iii. The transition area [waiver] permit application the information required pursuant to N.J.A.C. 7:7A-7.2(e)(f)2; and
2. (No change.)
3. To reduce the transition area width pursuant to N.J.A.C. 7:7A-7.2(e)(f3);
   i. The location of all existing adjacent structures, municipal wastewater treatment systems, paved roadways and other development adjacent to the wetlands;
   ii. Documentation regarding the response to all applications for variances to local set back requirements; and
   iii. Plans for proposed planting in reduced transition area if currently unvegetated.
4. For a transition area averaging plan pursuant to N.J.A.C. 7:7A-7.5, a statement that includes:
   i. The total square footage of the standard transition area;
   ii. The total square footage of the transition area to be disturbed by the proposed project;
   iii. The total square footage for transition area reduction, and proposed for transition area expansion in compensation for the proposed reduction, pursuant to the transition area averaging plan; and
4. A site plan showing and clearly labeling the standard transition area, the proposed area of reduction of the standard transition area, and the proposed areas adjacent to the standard transition area that will be added to the standard transition area as square footage compensation for the reduction. The transition area shown on the site plan shall be reproducible in the field.
5. For a special activity transition area permit for a general permit activity pursuant to N.J.A.C. 7:7A-7.4(e):
   i. All of the information required for determining compliance with the criteria of the specific general permit activity pursuant to N.J.A.C. 7:7A-9.2(a).
6. For a special activity transition area permit for redevelopment of a transition area pursuant to N.J.A.C. 7:7A-7.4(f):
   i. Plans showing the location and extent of existing impermeable surfaces in relation to transition area; and
   ii. Plans showing the location and extent of proposed development and attendant features including, but not limited, to septic systems discharging onsite, and stormwater outfalls and a proposed mechanism to treat stormwater runoff prior to leaving the site.
7. For a transition area averaging plan pursuant to N.J.A.C. 7:7A-7.5, a statement that includes:
   i. The total square footage of the standard transition area;
   ii. The total square footage of the transition area to be disturbed by the proposed project;
   iii. The total square footage proposed for transition area reduction, and proposed for transition area expansion in compensation for the proposed reduction, pursuant to the transition area averaging plan; and
(iv) A site plan showing and clearly labeling the standard transition area, the proposed area of reduction of the standard transition area, and the proposed areas adjacent to the standard transition area that will be added to the standard transition area as square footage compensation for the reduction. The transition area shown on the site plan shall be reproducible in the field.
(d) Applicants shall perform recordkeeping activities for transition area [waiver] permit applications according to the requirements at N.J.A.C. 7:7A-12.4.
(e) All transition area [waiver] permit applications shall be signed according to the signatory requirements at N.J.A.C. 7:7A-13.
(f) All transition area application fees shall be paid according to the requirements set forth for payment of permit fees at N.J.A.C. 7:7A-16.
7:7A-7.7 Procedure for review of transition area [waiver] permit applications
(a) Within 30 days of the receipt of an application for a transition area [waiver] permit, the Department shall review the application for completeness and may return all materials contained in a deficient application with a [make any necessary] request[s] for additional information, or declare the application complete. If the application does not include the fee specified at N.J.A.C. 7:7A-16, no action shall be taken by the Department under this section, the submittal will not be considered an application, and completeness review will not begin.
(b) (No change.)
(c) Except as indicated in (d) and (h) below, the Department shall issue or deny a transition area [waiver] permit within 90 days of receiving a complete transition area [waiver] permit application or within 90 days after receipt of the requested additional information or clarification sufficient for the application to be considered complete.
(d) If the transition area [waiver] permit application is submitted together with an individual freshwater wetlands permit application concerning the same property, the Department shall approve or deny the transition area [waiver] permit within the time period set forth in N.J.A.C. 7:7A-12 for the approval or denial of the individual freshwater wetlands permit application.
(e) Applications may be cancelled by the Department or withdrawn, amended, or resubmitted by the applicant pursuant to N.J.A.C. 7:7A-[12.7] 7.10.
(f) When a transition area [waiver] permit is issued pursuant to this subchapter, the Department shall send copies to all municipal and county agencies which received copies of the transition area [waiver] permit application.
(g) The Department will provide notice of application for a transition area [waiver] permit, the status of all applications, and the final decision concerning all applications in the DEP Bulletin, as set forth in N.J.A.C. 7:7A-12.4.
1. Copies of all transition area [waiver] permit applications will be available for public review by interested persons at the municipal clerk's office and in the offices of the Department in Trenton (see N.J.A.C. 7:7A-1.3 for address) by appointment during normal business hours.
(h) Within 20 days of publication of the notice of application in the DEP Bulletin, interested persons may request in writing that the Department hold a public hearing on a particular application. The Department will set a time, place and date for the public hearing [within 15 days of] after the close of the 20 day hearing request period, and shall so notify the applicant. [and] The Department will hold the public hearing within 60 days from the close of the 20 day period. The hearing shall be in the county wherein the transition area is located wherever practicable. The applicant is responsible for the cost of the hearing.
1. The Department may issue or deny a [waiver] permit without a public hearing unless there is a significant degree of public interest in the application [as manifested by written requests for a hearing
submitted within the 20 day hearing request period. If the Department grants a hearing, the application shall not be considered complete until 15 days after the public hearing.

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

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

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

7:7A-7.8 Hearings and appeal
(a) The applicant or other affected party, if aggrieved by the decision to authorize the activities specified in the transition area permit, may request a hearing on this decision pursuant to N.J.A.C. 7:7A-12.7.

7:7A-[7.8]7.9 Duration, effect, modification and transfer of transition area [waivers] permits
(a) A transition area [waiver] permit issued by the Department shall be effective for a fixed term of five years.

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

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

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

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

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

1. For modification as established at N.J.A.C. 7:7A-13.7;
2. For modification or revocation and reissuance as established at N.J.A.C. 7:7A-13.8;

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

7:7A-7.10 Cancellation, withdrawal, resubmission and amendment of applications
(a) Applications may be cancelled by the Department; or withdrawn, amended, or resubmitted by an applicant.

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

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

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

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

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

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

7:7A-7 Appendix A
Example of a transition area averaging plan

Transition Area Compensation

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

SUBCHAPTER 8. LETTERS OF INTERPRETATION

7:7A-8.1 Purpose
A person proposing to engage in a regulated activity in a freshwater wetland may, prior to applying for a freshwater wetlands permit, request from the Department a letter of interpretation to establish whether the site of a proposed activity is located in a freshwater wetland.

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

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

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

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

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

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

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

1. Name of owner(s) of property, municipality, county, lot and block number(s);
2. On an out-bound survey of the property, identification of all oil types (from United States Department of Agriculture, Soil Conservation Service County Soil Survey);
3. A map of the region locating the property;
4. Photographs of the property;
5. Verification that a registered mail notice and a complete copy of the application has been forwarded to the clerk of the municipality and that a registered mail notice has been forwarded to the environmental commission, if any, and planning board, if any, of the municipality in which the determination is to be made, and the planning board of the county in which the determination is to be made.
6. A fee pursuant to N.J.A.C. 7:7A-16, and as indicated on the printed fee schedule which is available from the Department.

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

1. Name of owner(s) of property, municipality, county, lot and block number(s), and project name, if any, and name of the waterbody;
2. On an out-bound survey of the property, the topography and oil types (from United States Department of Agriculture, Soil Conservation Service County Soil Survey). The locations of all soil pits or borings, if applicable, shall be indicated on the survey and numbered. Soil logs should be presented with an indication of the depth to the seasonal high water table. Soil borings must be to a minimum depth of 20 inches, on transects perpendicular to the wetlands boundary, starting in the definite wetlands area and moving towards the uplands. In wetlands with atypical characteristics such as sandy soils, or in wetlands which have been disturbed by human activities or as otherwise deemed appropriate, the Department may require deeper borings as needed;
3. Verification that registered mail notice has been forwarded to the environmental commission (if any), and planning board of the municipality in which the proposed regulated activity will occur, the planning board of the county in which the proposed regulated activity will occur, landowners within 200 feet of the legal boundary line of the property or properties on which the proposed regulated activity will occur, which notice may be filed concurrently with notices required pursuant to N.J.S.A. 40:55D-1 et seq., describing the proposed regulated activity and advising these parties of their opportunity to submit comments thereon to the Department;
4. Verification that a complete copy of the request for a letter of interpretation, including all materials required by this sub-section, has been submitted to the clerk of the municipality in which the proposed regulated activity will take place;
5. Vegetative species, recorded at soil boring locations, and classified using United States Fish and Wildlife Service categories (P.L. Reed, 1986) as listed under “R/IND” and “NAT-IND” (Regional and National Indicators) columns;

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

7. The wetlands boundary line shall be visibly flagged and/or staked in the field with numbered flags and referenced by matching numbers on the out-bound survey. The flags and/or stakes are to be set in relation to known points and landmarks so that the boundary can be re-established;
8. Pictures on the wetland area;
9. Name(s) and qualifications of these person(s) who prepared the proposed wetland boundary;
10. Written consent by the applicant to allow access to the subject site by representatives or agents of the Department for the purpose of conducting a site inspection or survey of the wetlands thereon;

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

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

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

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

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

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

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

(j) Various types of letters of interpretation are available from the Department, depending on the type of information requested by the applicant, the size of the right-of-way or size of the parcel (based on municipal tax block and lot boundaries). This LOI will not determine the location of these features, but only whether they are present. This LOI will be issued for any size parcel over one acre in size.

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

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

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

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

7:7A-8.3 Application for letters of interpretation
(a) The application for a letter of interpretation shall include the applicable fee for the review and processing of a letter of interpretation application specified at N.J.A.C. 7:7A-16.2 and three copies of the following information:

1. The name and address of owner(s) of the property, municipality, county, block and lot number(s);
2. A folded out-bound survey of the property or a folded site plan, if available. The survey or site plan should include all natural or human-made features such as structures, fences, streams, ponds, treelines, etc.
3. In addition, the corners of the property boundary shall be visibly flagged and/or staked in the field to facilitate the on-site inspection;
4. A copy of the current municipal tax map for the subject property;
5. A copy of the appropriate county road map or other local street map clearly indicating the location of the subject property;
6. A folded copy of the appropriate U.S. Geodetic Survey Quadrangle Map for the parcel site with the boundaries of the parcel (defined by tax block and lot) or project (limits of disturbance) clearly outlined, and a determination of the State Plane Coordinates for the center of the parcel;
7. A copy of the appropriate United States Department of Agriculture, Soil Conservation Service County Soil Survey, with the boundaries of the subject parcel (defined by tax block and lot) or project (limits of disturbance) clearly outlined. The sheet number of the Soil Survey shall be included;
8. Clear color photographs of the property (a minimum of four views is recommended) with a description and the location of each view;
9. Verification that a certified mail notice with return receipt requested (white receipt or green card is acceptable) and a complete copy of the request for a letter of interpretation including all materials required by this subsection, have been forwarded to the clerk of the municipality in which the parcel or project is located;
10. Verification that certified mail notice with return receipt requested (white receipt or green card is acceptable) has been forwarded to the environmental commission, or any public body with similar responsibilities, the planning board and the municipal construction official of each municipality, in which the parcel or project is located and landowners within 200 feet of the legal boundary line of the subject property or properties. The applicant must also provide a list of landowners within 200 feet. The written notices satisfying this paragraph and paragraph (a)/3 above may be filed concurrently with notices required pursuant to N.J.S.A. 40:55D-1 et seq. (The Municipal Land Use Law), but should be mailed no sooner than two working days before the application package is delivered to the Department. This will allow ample time for the application to be processed to accommodate public review. The written notice shall include, at a minimum, the following information and statement:
   i. The name(s) and address(es) of the property owner(s);
   ii. The property location described by block(s) and lot(s), municipality, county, and street address;
   iii. A description of the proposed project or the reason for applying for a letter of interpretation; and
   iv. The following statement:

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

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

The complete letter of interpretation application package can be reviewed at either the municipal clerk's office or by appointment at the Division of Coastal Resources office at the address listed below.

The Department welcomes comments and any information that you may provide concerning the presence of wetlands, open water or transition areas on the referenced parcel. Please submit your written comments within 15 days of receiving this letter, along with a copy of this letter to:

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

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

The Department may notify the environmental commission, the planning board of the municipality and the municipal construction official of the Department's determination in the letter of interpretation."
orings must be to a minimum depth of 24 inches on transects per-
endicular to the wetlands boundary starting in the definite wetlands rea and moving towards the uplands. In wetlands with atypical char-
acteristics, or in wetlands which have been disturbed by human activities r as otherwise deemed appropriate, the Department may require deep-
ior borings as needed;
(3) Vegetative species, recorded at soil boring locations, and classi-
ed using United States Fish and Wildlife Service categories (P. Reed, 986) as listed under "R/IND" and "NAT-IND" (Regional and Na-
ional Indicators) columns;
(4) The wetlands and/or open water boundary line shall be visibly 
tagged and/or staked in the field with numbered flags, placed no 
earer than 75 feet apart, and referenced by matching numbers on the
out-bound survey. The flags and/or stakes are to be set in relation to
own points and landmarks so that the boundary can be re-established;
(5) Name of the person who prepared the proposed wetland and/or
pen water boundary.

7:7A-[8.3]8.4 Onsite inspections
(a) For properties greater than one acre in size, [The] the Depart-
ment [may] shall require an applicant for a letter of interpretation to 
perform and submit to the Department an onsite [survey of the 
wetlands] delineation prepared by a qualified professional using the three-parameter approach and to verify the [general]
description of the freshwater wetland boundary. [This performance and 
submittal will be required whenever the parcel which is the subject of the letter of interpretation is greater than one acre in size.] The surveyed line shall be subject to approval and verification by the Department.
(b) [No change.]
(c) A person applying for a letter of interpretation may also 
submit a report of an onsite freshwater wetlands delineation prepared by a qualified professional using the three-parameter approach and to verify the [general] description of the freshwater wetland boundary. [This performance and submittal will be required whenever the parcel which is the subject of the letter of interpretation is greater than one acre in size.] The surveyed line shall be subject to approval and verification by the Department.
(d) [No change in text.]

7:7A-[8.4]8.5 Local review
The Department, in determining the presence or absence of 
freshwater wetlands, State open waters and transition areas and the 
location of [wetlands] their boundaries if they are present, shall con-
sider comments filed by municipal and county governments and 
interested citizens. Comments filed by the clerk, environmental com-
mission or any public body with similar responsibilities and planning 
board of a municipality, or [county] municipal construction official 
will be actively considered as part of all determinations, [provided
comments are] Comments must be filed with the Department within 5 days after [the Department's receipt of a request for a letter of inter-
pretation] the municipal clerk's office receives a complete copy of all information submitted to the Department or until the Department issues a letter of interpretation.

7:7A-8.5 USEPA review
(a) The Department shall transmit to the USEPA a copy of all 
etters of interpretation upon issuance.
(b) Any letter of interpretation which determines that the site of proposed regulated activity is not in a freshwater wetlands shall be subject to review, modification, or revocation by the United States Environmental Protection Agency.

7:7A-8.6 Effect of a letter of interpretation
(a) A person who receives a letter of interpretation pursuant to 
his subchapter shall be entitled to rely on the determination of the Department, concerning the presence or absence, or the extent of 
freshwater wetlands and/or State open waters, [except as provided in N.J.A.C. 7:7A-8.5 (USEPA Review),] for a period of five years unless he letter of interpretation has been determined to be based on inaccurate information, in which case it shall be void.
(b) The determination of resource value classification, issued with a letter of interpretation, is subject to change for a one year period following the issuance of the letter of interpretation regardless of any actions taken in reliance upon the notice of classification. During this one year period the Department may change the resource value classification if it finds that the information on which the resource value was based is no longer accurate or if new information is made available to the Department from any source, which the Department finds sufficient to justify a reclassification. At the end of the one year period the resource value classification may be relied upon for a period of four years, the effective duration of the letter of interpretation. The Department may waive the one year review period, and the resource value classification may be relied upon for the entire effective duration of the letter of interpretation if the Department concurs with conclusive evidence of resource value classification, in the form of a comprehensive habitat evaluation performed by a qualified biologist or botanist.

7:7A-8.7 Reissue of a letter of interpretation
A letter of interpretation may be extended beyond the five year time period, but not to exceed five years from the original expiration date. Requests for extensions shall be made in writing to the Department before the letter has expired and shall include the file number, a copy of the originally approved plans and fee as specified at N.J.A.C. 7:7A-16.2. Applicants will be required to submit a new application if an extension is not applied for prior to the expiration date of the letter of interpretation. The term of the letter may be extended provided that the information upon which the original letter was based remains valid.

7:7A-[8.7]8.8 Effect of non-issuance of a letter of interpretation
within time allotted
(a) Any person who requests a letter of interpretation pursuant to the provisions of the Act and this chapter, and does not receive a response from the Department within the deadlines imposed in this subchapter, shall not be entitled to assume that the site of the proposed activity which was the subject of the request for a letter of interpretation is not in a freshwater wetland or a transition area.
(b) A person who requests a letter of interpretation and does not receive a response within the above deadlines may directly apply for a freshwater wetlands permit. In the event that a letter of interpretation is not issued within the deadlines imposed in this subchapter, the letter of interpretation fee will be applied to an automatic extension of 30 days.

SUBCHAPTER 9. GENERAL PERMITS
general permits
[(a) All 26 United States Army Corp of Engineers Nationwide 
permits which were approved under the Federal Act as of November
13, 1986 have been considered by the Department. Nationwide Permits numbers one, two, five, eight, nine, 10, 11, 19, 21, and 24 pertain only to navigable waters of the United States or, in the case of number 21, only to coal mines and therefore, are not appropriate or applicable for adoption in this chapter. Nationwide Permit numbers seven, 13, 17, 18, 23, 25 and 26 have not been adopted in this chapter except that parts of 26 have been adopted as required by the Act at N.J.A.C. 7:7A-9.2. Nationwide Permit numbers three, seven, 12, 16, 20 and 22 have been adopted at N.J.A.C. 7:7A-9.2, as modified.
(b) The Department will issue a general permit for similar activities as specified in (c)1 below within a defined geographic area as specified in (c)2 below, after conducting an environmental analysis and providing public notice and opportunity for a public hearing if it is determined that the regulated activities will cause only minimal cumulative adverse impacts on the environment, will cause only minor impact on freshwater wetland and State open waters, will be in conformance with the purposes of the Act, and will not violate the Federal Act.]
ENVIRONMENTAL PROTECTION

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

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

1. The activities meet the limitations specified in (c) below;
2. After conducting an environmental analysis that determines the regulated activities will cause only minimal adverse environmental impacts when performed separately and will have only minimal cumulative adverse impacts on the environment, will cause only minor impact on freshwater wetlands and State open waters;
3. After determining that the activity will be in conformance with the purposes of the Act, and will not violate the Federal Act; and
4. After providing public notice and opportunity for a public hearing.

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

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

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

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

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

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

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

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

1. The repair, rehabilitation, replacement, maintenance or re-construction of any previously authorized, currently serviceable structure, fill, roadway, public utility, active irrigation or drainage ditch, or stormwater management facility lawfully existing prior to July 1, 1988 or permitted under the Act, provided such activities do not deviate from plans of the original activity and further provided that the previously authorized structure, fill, roadway, utility, ditch or facility has not been and will not be put to uses differing from those specified in any permit authorizing its original construction. Minor deviations due to changes in materials or construction techniques and which are necessary to make repairs, rehabilitation or replacements are allowed provided such changes do not result in disturbance of additional freshwater wetlands or State open waters upon completion of the activity;
2. Discharge of material for backfill or bedding for utility lines, provided there is no change in preconstruction elevation and bottom contours. Excess material must be removed to an upland disposal area. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. The activities allowed by this Statewide General Permit shall comply with the following conditions:
   i. The activity encompasses no more than one acre of wetland;
   ii. The width of the area of disturbance within the right-of-way for the project is no more than 20 feet wide;
   iii. The project is not located in a wetland of exceptional resource value;
   iv. The activity is not located in a wetland designated as a Priorit Wetland by EPA;
   v. iv. Any excavation is backfilled with the original soil matter if feasible and otherwise with suitable material to within 18 inches of the surface. The [upper 18 inches] excavation must be backfilled with the original soil material to the preexisting elevation;
   vi. The activity is designed so as not to interfere with the natural hydraulic characteristics of the wetland and watershed;
   v. The activity is not located in a wetland designated as a Priorit Wetland by EPA;
   vi. The repair, rehabilitation, replacement, maintenance or re-construction of any previously authorized, currently serviceable structure, fill, roadway, public utility, active irrigation or drainage ditch, or stormwater management facility lawfully existing prior to July 1, 1988, provided, that the improvements or additions require less than a cumulative surface area of 750 square feet of fill and will not result in new alterations to a freshwater wetland outside of the fill area.

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

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

[i] The Department shall either modify, reissue or revoke all general permits.

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

[iii] The activity would not result in the loss or substantial modification of more than one acre of freshwater wetland or State open waters;

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

[iii] The activity would not result in the loss or substantial modification of more than one acre of wetlands or State open waters;

[v] The disturbance of greater than 0.25 acres of wetlands or State open waters shall be mitigated as specified at N.J.A.C. 7:7A-1-

Mitigation. The mitigation plan shall be submitted as a part of the General Permit authorization and approved by the Department before the proposed activity may be authorized.

7. The removal, excavation, disturbance or dredging of soil, fillin with suitable non-toxic material, destruction of plant life and plakin obstructions is permitted] Regulated activities in ditches [or swales] of human construction or swales provided the [ditches or swales i. [Are] They are located in headwater areas;

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

[iii. [Are] They are designated a priority wetlands by th USEPA; [and]

iv. The activity would not result in the loss or substantial modification of more than one acre of wetlands or State open waters];

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

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

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

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

9. The construction of State or Federally funded roads which:
   i. Were planned and developed in accordance with the “Nations Environmental Policy Act of 1969”, the Federal Act, and Executive Order Number 53 (approved November 21, 1983); and
   [i. Were planned and developed in accordance with the “National Environmental Policy Act of 1969”, the Federal Act, and Executive Order Number 53 (approved November 21, 1983); and
   [ii. The activities would not result in the loss or substantial modification of more than one acre of wetlands or State open waters;]

(CITE 23 N.J.R. 360) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
(i). The activity is conducted in accordance with a Dam Permit issued pursuant to N.J.A.C. 7:20-1;

(ii). The activity results in the filling of no more than one acre of wetlands or State open waters;

(iii). If located in exceptional resource value wetlands, the activity will not negatively impact the documented threatened or endangered species or its habitat;

(iv). The activity is designed to minimize disturbance and other detrimental effects upon freshwater wetland or State open waters.

If the crossing is bridged, culverted or otherwise designed to prevent the restriction of, and to withstand, expected high flows:

(ii). [Disturbance] Except for widening existing roadways, the disturbance of any freshwater wetlands does not extend more than 50 feet on either side of the ordinary high water mark of State open waters. Where no State open waters are present, the total length of disturbance or modification of freshwater wetlands caused by the crossing shall be no greater than 100 feet;

(iii). The total area of freshwater wetlands and/or State open waters submerged or modified does not exceed 0.25 acres [or 100 cubic yards of fill, whichever is smaller; and]:

(iv). The total fill (gross) to be placed, per crossing, in State open waters does not exceed 200 cubic yards of fill below the top of bank of high water mark;

(v). The crossing is designed to minimize disturbance and other detrimental effects upon freshwater wetland or State open waters; and

(vi). The results of representative core sample borings shall indicate the spoil materials to be removed are non-contaminated;

(vii). There is no detrimental effect to spawning of resident or downstream fish populations;

(viii). No spoil material will be deposited and no dewatering will occur in freshwater wetlands, open waters or other environmentally sensitive areas;

(ix). Dredging for a specific lake will not be authorized more than once every five years; and


15. (No change.)

16. Fish and wildlife management activities which do not involve the discharge of more than 10 cubic yards of clean fill, carried out in [county, State or Federal] publicly owned or controlled wildlife management areas, parks or reserves. These activities include, but are not limited to:

(i). The activity is conducted in accordance with a Dam Permit issued pursuant to N.J.A.C. 7:20-1;

(ii). The activity results in the filling of no more than one acre of wetlands or State open waters;

(iii). If located in exceptional resource value wetlands, the activity will not negatively impact the documented threatened or endangered species or its habitat;

(iv). The activity is designed to minimize disturbance and other detrimental effects upon freshwater wetlands or State open waters through the use of best management practices including, but not limited to:

(1). Stabilizing all disturbed areas; and

(2). Using suitable, clean, non-toxic fill material; and
ENVIRONMENTAL PROTECTION

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

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

i. The following criteria shall be met for the construction of docks and piers:
   (1) The proposed dock will be the only one to serve a single residential lot;
   (2) If located in exceptional resource value wetlands, the activity will not have a negative impact on a documented threatened or endangered species or its habitat;
   (3) The proposed activity does not fill or disturb more than 0.10 acres;
   (4) The width of the dock or pier does not exceed six feet, will be constructed perpendicular to the shoreline and the maximum allowable length will be the minimum length necessary to reach deep water for launching. However, structures shall be constructed a minimum of 50 feet outside of any authorized navigation channel and shall not hinder navigation;
   (5) Space between horizontal planking is no less than 0.25 inches and the width of horizontal planking is no more than four inches; and
   (6) The height of the dock or pier above the ground surface shall be no less than four feet.

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

   (1) It shall be demonstrated that there is no feasible onsite alternative location that will involve less or no disturbance of wetlands;
   (2) The boat ramp shall be constructed of concrete or natural materials such as crushed stone or shells and placed at a location requiring negligible cut or fill;
   (3) The proposed activity does not fill or disturb more than 0.10 acres; and
   (4) If located in exceptional resource value wetlands, the activity will not impact a documented threatened or endangered species or its habitat.

20. The placement of gabions, rip-rap, geo-textiles, or other binding materials for the purpose of bank stabilization activities in State open waters provided:

i. The bank stabilization activity is less than 150 feet in length;

ii. The activity is required by and designed in accordance with the Soil Conservation Service, Standards for Soil Erosion and Sediment Control in New Jersey, N.J.S.A. 4:24-42;

iii. The activity is limited to an average of less than one cubic yard of rip-rap per running foot placed along the bank within State open waters;

iv. The material to be placed is the minimum necessary for erosion protection according to the Soil Conservation Service;

v. No material is placed in any location or in any manner so as to impair surface water flow into or out of any wetland area;

vi. Only suitable, clean, non-toxic fill material is used;

vii. The activity is a single and complete project, not associated with any other construction activity. For example, this activity cannot be used at the same location as a minor road crossing or a stormwater outfall structure; and


21. The construction or installation of new utility lines including the installation of wood poles, steel poles, lattice towers, conductors, guy anchors, and pad mount transformers for the transport of electrical energy, telephone or telegraph messages, radio or television communications or the discharge of fill to provide access to these new lines. The activities allowed by this Statewide General Permit shall comply with the following conditions:

i. The activity disturbs no more than one acre of wetlands or State open waters;

ii. The limits of clearing for construction is no more than 60 feet wide;

iii. The area to be maintained as a permanent right-of-way is a maximum of 20 feet in width;

iv. If located in exceptional resource value wetlands, the activity will not negatively impact associated water quality or the documented threatened or endangered species or its habitat;

v. When practicable, installation is done from outside wetland areas.

vi. After completion the area used to gain access to the installation location is replanted in accordance with applicable BMPs with native indigenous species.

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

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

22. The modification of existing dam or dike structures or the construction of new dam or dike structures for the detention of stormwater on a regional or watershed basis, as part of a county-approved plan in freshwater wetlands and/or State open waters. The activities allowed by this Statewide General Permit shall comply with the following standards:

i. The modification or construction of the dam or dike structure will not result in the loss or substantial modification of more than one acre of freshwater wetland or State open water;

ii. The activities will not take place in a wetland of exceptional resource value as defined in N.J.A.C. 7:7A-2.5(b), in a State open water defined as a special aquatic site (in 40 CFR 230).1), or in trout as associated waters;

iii. The activities shall meet with Stormwater Management Regulations (N.J.A.C. 7:8) and be consistent with the water quality provisions. Specifically, all stormwater which is detained in a freshwater wetland or State open water shall first be filtered or otherwise treated outside of the freshwater wetland or State open water, to minimize sediment, pollutants, and any other detrimental effects upon the freshwater wetland or State open water. Detention basins, contour terraces and grassed swales are examples of pre-discharge treatment techniques which may be required by the Department;

iv. The activities shall not result in a duration of inundation exceeding 36 hours for the 100 year storm;

v. The activities shall not result in an increase in water surface elevation exceeding five feet; and

vi. The placement of greater than 0.25 acres of fill in wetlands or State open waters for the modification of existing dam or dike structures or the construction of new dam or dike structures shall be mitigated as specified at N.J.A.C. 7:7A-14, Mitigation. The mitigation plan shall be submitted as a part of the General Permit authorization application and approved by the Department before the proposed activity may be authorized.

23. Regulated activities in freshwater wetlands or State open water which are the result of the construction or reconstruction of affordable housing provided:

i. The project is part of a housing plan that has received substantial certification, pursuant to N.J.S.A. 52:27D-301 et seq., that the project meets affordable housing criteria by the New Jersey Council on Affordable Housing; or the project is part of a municipal housing compliance plan that was part of a settlement approved by the New Jersey Superior Court, resulting from Mt. Laurel litigation;

ii. If the proposed activity is to take place in an exceptional resource value wetland, the applicant shall demonstrate to the Department's satisfaction that there is no practicable alternative to the proposed activity that would reduce or eliminate impacts to wetlands or State open waters;

(CITE 23 N.J.R. 362) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
24. The placement of bulkheads adjacent to human-made lagoons provided:

i. The bulkhead is to be placed between two lawfully existing bulkheads which are not more than 75 feet apart;

ii. The connecting bulkhead shall not extend waterward of a straight line connecting the ends of the existing bulkheads;

iii. The width of wetlands on the subject lot, adjacent to the lagoon shall not exceed an average of five feet;

iv. The total area of wetlands to be filled or disturbed does not exceed 75 square feet; and

v. The activities will not take place in a wetland of exceptional source value as defined in N.J.A.C. 7:7A-2.5(b) or in a State open area defined as a special aquatic site (in 40 CFR 230.1).

25. The repair or alteration of malfunctioning individual subsurface sewage disposal systems provided:

i. There is no expansion or change in the use of the building or seclity which will result in an increase in the volume of sanitary sewage;

ii. Alterations made to correct a malfunctioning system shall meet the requirements of N.J.A.C. 7:9A-3.3(c) and shall be undertaken only after the issuance of the administrative authority (the board of health or the authorized agent acting on its behalf);

iii. It is demonstrated to the administrative authority that there is a suitable location available with a seasonally high water table deeper than 1.5 feet from the existing ground surface which can support properly functioning subsurface sewage disposal system; and

iv. The total wetland area to be affected by the repair or alteration does not exceed 0.25 acres.

(b) The Department may require an application for an Individual Permit if the Department finds that additional permit conditions would not be sufficient, or that special circumstances make this action necessary to ensure compliance with the Act, this chapter, any permit or order issued pursuant thereto, or the Federal Act. In addition, when the regulated activity(ies) of a project exceed either the individual limits allowed under the issued Statewide general permits or the cumulative limits of stacked Statewide general permits, then the impacts of the entire project shall require an Individual Permit and will be reviewed under the conditions at N.J.A.C. 7:7A-3.

(c) Under no circumstances shall a project's impacts be segmented and a portion of the project submitted for review under Statewide general permits while the remainder of the project is submitted for review under an Individual Permit.

7A.9.3 Standards and Conditions for all Statewide General Permit[s] Authorization

(a) All regulated activities authorized under Statewide General permits listed in N.J.A.C. 7:7A-9.2 are subject to the specific conditions listed under each permit. In order to be authorized to conduct activities under these general permits, persons must comply with the conditions set forth at (b) below, as well as the conditions at N.J.A.C. 7:7A-13.1 and 13.2 and the procedures in N.J.A.C. 7:7A-9.4 and mitigation pursuant to N.J.A.C. 7:7A-14 where specified must be followed.

(b) The following standards [conditions] must be met in order for regulated activity to be authorized under the Statewide General permits identified in N.J.A.C. 7:7A-9.

1. The request for authorization to fill or modify wetlands or State open waters is associated with a proposed project or construction activity and is not solely being requested for the purpose of eliminating a natural resource in order to avoid future regulation;

   [1:2] The regulated activity shall not occur in the proximity of public water supply intake;

2. The regulated activity shall not jeopardize a threatened or endangered species and the activity shall not destroy, jeopardize, or adversely modify the historic or documented habitat of such species;

3. Any discharge of dredged or fill material shall consist of suitable material free from toxic pollutants (see section 307 of the Federal Act) in toxic amounts;

4. Any structure or fill authorized shall be properly maintained;

5. The activity will not occur in a component of either the Federal or State Wild and Scenic River System; nor in a river officially designated by Congress or the State Legislature as a "study river" for possible inclusion in either system while the river is in an official study status; and

6. The activity shall not adversely affect properties which are listed or are eligible for listing on the National Register of Historic Places. If the permittee, before or during the course of work authorized, encounters a historic property that has not been listed or determined eligible for listing on the National Register, but which may be eligible for listing in the National Register, the permittee shall immediately notify the Department and proceed as directed by the Department; and

7. Best management practices shall be followed whenever applicable.

(c) The following conditions shall be met in order for a regulated activity to be authorized under the Statewide General Permits identified in N.J.A.C. 7:7A-9.

1. Any discharge of dredged or fill material shall consist of suitable material free from toxic pollutants (see section 307 of the Federal Act) in toxic amounts;

2. Any structure or fill authorized shall be maintained as specified in the construction plans;

3. In order to protect the fishery resources and/or the spawning of the downstream resident fish population, any activity within or adjacent to a stream channel which may introduce sediment into the stream or cause the stream to become turbid is prohibited during the time frames listed below or any subsequent updates to this listing as provided by the New Jersey Division of Fish, Game and Wildlife. The total restriction period will not exceed six months:

Timing restrictions:

Stream Classification Dates of Restriction
Trout Production
general September 15-March 15
brook trout September 15-February 28
brown trout September 15-February 28
rainbow trout February 1-April 30
Trout Maintenance March 15-June 15
Trout Stocked March 15-June 15
Anadromous
American Shad—For the Delaware River upstream of the Delaware Memorial Bridge, and for tidal Rancocas and Raccoon Creeks April 1-June 30
September 1-November 30
American Shad—For the Delaware River from the Delaware Bay to the Delaware Memorial Bridge, and tidal Maurice River March 1-April 30 and October 1-November 30
All other waterways classified for anadromous fish April 1-June 30;
For waterways classified, on a case by case basis, as spawning areas for warm water fish May 1-June 30.

4. During construction activities, all excavation must be monitored to check for the presence of acid-producing deposits pursuant to N.J.A.C. 7:13-5.10 of the Flood Hazard Area Control Rules. If any such deposits are encountered, the mitigation and disposal standards described in N.J.A.C. 7:13-5.10 must be implemented. If any such deposits are encountered, an annual post-planting monitoring program shall be established to ensure that the reestablishment of vegetation in disturbed areas, shall have a minimum 85 percent plant survival and coverage rate after two complete growing seasons. Failure to achieve this survival rate will require implementation of additional corrective
measures and/or reevaluation of the acid producing soils mitigation proposal to ensure the 85 percent survival rate requirement.

5. Best management practices shall be followed whenever applicable.

7:7A-9.4. Use of multiple Statewide General Permits
(a) The Department may approve activities under the authority of more than one Statewide General Permit on a single property, subject to the limitations below, and subject to the standard conditions for Statewide General Permits at N.J.A.C. 7:7A-9.3. For the purposes of this section, a single property is defined as all property contiguous with the property line of the property or properties on which the regulated activity or activities are proposed and which is in common ownership at the time of the proposal on site as defined at N.J.A.C. 7:7A-1.4. Definitions. No activity is authorized by a Statewide General Permit without an approval letter from the Department indicating that a Statewide General Permit authorizes the particular activity at the particular location.

(b) The Department may issue an approval letter, authorizing activities covered under a single Statewide General Permit, for more than one location on a single property, provided that the total area of wetlands or State open waters disturbed on that property on-site by activities authorized under Statewide General Permits does not exceed the maximum allowed under that general permit.

(c) [For Statewide General Permits at N.J.A.C. 7:7A-9.2(a)(2), 6, 7, 10 and 11, the Department may approve activities covered under more than one general permit on a single property, provided that the total area of wetlands or State open waters disturbed on that property on-site by activities authorized under Statewide General Permits does not exceed one acre in total and provided that all conditions for each Statewide General Permit authorizing activities on-site are complied with, including acreage limitations.] The Department may approve activities covered by different general permits on-site, provided that the individual limits of each general permit are complied with and that the total area of wetlands, State open waters, and transition areas disturbed or modified does not exceed one acre. For example, the Department could approve on-site a minor road crossing disturbing 0.25 acres, stormwater outfall structures disturbing a total of 0.25 acres, and the filling of 0.5 acres of a ditch.

(d) Only one approval letter for activities covered by the Statewide general permits at N.J.A.C. 7:7A-9.2(a)(8) (Statewide General Permits 8) will be issued for a single property. Statewide General Permit 8 may not be used more than once on a single property. Later additions to a residence will require an individual permit.

(e) An individual permit will be required for review of all regulated impacts onsite (as defined at N.J.A.C. 7:7A-1.4) if the cumulative impact of one acre will be exceeded by any combination of Statewide General Permits, or if the individual limits of Statewide General Permits 2, 6, 7, 10, 11, 19, 20, 21, 22, 23 or 24 will be exceeded by the proposed activities.

(f) For Statewide General Permits at N.J.A.C. 7:7A-9.2(a), 3, 4, 5, 12, [13], 14, [15], 16 and 17, the Department may issue approvals for any number of activities on a single property covered by any number of these general permits. Later activities on the same property will also be eligible for approval under these Statewide general permits.

(g) No property will be the subject of Department approvals under Statewide General Permits 2, 6, 7, 10, 13, 15, 18, and 20 or more often than once every five years.

7:7A-9.5 Application for activities under Statewide General Permits
(a) Except for Statewide General Permit number 25 pursuant to N.J.A.C. 7:7A-9.2(a)(25), [A] a person proposing to engage in an activity covered by a Statewide General Permit shall provide [written, certified mail notice to the Department and to the clerk of the municipality and to the county clerk] a fee pursuant to N.J.A.C. 7:7A-16 and three copies of the following information to the Department [at least 30 working days prior to commencement of work]:

1. An application form completed as per the instructions for a Statewide general permit;

2. Any information necessary to determine whether the conditions of the general permit will be satisfied, including, but not limited to, the following information:

   i. Complete wetlands delineation including field delineation, folder plans at an appropriate scale, and wetlands field data sheets including soils and vegetation information (no formal report is required) for the area to be disturbed under the Statewide general permit application;

   ii. A copy of the appropriate U.S. Geodetic Survey Quadrangle (USGS) Map for the project site and a determination of the State Plans Coordinates for the center of the project;

   iii. For projects that are located in municipalities listed below at (a) iii(1) and all amendments thereto, the applicant shall submit a signed statement certifying that the proposed activities will not result in any direct or indirect adverse impacts to Swamp pink (Helonias bullata) or its documented habitat; and

   (i) Municipalities which have documented record of Helonias bullata:

   Atlantic County
   Egg Harbor Township
   Hammonton Township

Burlington County
Evesham Township
Medford Township
Pemberton Township
Southampton Township
Woodland Township
Medford Township

Camden County
Berlin Township
Clementon Borough
Gibbsboro Borough
Gloucester Township
Haddonfield Borough
Lindenwold Borough
Pine Hill Borough
Pine Valley Borough
Runnemed Borough
Voorhees Township
Waterford Township
Winslow Township

Cape May County
Cape May Point Borough
Lower Township
Middle Township

Cumberland County
Bridgeton City
Downe Township
Fairfield Township
Hopewell Township
Lawrence Township
Millville City
Stow Creek Township
Upper Deerfield Township
Vineland City

Gloucester County
Clayton Borough
Deptford Township
East Greenwich Township
Elk Township

3. Photographs of the property.

(b) [The notice shall contain:] In addition, a person proposing to engage in an activity covered by a Statewide General Permit shall provide verification that a certified mail notice with return receipt requested and a complete copy of the application has been forwarded to the clerk of the municipality and that a certified mail notice with return receipt requested (white receipts or green cards are acceptable) has been forwarded to the environmental commission, municipal planning board, municipal construction official, and landowners within 200 feet of the legal boundary lines of the property(ies) on which the proposed activity will occur. The applicant shall also provide a list of landowners within 200 feet. The notice shall contain:

(CITE 23 N.J.R. 364) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
1. A description of the proposed activity; [and]
2. A description of the location of the activity including county, municipality, lot(s), block(s), and a plan of the site detailing existing ructures, wetlands boundaries and proposed structures or activities, r both[.]; and
3. The following statement:

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

Statewide general permit will allow the property owner to conduct certain limited activities in freshwater wetlands or State open waters.

The complete Statewide general permit application package can be viewed at either the municipal clerk’s office or by appointment at the Division of Coastal Resources office at the address listed below. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the wetlands or open areas on the referenced parcel. Please submit your written comments within 15 days of receiving this letter, along with a copy of this letter:

New Jersey Department of Environmental Protection
Division of Coastal Resources
Bureau of Regulation
CN 401
5 Station Plaza
Trenton, New Jersey 08625

(tt: (County in which the property is located) Section Chief

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

The Department will notify your municipal environmental commission, planning board and the municipal construction official of the Department’s approval or denial of the Statewide general permit application.”

(c) If the regulated activity involves a linear facility such as a pipeline or road of more than .5 miles, instead of notifying all landowners within 200 feet of the property(ies) lines, the applicant shall give public notice by publication of a display advertisement. The advertisement shall be minimum of four column inches and be published in at least one newspaper of local circulation and one of regional circulation in the municipality. In addition, notice shall be given to owners of all real property within 200 feet of any above surface structure related to the near facility, such as a pumping station or treatment plant.

(c) In addition to the above information, the notice to the Department shall contain:
1. Any information necessary to determine whether the conditions of the general permit will be satisfied; and
2. A fee pursuant to N.J.A.C. 7:7A-16. If activities authorized under more than one statewide general permit are proposed, a separate fee must be submitted for each of the Statewide General Permits.

(d) The Department, within 30 days of receipt of this notification, shall either return the package as incomplete or accept the application administratively complete and notify in writing the person proposing to engage in the activity covered by a general permit as to whether they are covered by the Statewide General Permit, or whether an individual permit is required for the activity pursuant to (e) below.

(e) Upon receiving [notice under (a) above] an application for a general permit, the Department may require that the owner apply for an individual permit. Cases where an individual permit may be required include, but are not limited to:
1. The activity has more than a minimal adverse environmental effect;
2. The cumulative effects on the environment of the authorized activities are more than minimal; or
3. The applicant or project is not in compliance with the conditions of the general permit[.];
4. Public comment indicates that the application does not meet general permit criteria.

SUBCHAPTER 10. PRE-APPLICATION CONFERENCES

7:7A-10.1 Purpose

A pre-application conference is optional, but highly recommended. It allows the Department to inform potential applicants of the various procedures and policies which apply to the freshwater wetlands, and [and] open water fill, stream encroachment, and coastal program permitting process. Department staff will candidly discuss the apparent strengths and weaknesses of the proposed permit application at this conference, but the Department shall in no way commit itself to approval or rejection of a proposed project as a result of these discussions.

7:7A-10.2 Request for a pre-application conference

(a) Potential applicants [are encouraged to] may request a pre-application conference with the Department [at the earliest opportunity following the issuance of a letter of interpretation]. A request for a pre-application conference shall be made in writing and...
shall include a project description, a tax lot and block designation of the site, the location of the project site, including the municipality and county, the general location of freshwater wetlands and State regulated waters, a copy of the appropriate United States Soil Conservation Service map(s) locating the project, a list of dominant vegetation types, and a United States Geological Survey quadrangle map showing the site. The Department encourages the applicant to obtain a letter of interpretation prior to the preapplication conference.

(b) The Department shall, within 15 days of receipt of such request, schedule a pre-application conference.

SUBCHAPTER 11. APPLICATION PROCEDURE

7:7A-11.1 Application contents for Individual Freshwater Wetlands and Open Water Fill Permits, and Individual Water Quality Certificates

(a) The Division will issue joint permits for projects requiring more than one Division permit whenever possible. It is strongly recommended that an applicant requiring more than one Division permit submit all applications materials simultaneously to facilitate joint permit processing. For example, the submission of all information necessary for both a Freshwater Wetlands permit and a Stream Encroachment permit at the same time will facilitate the issuance of a joint permit.

[(a)](b) The application for a freshwater wetland permit or open water fill permit shall include 10 copies of the following information:

1. A completed freshwater wetlands permit or open water fill permit application form including the names and addresses of all owners of property adjacent to the property which is the site of the proposed project. All activities which the applicant plans to undertake which are reasonably related to the same project should be included in the same permit application and will be considered simultaneously with the review of the individual permit. Only one application fee will be required to review all regulated activities in freshwater wetlands, State open waters and transition areas associated with the project;

2. A folded preliminary site plan or subdivision map of the proposed regulated activities, or other map of the site if no preliminary site plan or subdivision map exists;

3. A written description of the proposed regulated activity, the total area to be used, filled or modified, the total area of the freshwater wetland or State open waters potentially affected, identification of the watershed in which the project is located, and the relationship of the area affected to the area of the entire freshwater wetland or State open waters complex, for example, one-half acre to be filled of a 15 acre freshwater wetland. In addition, project elements affecting transition areas should be detailed;

4. A description of the source of any [dredged or] fill material and [method of dredging used, if any];[A description of the type, composition and quantity of the material. The proposed method of transportation and disposal of the material, including the type of equipment to be used;] For dredge projects, submit the information as listed at N.J.A.C. 7:7A-4.3(c)(2);

5. A description of alternatives to the proposed activity or discharge, including alternative sites, construction methods, methods of discharge, and reasons for rejecting the alternatives pursuant to N.J.A.C. 7:7A-3. General Standards for Granting Individual Freshwater Wetlands and Open Water Fill Permits;

6.-7. (No change.)

8. [A vicinity map identifying the proposed activity site and the local jurisdiction closest to the site] A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map (available from the Department's Maps and Publications Office, CN 402, Trenton, NJ 08625) showing the location of the property and its general vicinity, indicating and labeling the location of the proposed activity and the property boundaries, and a determination of the State Plane Coordinates for the center of the property;

9. Verification that a [registered mail] certified mail notice with return receipt requested (white receipt or green card is acceptable) and a copy of the vicinity map in (a)(7) above have been forwarded to the clerk, environmental commission [[if any]] or any other public body with similar responsibilities, and planning board of the municipality in which the proposed regulated activity will occur; the planning board, environmental commission and county mosquito control agency of the county in which the proposed regulated activity will occur; landowners within 200 feet of the property or properties o which the proposed regulated activity will occur (applicant shall also provide a list of all landowners within 200 feet), and all persons a identified by the Department who requested to be notified of propose regulated activities, which notice may, at the applicant's option, b filed concurrently with notices required pursuant to N.J.S.A 40:55D-1 et seq., describing the proposed regulated activity an advising these parties of their opportunity to submit comments there on to the Department]. A copy of the notice shall be included in the application to the Department. The notice shall include the following:

i. The name and address of the applicant and, if different, the address or location of the activity or activities regulated by the permit;

ii. The name, address, and telephone number of the applicant's agent to contact for further information;

iii. A brief description of the proposed activity, its purpose an intended use, so as to provide sufficient information concerning nature of the activity to generate meaningful comments, including description of the type of structures, if any, to be erected on fills, an description of the type, composition and quantity of materials to be discharged;

iv. A plan and elevation drawing showing the general and specific site location;

v. Any other information which would assist interested parties in evaluating the likely impact of the proposed activity; and

vi. The following statement: “This letter is to provide you with legal notification that the reference property owner is applying to the New Jersey Department of Environmental Protection, Division of Coastal Resources for an Individual Freshwater Wetlands permit.

An Individual permit will allow the property owner to conduct activity in freshwater wetlands or State open waters.

The complete Individual permit application package can be review at either the municipal clerk's office or by appointment at the Division of Coastal Resources office at the address listed below. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the wetlands or open waters on the referenced parcel. Please submit your written comments within 30 days of receiving this letter. In addition, interested persons may request a writing that the Department hold a public hearing on this application. Requests shall be made in writing within 30 days after the notice of application in the DEP Bulletin and shall state the nature of the issue proposed to be raised at the hearing. Both comments and hearsin requests should be sent along with a copy of this letter to:

New Jersey Department of Environmental Protection
Division of Coastal Resources
Bureau of Regulation
CN 401
5 Station Plaza
Trenton, New Jersey 08625

att: (County in which the property is located) Section Chief

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

The Department will notify your municipal environmental commission planning board and the municipal construction official of the Depart ment's approval or denial of the Individual permit application.

10. Verification that notice of the proposed activity has been pub lished as a display advertisement in a newspaper of local circulation For projects proposing more than 10 acres of fill, notification sha also be published in a newspaper of regional circulation;

11. A statement detailing any potential adverse environmental e ffects of the regulated activity and any measures necessary to prevent and/or minimize those effects, and any information necessary for th
Department to make the findings pursuant to N.J.A.C. 7:7A-3 and 4. Applicants should review N.J.A.C. 7:7A-3 and 4 in detail and provide all the listed information to avoid unnecessary delays in permit processing.

12-15. (No change.)

16. A description of technologies or management practices by which the applicant proposes to minimize adverse environmental effects of the activity or discharge. [Some guidance regarding minimizing adverse effects can be found at 40 CFR 230.]

(NOTE: The Department shall upon request provide permit applicants with guidance, either through the application form or on an individual basis, regarding the level of detail of information and documentation required under this subsection. The level of detail shall be reasonably commensurate with the type and size of the proposed project, proximity to critical areas, and degree of environmental degradation.)

[(b)(c)] The application shall also include 10 copies (including one of reproducible quality—a mylar copy is not required) of a site plan, in 8 1/2 inch by 11 inch paper if appropriate (if larger than 8 1/2 inch by 11 inch, all copies shall be folded) indicating the following:

1. All existing structures and related appurtenances on the lot and immediately adjacent lots;
2. Distances and dimensions of areas, structures and lots, including freshwater wetlands, [and] State open waters, transition areas, and limits of inundation for the 100 year flood for non-delineated streams or flood hazard area flood for delineated streams (if applicable), mean high water line (if appropriate), upland property, roads and utility lines;
3. A complete delineation of the wetlands boundary(ies) in accordance with the requirements of N.J.A.C. 7:7A-8 [2(b)(2), 5, 6, 7 and 2](a) and (b). A letter of interpretation issued by the Department (or a jurisdictional letter from the Army Corps of Engineers,) may be submitted to satisfy this requirement[.]
4. The proposed area which will be used for the activity or discharge;
5. The general site location in relation to development in the region;
6. The scale of the plan and a north arrow; and
7. The name of the person who prepared the plan and the date of preparation; and
8. The name of the applicant and municipal lot and block number of the project site.

7. A title block for each sheet containing the following information:
   i. The name of the applicant and the name or the proposed project [if any];
   ii. Identification of the proposed activity;
   iii. County and municipality;
   iv. Lot and block;
   v. Number of the sheet and the total number of sheets in set; and
   vi. Preparer, and date of the drawing and all revisions.

[(c)(d)] The application shall also include color photographs of sufficient quality and quantity to show[ing] the project site including:
1. Location of known freshwater wetlands and State open waters;
2. Proposed location of the regulated activity.
[(d)(e)] If the proposed project involves the discharge of dredged or fill material, the application shall include a cross-sectional view of the proposed project showing the following:
1. 4. (No change.)
2. Location of wetlands; and
3. Delineation of disposal site; and.
8. A title block for each sheet submitted identifying the proposed activity and containing the name of the body of water, river mile, if applicable, name of county, State and nearest incorporated municipality; name of applicant; number of the sheet and the total number of sheets in set; and date the drawing was prepared.
[(e)(f)] A mitigation plan meeting the requirements of N.J.A.C. 7:7A-14.4 may be submitted [N.J.A.C. 7:7A-14.4] with the permit application. The Department requires an approved mitigation plan as a condition precedent to engaging in a regulated activity.

7:7A-11.3 Signatories to permit applications and reports
(a)-(c) (No change.)
(d) Any person signing a document under (a) or (b) above shall make the following certification:
"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

7:7A-11.4 Confidentiality
(a) Any information submitted to the Department pursuant to these regulations may be claimed as confidential by the submitter at the time of submittal.
(b) Claims of confidentiality for the following information will be denied:
1. The name and address of any permit applicant or permittee;
2. Effluent data;
3. Permit application; and
4. Permit decision.
(c) Claims of confidentiality for all information not listed in (b) above will be denied unless the claimant can show that the information should be kept confidential under the requirements and procedures of 40 CFR Part 2.

SUBCHAPTER 12. REVIEW OF APPLICATIONS
7:7A-12.1 Initial Department action for Individual Freshwater Wetlands and Open Water Fill Permits, and Individual Water Quality Certificates
(a) Upon receipt of an application, which includes the fee specified in N.J.A.C. 7:7A-16, the Department shall, if appropriate, transmit copies to [the USEPA and] other reviewing agencies. [and] In addition, the Department will publish notice of the application in the DEP Bulletin. If the application does not include the appropriate fee, no action will be taken by the Department under this section, and the submittal will not be considered an application, and completeness review will not begin.
(b) Within 30 days of receipt of the application, the Department shall review the application for completeness and may return the application as incomplete, make any necessary requests for more information, or declare the application complete. However, after assumption by the State of the 404 program, this deadline for requesting additional information shall not apply if requests for more information are made by the Department because of comments received from the USEPA.
1. If the application is returned as incomplete a new application will be required;
2. New notices meeting the requirements at N.J.A.C. 7:7A-11.9 will be required if the new application is not filed within 60 days.
(c) (No change.)

7:7A-12.2 Draft permits
(a) A draft permit will be prepared by the Department for all those activities listed at N.J.A.C. 7:7A-12.3(a).
(b) If the Department prepares a draft permit, the draft permit shall contain the following information:
1. All conditions under N.J.A.C. 7:7A-13.1 and 13.2; and
(c) All draft permits prepared by the Department under this section shall be accompanied by a statement of basis which meets the requirements of 40 CFR §124.7 or a fact sheet which meets the requirements of 40 CFR §124.8, and shall be publicly noticed in accordance with 40 CFR §124.10 and made available for public comment in accordance with 40 CFR §124.11.
7:7A-[12.3][12.2] USEPA review
1. If the Federal Act requires that the USEPA be notified of and have the opportunity to comment on certain applications for a freshwater wetlands permit or open water fill permit within "Waters
ENVIRONMENTAL PROTECTION

of the State.' The Department will provide copies of all appropriate applications to USEPA for review and comment. Permits for the following categories of activities will require USEPA review: The Department shall consider and give great weight to comments provided by USEPA. (c) The Department shall promptly transmit to the Regional Administrator: (1) A copy of the complete permit application received by the Department for which permit review has not been waived under (b) above. The Department shall supply the Regional Administrator with copies of the complete permit applications for which permit review has been waived whenever requested by USEPA; (2) A copy of a draft Statewide general permit whenever the Department intends to propose a general permit; (3) Notice of every significant action taken by the State agency related to the consideration of any permit application for which Federal review has not been waived, or of any draft Statewide general permit; and (4) A copy of every permit decision for which review has not been waived. (d) If USEPA intends to comment upon, object to, or make recommendations with respect to a permit application, draft Statewide general permit, or the State's failure to accept the recommendations of an affected state pursuant to N.J.A.C. 7:7A-12.3(d); USEPA may notify the State of this intent within 30 days of receipt of the permit application. If the State has been so notified, the permit shall not be issued unless after the receipt of such comments or within 90 days of the USEPA's receipt of the application, draft Statewide general permit or State response, whichever comes first. The USEPA may notify the State within 30 days of receipt that there is no comment but that USEPA reserves the right to object within 90 days of receipt, based on any new information brought out by the public during the comment period or at a hearing. (e) When the Department has received a USEPA objection or requirement for a permit condition, the Department shall supply the Regional Administrator with copies of the complete permit applications, transition area permit, or Water Quality Certificate applications will be available for public scrutiny by interested persons in the municipal clerk's office and by appointment in the offices of the Department in Trenton (see N.J.A.C. 7:7A-1.3 for address) during normal business hours. (c) No change.) (d) If a proposed discharge may affect the biological, chemical, or physical integrity of the waters of any state(s) other than New Jersey, the Department shall provide an opportunity for such state(s) to submit written comments within the public comment period and to suggest permit conditions. If these recommendations are not accepted, the Department shall notify the affected state and the USEPA in writing, prior to permit issuance, of the State's failure to accept these recommendations, together with the reasons for so doing. The Regional Administrator shall then have the time provided for in N.J.A.C. 7:7A-12.2(d) to comment upon, object to, or make recommendations. 7:7A-[12.5]12.4 Hearings on applications (a) Within [20] 30 days [of] after publication of the notice of application in the DEP Bulletin, interested persons may request in writing that the Department hold a public hearing on a particular application. Requests shall state the nature of the issues proposed to be raised at the hearing; the Department determines, together with the reasons for so doing. The Regional Administrator shall then have the time provided for in N.J.A.C. 7:7A-12.2(d) to comment upon, object to, or make recommendations. (b) Within 60 days after the Department receives comment on a complete application for a permit from USEPA, or upon receipt of notice from USEPA that no comment will be forthcoming, the Department may hold a non-adversarial public hearing on the application for a permit or on a draft permit if one is issued. [CITE 23 N.J.R. 368] NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
The Division of Coastal Resources invites the public to attend the hearing and present written or oral comments on the application.

HEARING DATE & TIME: As assigned by Division
HEARING LOCATION: As assigned by Division
HEARING OFFICER: Your project review officer
DATE OF PREVIOUS HEARING (If one was held):

A copy of the complete application is available for review at the township clerk's office. The Division of Coastal Resources invites the public to submit written comments on the Freshwater Wetlands Individual Permit application within fifteen (15) days of the hearing to:

Your project review officer
Division of Coastal Resources
CN 401/501 E. State St. 5 Station Plaza
Trenton, NJ 08625

DATE OF THIS NOTICE: Date*

* If the regulated activity involves a linear facility such as a pipeline or road, the applicant shall also give public notice by publication of a display advertisement of at least four column inches in a newspaper of general circulation in the municipality, and to owners of all real property within 200 feet of any above surface structure related to the linear facility, such as a pumping station or treatment plant; and

[3.12. (No change in text.)]

[(g)](f) The Department shall maintain a copy of the hearing transcript and all written comments received. The transcript and written comments shall be made part of the official record on the application and shall be available for public inspection in its Trenton Office. See N.J.A.C. 7:7A-1.3 for address.

[(h)](g) The applicant shall provide a court reporter, bear the cost of the hearing and provide the Department with a transcript.

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

[(j)](i) Any interested person may submit information and comments, in writing, concerning the application or draft permit at or within 15 days after the hearing.

7:7A-12.6.2 Final decisions
(a)-(b) (No change.)

(c) The Department may issue a permit imposing conditions necessary for compliance with the Act, this chapter, the Federal Act and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. Any regulated activities undertaken under authority of any issued permit shall constitute an acceptance by the applicant of the entire permit including all conditions therein.

(d) Decisions by the Department shall be published in the DEP Bulletin and a copy of every issued individual permit for which USEPA review has not been waived shall be transmitted to USEPA.

(e) (No change.)

7:7A-12.7.2 Cancellation, withdrawal, resubmission and amendment of applications
(a) (No change.)

(b) If an application is not complete for final review within 60 days of a request for additional information the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. If good cause is demonstrated, a 60 day extension in which to submit the information shall be granted. shall send a letter canceling the application and stating that the application will be purged from Department files and that a new application will be required to reactivate the Department's review. If the applicant sends the Department a letter documenting good cause for not supplying the requested information within the 60 day period, the Department will grant an automatic extension of 30 days.

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

2. A resubmission of a previously cancelled application shall be accompanied by a new fee.

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

(d) If an application is cancelled, denied or withdrawn, the applicant may resubmit an application for a revised project on the same site. The resubmitted application will be treated as a new application, although references may be made to the previously submitted application. A new fee will be required however, if the application was withdrawn prior to being declared complete, the original permit fee from the previously withdrawn application may be credited to the new fee, provided the application is resubmitted within one year of the date of withdrawal. A new fee will be required except for applications that are withdrawn and resubmitted within one year of the withdrawal date.

(e) [Permit] A permit application may be amended at the applicant's discretion at any time as part of the permit review process. Copies of amendments and amended information shall be distributed to the applicant to the same person to whom copies of the initial application where distributed. All amendments to pending applications shall constitute a new submission and may at the Department's discretion require reinitiation of the entire review process.
7:7A-13.7 Hearings and appeal of permit decisions
(a) An applicant for a freshwater wetlands or open water fill permit or other affected party may request of the Commissioner an administrative hearing on any decision to issue or deny a permit made by the Department pursuant to the Act and this chapter. When a request for an administrative hearing is filed by an affected party contesting an approved permit, the effective date of the approved permit may be stayed at the discretion of the Commissioner until the matter is resolved.
(b) Such request shall be submitted in writing within 30 days of the contested decision the DEP Bulletin publishing date, or the date of receipt of the permit decision, whichever is later. The request shall state in what way the Department has acted improperly in issuing or denying the permit, and what issues will be raised by the requestor should a hearing be held.
(c) The request for a hearing shall be sent to:
Adjudicatory Hearings
Division of Coastal Resources
501 East State Street, CN 401
Trenton, NJ 08625
1. Upon receipt of such a request, the Commissioner shall refer the matter to the Office of Administrative Law, which shall assign an administrative law judge to conduct a hearing on the matter in the form of a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
2.-3. (No change.)

SUBCHAPTER 13. PERMIT CONTENTS

7:7A-13.1 Conditions applicable to all permits
(a) The following conditions apply to all individual and Statewide general freshwater wetlands and open water fill permits: All such conditions shall be incorporated into the permits.
1. Duty to comply. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Act and this chapter, and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. In some cases, permit noncompliance may also constitute a violation of the Federal Act.
2.-3. (No change.)
4. Duty to [mitigate] minimize environmental impacts: The permittee shall take all reasonable steps to prevent, minimize or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit. Mitigation consistent with N.J.A.C. 7:7A-14 will also be required for freshwater wetlands permits, open water fill permits and those Statewide General permits described at N.J.A.C. 7:7A-9.2(a).
5.-17. (No change.)

7:7A-13.2 Establishing permit conditions
(a)-(b) (No change.)
(c) In addition to the requirements in N.J.A.C. 7:7A-13.6, each permit shall include [conditions] information meeting the following requirements, when applicable:
1. A specific identification and description of the authorized activity, including:
   i.-iii. (No change.)
   iv. Any structures proposed to be erected; and [and]
   v. The location and boundaries of the activity site(s), including a detailed sketch and the name and description of affected freshwater wetlands [and], State open waters, and transition areas, identification of the major watershed and subwatershed; and
   vi. A reference to the specific site plans depicting the approved regulated activity(ies);
2.-8. (No change.)
(d) (No change.)

7:7A-13.3 Duration of permits
(a) [Freshwater wetlands and open water fill permits shall be effective for a fixed term not to exceed five years.]
(b) The term of a permit shall not be extended beyond the maximum duration specified in this section. However, if necessary, a permit may be renewed through the application process set forth in this chapter.

7:7A-13.6 Modification or revocation and reissuance of permits
(a) (No change.)
(b) Any permit modification not processed as a minor modification must be made for cause and with the [draft permit (if applicable) and] public notice and hearings procedures required for permit applications under N.J.A.C. 7:7A-12.3 and 12.4. 11.1(a)(7) and 10 12.1(a), 12.3, 12.4, and 12.5.
(c)-(d) (No change.)
(e) When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision, [and] public hearings and comments, and the permit may be reissuied for a new term.
(f) No Federal 404 permit shall be modified or revoked and reissued if USEPA objects (see N.J.A.C. 7:7A-12.3).
(g) Any modification except for those issued pursuant to N.J.A.C. 7:7A-13.9(b)4 will be published in the DEP Bulletin.
(h) Except for minor modifications of permits as described at N.J.A.C. 7:7A-13.9, a fee shall be submitted for modifications according to the requirements set forth for permit fees at N.J.A.C. 7:7A-16.

7:7A-13.9 Minor modifications of permits
(a) (No change.)
(b) Minor modifications may only:
   1.-3. (No change.)
   4. [Extend the term of a permit, so long as the modification does not extend the term of the permit beyond five years from its original effective date.]
4. Allow for a change in materials or construction techniques required by another permitting agency provided the change will not result in additional wetland, State open water or transition area impacts from that of the originally approved permit.

SUBCHAPTER 14. MITIGATION

7:7A-14.1 Mitigation goals
(a) The Department shall require mitigation as a condition of an individual freshwater wetlands or State open water fill permit, Water Quality Certifications and certain Statewide general permits. [that all appropriate measures have been carried out to mitigate adverse environmental impacts, restore vegetation, habitats, and land and water features, prevent sedimentation and erosion, minimize the area of freshwater wetland disturbance and ensure compliance with the Federal Act and implementing regulations. In addition, mitigation [pursuant to this subchapter may also be required and] may include restoration, creation, enhancement, or donation of money or land or both to the Mitigation Bank, or through other public or non-profit mechanisms approved by the Division.]
(b) When an individual freshwater wetlands permit, State open water fill permit, Water Quality Certification or certain Statewide general permits allow[s] the disturbance or loss of wetlands or State open waters, this disturbance or loss shall be compensated for as specified [below] at N.J.A.C. 7:7A-14.2, unless the applicant can prove, through the use of productivity models or other similar studies, that by restoring or creating a lesser area, there will be a replacement of wetlands or State open water of equal ecological value. In order to demonstrate equal ecological value, the applicant shall survey and provide written documentation regarding, at a minimum, existing soil, vegetation and wildlife habitat conditions and detail how the proposed mitigation plan will replace the ecological values of the wetland to be lost or disturbed.
(c) Mitigation must be performed prior to or concurrently with permitted activities that will permanently disturb wetlands or State open waters, and immediately after activities that will temporarily disturb wetlands or State open waters. Applicants shall be required to obtain a secured bond, or other surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the applicant default. The performance bond for the construction of the proposed mitigation shall be posted in an amount equal to 115 percent of the estimated cost of the activity.
Interested Persons see Inside Front Cover

ENVIRONMENTAL PROTECTION easement and register this restriction on the deed for the value in interest in the premises or any part would:

deed restriction is registered with the county clerk. Any regulated effective pursuant to N.J.A.C. 7:7A-14.1(b). Where the Department per­ successors memorialized in a deed restriction meeting the Department's require­ have

(i) When loss or disturbance of freshwater wetlands or State open waters results from a violation of the Act, this chapter, or any permit, action: restoration, creation, enhancement, and contribution. Depend­ in preservation of freshwater wetlands of equal ecological value to those which are being lost
to reverse or remedy the effects of the activity on the wetland or State open waters

The Department will consider in violation of the Act and this chapter.

(3) Except for publicly funded projects, as described at (f)2 below, any mitigation carried out offsite shall be on private property. [and no future development will be permitted on the mitigation site.] n addition, a maintenance bond to assure the success of the mitigation shall be posted in an amount equal to 30 percent of the estimated cost of construction. The performance and maintenance bonds will be re­ newed annually and shall be adjusted to reflect current economic acts.

[(d) Where the Department permits mitigation on less than a 2:1 ratio, frequent monitoring will be required by the permittee. In such cases, the Department will require additional mitigation or further remedial action when a net loss of equal ecological value is indicated. Under no circumstances shall the mitigation area be smaller than the limited area. Creation of wetlands from other existing climax habitats is discouraged.]

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

(e) As a condition of every creation or enhancement plan authorized under this subchapter, an applicant shall sign a Department approved conservation easement and register this restriction on the deed for the subject parcel. This restriction will provide that no regulated activities will occur in the created or enhanced wetland area. This restriction shall be memorialized in a deed restriction meeting the Department’s require­ and shall run with the land and be binding upon the applicant and the applicant’s successors in interest in the premises or any part thereof. The freshwater wetland permit will not become effective until the deed restriction is registered with the county clerk. Any regulated activities undertaken on the site before a copy of the registered restriction is submitted to the Department will be considered in violation of the Act and this chapter.

(f) [Any Except for publicly funded projects, as described at (f)2 below, any mitigation carried out offsite shall be on private property. [and no future development will be permitted on the mitigation site.] n future development will be permitted on the mitigation site unless the Department finds that the regulated activity has no prac­ ticable alternative which would:

(i) Involve a freshwater wetland or State open water; or

(ii) Involve a freshwater wetland, or State open water but would have a less adverse impact on the aquatic ecosystem;

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

(iv) That there is a compelling public need for the activity greater than the need to protect the mitigation site.

Mitigation for publicly funded projects may be carried out on public lands if the following conditions are met:

i. If the lands are encumbered by Green Acres funding, the use of the land for mitigation must be approved by the Green Acres Admin­ istration and the State House Commission;

ii. If the lands are not encumbered, the use of the land as mitigation must be approved by the public agency administering the land; and

iii. The Department must determine that the use of the public land for mitigation will result in a net gain in environmental value and does not simply provide equal ecological value.

(g) When loss or disturbance of freshwater wetlands or State open waters results from a violation of the Act, this chapter, or any permit, order or approved mitigation plan issued pursuant thereto, the mitigation portion of the penalty shall be that specified in N.J.A.C. 7:7A-14.15. The Department may, at its discretion, condition approval of a mitigation plan, or a permit, or both, on the resolution of the violation.

7:7A-14.2 Wetland or State open water mitigation options

(a) The Department distinguishes between four types of mitiga­ tion: restoration, creation, enhancement, and contribution. Depending on the circumstances under which wetlands or State open waters are lost or disturbed, different types of mitigation may be required by the Department. The types of mitigation are explained below,[ in decreasing order of their desirability]:

i. Restoration refers to actions performed on the site of a regulated activity, within six months of the regulated activity, in order to reverse or remedy the effects of the activity on the wetland or State open waters, and to restore the site to pre-activity condition.

ii. Restoration will be required at a ratio of one acre restored to one acre lost, modified or disturbed. If restoration type actions are performed more than six months after the regulated activity which disturbed the wetland, these actions will no longer be considered restoration, but will be considered creation, and will be governed by the provisions of (a)2 below. At the Department’s discretion, resto­ ration activities may exceed six months in cases where a violation has occurred.

[i. If restoration type actions are performed on degraded freshwater wetlands or disturbed freshwater wetlands offsite, these actions will be considered enhance­ ment, and will be governed by the provisions of (a)3 below.]

2. Creation refers to actions performed to establish freshwater wetland or State open water characteristics, habitat and functions on upland areas. The creation of freshwater wetlands or State open waters shall be governed by the following provisions:

(i. A non-wetlands site; or

i. Creation will be required at a ratio of two acres created to one acre lost or disturbed unless the applicant demonstrates equal ecological value pursuant to N.J.A.C. 7:7A-14.1(b). Where the Department per­ misses mitigation on less than a 2:1 basis, frequent monitoring will be required by the permittee. In such cases, the Department will require additional mitigation or further remedial action if a net loss of equal ecological value occurs over time. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of wetlands from other existing climax habitats is discouraged. [A formerly freshwater wetlands site which has been filled or otherwise disturbed such that it no longer retains wetland charac­

teristics. If the] Creation shall not be permitted on a site that retains wetlands characteristics [such that it meets the definition of a de­
graded wetland pursuant to N.J.A.C. 7:7A-1,4, it is not eligible for use in creation]. Rather [it] such a site is only eligible for enhancement activities pursuant to (a)3 below. [If the disturbance to a formerly wetlands site is the result of a violation of the Act or this chapter, the Department may, at its discretion, condition approval of a mitigation plan, or a permit, or both, on the resolution of the violation.]

iii. In addition to the wetlands created in the ratio required, the mitigation site shall include the appropriate transition area. The transition area width will be that which is required for the resource value classification of the closest adjacent wetland areas and will be a minimum of 50 feet.

3. Enhancement refers to actions performed to improve the characteristics, habitat and functions of an existing, degraded wetland such that the enhanced wetland will [function] have resource values and functions similar to an undisturbed wetland. [Enhance­ ment will be required at a ratio of seven acres enhanced to one acre lost or disturbed.] The ratio of enhanced wetlands to wetlands disturbed or modified will be determined based on the documented assessment of the loss of ecological value of the wetlands disturbed or modified.

4. Contribution refers to the donation of money or land to the Mitigation Bank. The Department will permit the donation of land only after determining the mitigation Bank only after determining that creation or restoration of wetlands onsite is not feasible. The Department will consult with USEPA in making this determination for projects for which USEPA review has not been waived. [If money is donated, the Department will require an amount equivalent to:

i. [The] If money is donated, the donation shall be in an amount equivalent to the cost of purchasing an area [which was historically a freshwater wetland but which has been legally filled, and restoring that area to] and creating a functional freshwater wetland, [resulting in preservation of freshwater wetlands of equal ecological value to those which are being lost] at a ratio of two acres of wetlands created for each acre disturbed unless the applicant demonstrates equal ecological value pursuant to N.J.A.C. 7:7A-14.1(b); or.

ii. The cost of purchasing an area which was historically an up­

land, and creating freshwater wetlands of equal ecological value to those which are being lost, and preserving the created wetland.]

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 371)
7:7A-14.3 Location of mitigation sites
(a) All mitigation projects shall be carried out on-site to the maximum extent practicable.
(b) If on-site mitigation is found to be impracticable, the mitigation shall be carried out within the same watershed to the maximum extent practicable.
(c) If the Department determines that mitigation onsite is not feasible or less ecologically beneficial, the Department may approve mitigation in a different watershed.

7:7A-14.4 Wetland mitigation proposal requirements
(a) A proposal for mitigation shall include the following information, as appropriate:
1. A description of the size and type of mitigation project proposed, including any proposed transition area, a description of the freshwater wetlands which are being lost or disturbed and how the proposal satisfies the requirement for creation of wetlands of equal ecological value within the same watershed;
2. [Current] The names and addresses of current and proposed owner(s) of the mitigation project site;
3. [No change.]
4. A monitoring and maintenance plan to ensure 85 percent survival and 85 percent [area] areal coverage of the mitigation plantings for at least three years after planting;
5. [No change.]
9. A metes and bounds description of the proposed mitigation site, which will form the basis for the deed restriction; and
10. Five folded copies of a site plan for the mitigation project which includes:
   i. Project location within the region and in relation to adjacent development;
   ii. Lot The lot and block number of the project location [and name and address of property owner];
   iii. Existing and proposed elevations and grades of the project shown in one foot intervals; and
   iv. Plan views and cross sectional views[.]; and
   ii. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map (available from the Department's Maps and Publications Office, CN 402, Trenton, NJ 08625) showing the location of the property and its general vicinity, indicating and labeling the location of the proposed mitigation and the property boundaries, and a determination of the State Plane Coordinates for the center of the property.

7:7A-14.5 Acceptability of wetlands mitigation proposals
(a) Wetlands and State open water mitigation proposals shall be reviewed by the Department for acceptability. The Department will base the acceptability determination upon the following criteria:
   1. -3. [No change.]
   4. Suitability of the monitoring program and maintenance to ensure 85 percent survival and 85 percent [area] areal coverage of the mitigation plantings for at least three years following planting;
   5.-9. [No change.]
   (b) When a mitigation plan is submitted subsequent to the permit decision, within 30 days of the receipt of the submission, the Department shall review the submission for completeness and make any necessary requests for additional information, or declare the submission complete. Within 60 days of accepting a submission as complete, the Department shall issue a decision on the acceptability of a proposed mitigation plan unless extended by consent of the permittee.

7:7A-14.6 Wetlands Mitigation Council
(a) The Wetlands Mitigation Council shall have oversight of the creation and implementation of the Wetlands Mitigation Bank. The
other actual damages caused by an unauthorized regulated activity. Assessments under this section shall be paid to the State Treasurer except that compensatory damages shall be paid by specific order if the court to any persons who have been aggrieved by the unauthorized regulated activity; and/or

5. (No change.)

7:7A-15.5 Civil administrative penalty
(a) Whenever, on the basis of available information, the [Commissioner] Department finds a person in violation of any provision of the Act, or of any rule or regulation adopted, or permit or order issued pursuant to the Act, the [Commissioner] Department is authorized to assess a civil administrative penalty of not more than $10,000 for each violation. Each day during which each violation continues shall constitute an additional, separate, and distinct offense. Specific penalty amounts, and procedures for their assessment and for adjudicatory hearings on penalties assessed, can be found in N.J.A.C. 7:7A-17.
(b) (No change.)
(c) Any person violating an “after the fact” permit issued pursuant to this section shall be subject to the provisions of this chapter.

7:7A-15.10 Termination of permits
(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:
1. Noncompliance by the permittee with the permit or any condition of the permit; or
2. The permittee’s failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee’s misrepresentation of any relevant facts at any time[; or]
3. The permit has unanticipated negative environmental impacts which become apparent during construction.
(b) Prior to a termination, the Department shall furnish written notice to the permittee by certified mail. The notice shall provide 10 days within which the permittee shall either remedy the violations, or unanticipated negative environmental impacts, request a hearing or offer a [mitigation] plan as to how [the violation will be corrected] to bring the permit back into compliance or correct the unanticipated impact, or request a hearing. Within [90] 60 days of Department approval of a plan, the violations or unanticipated impact shall be remedied.
(c) If the requirements of (b) above have not been met within 10 days of the Department’s notice, the permit shall [be terminated. The regulated activity shall cease] automatically terminate and the unanticipated negative environmental impacts or violations shall be remedied. Once the violations are remedied, the [permittee] Department may reinstate the permit or require the applicant to apply for a new permit, following the application procedures in this chapter.
(d) (No change.)
(e) [A permittee may appeal termination of a permit according to the provisions of N.J.A.C. 7:7A-11.7 only if the regulated activity has ceased.] The State shall provide for public participation in the State enforcement process by providing assurance that the State agency or enforcement authority will:
1. Investigate and provide responses to all citizen complaints submitted pursuant to State procedures;
2. Not oppose intervention by any citizen when permissible intervention may be authorized by statute, rule, or regulation; and
3. Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action in the DEP Bulletin.

SUBCHAPTER 16. FEES
7:7A-16.1 Payment of fees
(a) Except when submitted by an agency of the State, each request for a letter of interpretation, or freshwater wetlands permit application, open water fill permit application, or notice of proposed activity covered by a general permit[,] letter of authorization for a Statewide general permit activity, transition area permit application, or request for a letter of exemption shall be accompanied by the appropriate fee as set forth [below] at N.J.A.C. 7:7A-16.2 to 16.6. Except when submitted by an agency of the State, no request, application, or notice will be considered complete, and therefore will not be acted on by the Department, unless accompanied by the appropriate fee.
(b) All fees shall be paid by personal check, certified check, attorney check, or money order. Checks and money orders shall be payable to “Treasurer, State of New Jersey” and submitted with the application. [to: Division of Coastal Resources New Jersey Department of Environmental Protection CN 401 5 Station Plaza 501 East State Street Trenton, New Jersey 08625]
ENVIRONMENTAL PROTECTION

(c) Each check or money order shall be marked to identify the nature of the submittal (for example, freshwater wetlands Individual permit application) for which the fee is paid and the name of the applicant.

7:7A-16.2 Fees for review of requests for letters of interpretation
(a) If a request is made for a letter of interpretation to determine [whether any freshwater wetlands are present or absent on a parcel of land, the fee shall be $100.00.]
1. Whether freshwater wetlands, State open waters or transition areas are present or absent on a parcel of land or right-of-way, pursuant to N.J.A.C. 7:7A-8(a), the fee shall be $100.00.
2. Whether freshwater wetlands, State open waters or transition areas are present or absent on a footprint of land, pursuant to N.J.A.C. 7:7A-8.2(a), the fee shall be $200.00.
(b) Any request for a letter of interpretation which requires any freshwater wetlands or State open water boundary delineation, or verification of a delineation, shall be accompanied by the following fee:
1. For a parcel of land or right-of-way which is smaller than one acre, pursuant to N.J.A.C. 7:7A-8.2(a), the fee shall be $100.00 + $25.00 or $250.00.
2. For land of less than one acre, with a total area of one acre or more, pursuant to N.J.A.C. 7:7A-8.2(a), the fee shall be $250.00 plus $20.00 per acre or any fraction thereof, with a total area not exceeding $50,000. For example, the fee for line verification of a parcel with a total area of 7.2 acres would be $250.00 + (8 acres x $20.00) = $350.00.
(c) For a request for the reissuance of a letter of interpretation pursuant to N.J.A.C. 7:7A-8.7, the fee shall be 25 percent of the original fee or $100.00, whichever is larger.

7:7A-16.3 Fees for review of individual freshwater wetlands[] and open water fill permits or individual water quality certificate applications
(a) The fee for the review and processing of a freshwater wetlands permit application to drive pilings shall be $500.00. If a freshwater wetlands permit application is for any regulated activity set forth in (b) below, in addition to pile driving, the fee for review will be that set forth in (b) below.
(b) If a request for a letter of interpretation is made for a freshwater wetlands and open water fill permit or individual water quality certificate application [for any of the following activities] shall be $250.00, plus $20.00 per one-tenth acre, or any fraction thereof, of freshwater wetlands or State open waters affected by any [of the following proposed] regulated activities[]. For a permit requiring both an individual freshwater wetlands and open water fill permit, the fee shall be $1,000.00 plus $100.00 per one-tenth acre, or any fraction thereof, of freshwater wetlands and State open waters affected by any regulated activities.
(c) For projects that require both an individual freshwater wetlands/ open water fill permit and a transition area permit, only one fee for the review and processing of the permit shall be required, the higher of the two fees.
1. The removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind:
2. The drainage or disturbance of the water level or water table:
3. The dumping, discharging or filling with any materials:
4. The placing of obstructions other than pilings:
5. The destruction of plant life which would alter the character of a freshwater wetland, including the cutting of trees.
(c) (No change.)

7:7A-16.4 Fees for review of open water fill permit applications
(a) The fee for the review and processing of an open water fill permit application shall be $1,000.00 plus $100.00 per one-tenth acre, or any fraction thereof, of State open waters affected by the proposed discharge of dredged or fill material.
(b) If, in order to review and process an open water fill permit application, more than one inspection by the Department is necessary because of any act or omission of the applicant, the Department may assess an additional fee for each additional visit in an amount not to exceed $1,000. No permit shall be issued until this additional fee is paid.

7:7A-16.5 Fees for review and processing of transition area [waiver] permit applications
(a) Each request for a transition area [waiver] permit shall be accompanied by the appropriate fee as follows:
1. If a letter of interpretation has been performed on the property by the Department pursuant to N.J.A.C. 7:7A-8 confirming or delineating the freshwater wetlands boundary, the transition area [waiver] permit application fee shall be:
   i. For a property or right of way of one acre or less: $100.00; [and] $250.00 plus $20.00 per acre or any fraction thereof, of the standard transition area affected or disturbed by the proposed activity[]. and
   ii. If, in order to review and process a transition area [waiver] permit, the fee shall be $250.00 plus $20.00 per acre, or any fraction thereof, of the standard transition area affected or disturbed by the proposed activity, plus $100.00 for each additional special activity permit.
2. If no letter or interpretation for the property has been prepared by the Department pursuant to N.J.A.C. 7:7A-8 confirming or delineating the freshwater wetlands boundary, the transition area [waiver] permit application fee shall be:
   i. For a property or right of way of one acre or less: $200.00; and $350.00; $40.00 per acre or any fraction thereof, of the total property[]. and
   ii. For a property or right of way over one acre: $450.00 plus $25.00; $40.00 per acre or any fraction thereof, of the total property[]. and
   iii. For review of applications for more than one type of transition area permit, the fee shall be $450.00 plus $40.00 per acre, or any fraction thereof, of the total property plus $100.00 for each additional special activity permit.
3. If a letter of interpretation for the property which provides only a determination of the presence or absence of freshwater wetlands has been prepared for a property by the Department pursuant to N.J.A.C. 7:7A-8, the transition area [waiver] permit application fee shall be:
   i. For a property or right of way of one acre or less: $100.00; and $350.00; and
   ii. For a property or right of way over one acre: $450.00 plus $25.00; $40.00 per acre or any fraction thereof, of the total property[]. and
   iii. For a transition area waiver is sought by an agency of the State, no application fee is required.
4. For special activity permits for activities covered by Statewide general permits, the permit application fee shall be:
   i. For the review of a special activity permit pursuant to N.J.A.C. 7:7A-7(e): $250; and
   ii. If the proposed project requires more than one type of special activity permit, the fee shall be $250.00 for the first special activity permit and $100.00 for each additional special activity permit.
5. If, in order to review and process a transition area [waiver] permit application, more than one site inspection by the Department is necessary because of any act or omission of the applicant, the Department may assess an additional fee for each additional visit in an amount not to exceed $1,000. No transition area [waiver] permit shall be issued until this additional fee is paid.

(CITE 23 N.J.R. 374) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
7:7A-16.7 Fees for the review and processing of requests for permit modifications

Except for minor modifications pursuant to N.J.A.C. 7:7A-13.9 for which no fee will be charged, the fee for the review and processing of a request for permit modification shall be 25 percent of the original fee.

7:7A-16.8 Fee refunds

All fees submitted with an application that is declared administratively complete shall be non-refundable.

SUBCHAPTER 17. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:7A-17.1 General penalty provisions

(a) This subchapter shall apply only to violations of the Act and this chapter which involve freshwater wetlands and transition areas. This subchapter shall not apply to regulated activities in State open waters. The penalty procedures and amounts for State open water fill [permit] violations are set by N.J.A.C. 7:14-8. This subchapter shall also govern the procedures for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

(b) Each violation of any provision of the Act or any rule, administrative order, approved mitigation plan, [waiver] permit or permit issued pursuant thereto, shall constitute an additional, separate, and distinct violation for which a separate penalty may be assessed.

(c) Each day during which such violation exists and/or continues shall constitute an additional, separate, and distinct violation for which a separate civil administrative penalty may be assessed. A violation shall be considered to continue as long as it is not rectified, remedied, repaired, or removed, to the satisfaction of the Department. For example, each day that an obstruction, structure, deposit, fill or discharge placed or constructed in violation of the Act remains in place shall constitute an additional, separate, and distinct violation. Also for example, for destruction, dredging, or removal of freshwater wetland components such as soil or vegetation, each day between the destruction or removal and the replacement, restoration, or remediation to the satisfaction of the Department shall constitute an additional, separate, and distinct violation.

1. For the purposes of calculating the duration of any violation, the first day of the violation shall be the day which is the earliest point in time that the Department can establish that the violation occurred, had occurred, or was occurring.

2. The last day of the violation shall be as follows:

   (1) The day upon which a complete application for a permit to pursue the activity is submitted to the Department;

   (2) The day upon which a complete restoration plan is submitted to the Department (in the case of an unpermittable activity); or

   (3) The first day upon which a good faith effort was made to comply with the Department's requirements. If such a good faith effort is shown, the Department may, in its sole discretion, consider the first day of such efforts to be the last day of the violation.

3. To demonstrate a good faith effort, the violator shall show that all regulated activity has been halted, shall promptly submit any information required by the Department, shall promptly remedy all deficiencies in any application or other materials submitted to the Department, and shall otherwise promptly comply with all Department requirements.

4. For the purposes of penalty assessment, the number of days required by the Department to render a decision and give notice of such decision on a submitted permit application or restoration proposal shall be excluded from the per day penalty calculation.

7:7A-17.2 Civil administrative penalty determination

(a) Except for those violations set forth in N.J.A.C. 7:7A-[17.3] 17.4 through 17.6, the Department may assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges unless adjusted pursuant to (d) below:

   (i) using three factors: conduct of violator, acreage of impact, and the resource value classification of impacted wetland. Point values are assigned to the three ranges within each factor, as described below. For each violation, the total number of points are determined and the total is used at (c) below to determine penalty amount per day.

   (b) The seriousness factor of the violation shall be determined as major, moderate or minor as follows:

      1. Major shall include:
         i. Any violation which has caused or may cause serious harm to human health or the environment; or
         ii. Any violation which has caused or may cause irreversible or irreversible harm to the environment;

      2. Moderate shall include:
         i. Any violation which has caused or may cause substantial harm to human health or the environment; or
         ii. Any violation which has caused or may cause harm to the environment, which harm can only be reversed with difficulty or will take more than 30 days to repair; and

      3. Minor shall include any violation not covered in (b)1 or 2 above.

   (c) (b) The following is a description of the factors to be used in penalty determination and the point values assigned to them:

      1. The conduct factor of the violation shall be determined as major, moderate or minor as follows:

         [1.] i. Major shall include an intentional, deliberate, purposeful, knowing or willful act or omission by the violator and is assigned three points;

         [2.] ii. Moderate shall include any unintentional but foreseeable act or omission by the violator and is assigned two points; and

         [3.] iii. Minor shall include any other conduct not identified in [(c)1 or 2] (b)i or ii above and is assigned one point.

      2. The acreage of wetlands impacted by the violation factor shall be determined as:

         i. An impact to greater than three acres of wetlands is assigned three points;

         ii. An impact to one to three acres of wetlands is assigned two points;

         iii. An impact to less than one acre of wetlands is assigned one point.

      3. The resource value classification factor shall be determined as:

         i. An impact to exceptional resource classification wetlands is assigned three points;

         ii. An impact to intermediate resource classification wetlands is assigned two points;

         iii. An impact to ordinary resource classification wetlands is assigned one point.

   (c) The total points from the above factors shall be used to determine the penalty assessment per day according to the following table:

<table>
<thead>
<tr>
<th>Total Points</th>
<th>Penalty Amount Per Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>$10,000</td>
</tr>
<tr>
<td>8</td>
<td>9,000</td>
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<tr>
<td>7</td>
<td>7,500</td>
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<tr>
<td>6</td>
<td>6,000</td>
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<td>5</td>
<td>4,500</td>
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<tr>
<td>4</td>
<td>3,000</td>
</tr>
<tr>
<td>3</td>
<td>1,500</td>
</tr>
</tbody>
</table>

(d) (No change.)

7:7A-17.3 Civil administrative penalty for engaging in regulated activities without approval

(a) The Department may assess a civil administrative penalty in accordance with the provisions of this section against each violator who engages in a regulated activity in a freshwater wetland without
a freshwater wetlands permit or engages in a regulated activity in a transition area without a transition area [waiver] permit.

(b) For each violation under this section, [the penalty shall be $10,000.] the Department may assess a penalty of up to $10,000. Each day, from the day the regulated activity begins to the day its effects persist, the Department may assess a penalty of $1,000 for violations described in this section. The Department shall notify the violator by certified mail, return receipt requested, or personal service. This Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the Act, rule, mitigation plan, [waiver, permit or administrative order] violated;
2. Concisely state the facts alleged to constitute the violation[.]
3.4. (No change.)
4. The civil administrative penalty assessed pursuant to this subchapter, include as a civil administrative penalty for violations described in this section as follows:

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, record, or other document required to be submitted or maintained, under the Act or any rule, administrative order, permit, mitigation plan, or [waiver] permit issued pursuant thereto.

(b) Each day, from the day of receipt of the information by the Department, to the day of receipt of a written correction by the violator, the Department may assess a penalty of up to $10,000, nor less than $8,000 for violations declared in N.J.A.C. 7:7A-15; and
2. For each other violation, the penalty shall be in the amount of $1,000.

7:7A-17.5 Civil administrative penalty for failure to allow entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative.

(b) Each day (from the initial day of failure by the violator to allow immediate entry and inspection to the day of receipt by the Department of written notice from the violator that the violator will no longer refuse, inhibit or prohibit immediate entry) that a violator refuses, inhibits or prohibits immediate lawful entry and inspection[,] shall be an additional, separate, and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on the conduct of the violator as follows:

1. For each intentional, deliberate, purposeful, knowing, or willful act, omission by the violator, the civil administrative penalty shall be in an amount of not more than $10,000 nor less than $8,000 for violations in N.J.A.C. 7:7A-15; and
2. For each other violation, the penalty shall be in the amount of $1,000.

7:7A-17.7 Economic benefit factor

The Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as a civil administrative penalty the economic benefit (in dollars) which the violator has realized as the result of not complying, or by delaying compliance with the requirements of the Act or any rule, permit, mitigation plan [waiver] or administrative order issued pursuant thereto. If the total economic benefit was derived from more than one violation, the total economic benefit amount may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than $10,000 per violation.

7:7A-17.8 Procedures for assessment of civil administrative penalties under the Act

(a) To assess a civil administrative penalty under the Act, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the Act, rule, mitigation plan, [waiver, permit or administrative order] violated;
2. Concisely state the facts alleged to constitute the violation[.]
3.4. (No change.)
4. (No change.)

PROPOSALS

PUBLIC HEALTH COUNCIL
State Sanitary Code
Chapter IX, Public Recreational Bathing

Proposed Readoption with Amendments: N.J.A.C. 8:26

Authorized By: New Jersey Public Health Council, Louise Chut, Ph.D., M.P.H., Chairperson.


A public hearing concerning this proposed readoption with amendments will be held on March 11, 1991 at 1:30 P.M. at the following address:
Department of Health
First Floor Auditorium
John Fitch Plaza
Trenton, N.J. 08625

Public comments should be submitted written comments by March 21, 1991 to:
Joseph Kolakowski
Coordinator, Health Projects
Department of Health
Consumer Health Services Unit
363 West State Street, CN 364
Trenton, New Jersey 08625-0364
(609) 984-3947

The agency proposal follows:

Summary


The purpose of this chapter of the State Sanitary Code is to set reasonable sanitary and safety rules for all public recreational bathing places, in order to preserve and improve public health in this State.

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:26 will expire on August 4, 1991. The Public Health Council (hereafter, the Council) and the Department of Health (hereafter, the Department) therefore propose to readopt this chapter with amendments reflecting technical changes, corrected citations and typographical errors, the addition of explanatory language for the purpose of bringing clarity to several of the requirements, and substantive modifications to existing rules that have been deemed no longer necessary or reasonable.

The Council and the Department have reviewed these rules and, with the exceptions that will be summarized below, have determined that they are necessary, reasonable, and proper for the purpose for which they were initially promulgated. This administrative review was accomplished through the convening of an advisory committee comprised of representatives from local and State public health departments, the New Jersey Health Officers Association, and the New Jersey Environmental Health Association. Additionally, the Department met with representatives from various groups of the regulated community for the purpose of soliciting their input including suggestions and recommendations for improving the rules governing public recreational bathing. Unsolicited public comments have also been provided over the past several years which were evaluated.
and taken into consideration during the formulation of this readoption proposal.

Public comment is invited so that the Council and the Department can make a fully informed decision as to whether these rules should be readopted as proposed before they expire on August 4, 1991. The proposed readoption with amendments is summarized as follows:

Subchapter 1. Purpose, Scope, and Definitions

N.J.A.C. 8:26-1.1 and 1.2 establish the purpose and scope of the rules governing recreational bathing places. N.J.A.C. 8:26-1.3 establishes definitions of terms used in this chapter of the State Sanitary Code. The proposed amendments add and define the terms “common interest community” and “private lake/river/bay or private community lake/river/bay association” which are necessary, since these types of public recreational bathing facilities will have specific and varying requirements under subchapter 5, Waterfront Safety. Additionally, the term “save” is being deleted since it is also being proposed that the reporting of saves be deleted (see N.J.A.C. 8:26-8.9 and 8.10) and, therefore, the term and definition are no longer necessary.

Subchapter 2. Administration

N.J.A.C. 8:26-2.1 through 2.9 provide for the review of plans, procedures for obtaining written approval to locate and construct, the denial of approval, procedures for obtaining approval to alter, preoperational inspection, approval to operate, and the modification and waiver of standard for public recreational bathing places.

Subchapter 3. Swimming Pools

N.J.A.C. 8:26-3.1 provides for the general layout and design of swimming pools. The proposed amendment permits the installation of entrances and exits of closures at the end of the deep end of the swimming pool provided that a minimum of six feet of deck exists between the pool and the enclosure. N.J.A.C. 8:26-3.2 through 3.7 provide for the standards for construction material used for; dimensional design of; diving area design of; and bottom slope, wall, and offset ledges specifications for swimming pools. N.J.A.C. 8:26-3.8 provides for the use of water depth markings. The proposed amendment clarifies the use of feet or inch designations after the depth marking numbers.

N.J.A.C. 8:26-3.9 through 3.11 provide for the design and specifications of overflow collection systems, decks and walkways, and ladders and stairs for swimming pools.

N.J.A.C. 8:26-3.12 provides for the standards to be followed to ensure that the pool enclosure is not hazardous to persons. The proposed amendment removes the recommendation that the pool enclosure should be 10 feet high since this is not always reasonable, practical, or necessary.

N.J.A.C. 8:26-3.13 provides for electrical, illumination, and ventilation requirements for swimming pools. The proposed amendment adds clarity to the requirement that the illumination standard needs only to be met when the swimming pool is in use.

N.J.A.C. 8:26-3.14 provides for construction and installation of diving stands, boards, slides, and floats.

N.J.A.C. 8:26-3.15 provides for design and construction of recirculation systems of swimming pools. The proposed amendment eliminates the requirement of a flow meter on the backwash line.

N.J.A.C. 8:26-3.16 through 3.19 provide for the design, construction, and operation of wading pools, water slides, rope drops, and floats.

N.J.A.C. 8:26-3.20 provides for chemical disinfection of swimming and wading pools. The proposed amendment deletes the requirement that erosion-type chlorinators feed the disinfectant solution to the suction side of the pump. It is being proposed that all chemical feeders be installed downstream from the filter and heater.

Subchapter 4. Hot Tubs and Spas

N.J.A.C. 8:26-4.1 through 4.13 provide for the design, construction, and operation of hot tubs and spas including general construction and design; deck construction and design; heater and temperature requirements; electrical, illumination, and ventilation requirements; protection of potable water; inlets and outlets; circulation systems; pumps and strainers; disinfectants and chemical feeders; air induction systems; overflow systems; and hot tubs and spa enclosures.

Subchapter 5. Waterfront Safety

N.J.A.C. 8:26-5.1 through 5.11 provide for the use of trained and qualified adult supervision, first aid, lifesaving, and pool operator personnel; use of emergency equipment; boating and water safety operation rules; identification and elimination of hazards; posting of precautionary signs; and waterfront restrictions for swimming pools, wading pools, hot tubs and spas, water slides, and bathing beaches. Several substantive amendments are being proposed in this subchapter which are further summarized as follows:

- A new section, N.J.A.C. 8:26-5.1, Exceptions, is proposed which would exempt private lake/river/bay or private community lake/river/bay associations and common interest communities that restrict the use of its recreational bathing place (other than those utilizing ocean waters) to the owners of the dwelling units and their invited guests from mandated compliance with the first aid and lifeguard personnel and associated requirements contained in subchapter 5. Private lake/river/bay or private community lake/river/bay associations and common interest communities eligible for this exemption which choose not to voluntarily comply with these requirements must prominently post precautionary signage.

The Council and the Department accept the compelling arguments presented by this segment of the regulated community and are, therefore, proposing this new rule for the purpose of eliminating the undue hardship of compliance and making the rules more reasonable and practicable without compromising the health, safety, and well-being of the bathing public. It must be mentioned that similar arguments have been presented by the representatives of the hotel, motel, and campground industries who are also requesting that their facilities be exempted from the proposed rule of requiring a certified pool operator. Notwithstanding the evidence and arguments presented, it is not within the Council’s or Department’s powers or prerogative to promulgate rules that would be inconsistent with the aforementioned statute and the interpretation thereof.

- Explanatory language is included clarifying the requirement for a certified pool operator, specifically, the degree of availability necessary to fulfill this requirement.

- The requirement of an approved means of communications is expanded to all public swimming pools. The present rule requires this of only those public swimming pools capable of accommodating 500 patrons or more.

- Amendatory language is added prohibiting swimming during an electrical storm in outdoor pools only. The current rule does not differentiate between indoor and outdoor swimming pools, hot tubs, and spas.

- Head first entries into less than five feet of water (currently prohibited) during competitive swim meets are permitted, provided that the depth is at least four feet, only a flat forward start dive is used, the water depth is at least four feet, only a flat forward start dive is used, and there is no compromise to the safety of the competitive swimmer. Additionally, a provision is being made to allow each bathing beach by the individual operator to determine the type of entry allowed.
A minor technical change is made eliminating the size requirement of the paddle rescue board and replacing it with the performance standard of being capable of supporting two adults.

Proposals are made governing the use of fixed platforms and floats to allow the use of floats without specific restrictions and to allow for the use of fixed platforms in tidal waters (prohibited under the current rule) as long as specific criteria to ensure bather safety are met.

Subchapter 6. General Sanitation and Maintenance

N.J.A.C. 8:26-6.1 through 6.3 provide for sanitary construction, maintenance, and operation of public recreational bathing places including the dressing rooms, bathhouses, and showers.

N.J.A.C. 8:26-6.4 provides for the installation and maintenance of water closets. The proposed amendment, being only a minor technical change, allows for the use of safety glass, in addition to unbreakable mirrors which are currently allowed.

N.J.A.C. 8:26-6.5 through 6.12 provide for the sanitary management of wastewater disposal, solid waste disposal, potable water supply, drinking water fountains, food service, plumbing and recreational equipment, and insect, rodent, and weed control.

Subchapter 7. Sampling and Water Quality Criteria

N.J.A.C. 8:26-7.1 through 7.8 provide for the standards governing water sources, microbiological sampling and analysis, and sample collection and disposition; microbiological water quality standards; sample results that are not meeting established water quality standards; and chemical and physical water quality analyses for swimming pools and wading pools.

N.J.A.C. 8:26-7.9 provides for the establishment of chemical water quality standards for swimming pools and wading pools. The proposed amendment increases the range for free chlorine residual by extending the maximum limit for indoor and outdoors to 3.0 ppm and 4.0 ppm, respectively. This will provide greater flexibility and ease in complying with the chemical disinfectant standards.

N.J.A.C. 8:26-7.10 through 7.16 provide for the establishment of physical water quality standards for swimming pools and wading pools and salt water swimming and wading pools utilizing ocean and/or bay water, microbiological water quality standards for hot tubs and spas, chemical water quality standards for hot tubs and spas, physical water quality standards for hot tubs and spas, and sanitary survey criteria for bathing beaches.

N.J.A.C. 8:26-7.17 provides for the collection of samples at bathing beaches. The proposed amendment allows for the relaxing of the sampling frequency from weekly to biweekly (every two weeks) subject to the approval of the health authority based on three months of consecutive satisfactory water quality analyses.

N.J.A.C. 8:26-7.18 provides for the technique to be applied when taking recreational bathing water samples. The proposed amendment provides detailed specifications for obtaining water samples previously provided in an administrative policy memorandum issued to all local health authorities participating in the Cooperative Coastal Monitoring Program administered by the Department of Environmental Protection.

N.J.A.C. 8:26-7.19 through 7.21 provide for the establishment of microbiological water quality standards for natural waters, and physical water quality standards for natural waters.

Subchapter 8. Enforcement Procedures

N.J.A.C. 8:26-8.1 through 8.8 provide for legal authority; the inspection of public swimming pools, hot tubs, spas, and bathing beaches; report of inspections; the public availability of inspection records; and the criteria for closure of public recreational bathing facilities.

N.J.A.C. 8:26-8.9 provides for the establishment of specific recordkeeping requirements. The proposed amendment will delete the requirement that every public recreational bathing place keep records on the number and nature of saves performed. The Council and the Department have determined that this requirement failed in fulfilling the original intent of collecting information for the purpose of measuring the effectiveness of the current rules. It is also a burdensome recordkeeping requirement which has placed undue hardship on a number of public recreational bathing facilities.

N.J.A.C. 8:26-8.10 provides for the reporting of all deaths and/or serious injuries including saves to the local authority by November 1 of each year. The proposed amendment would delete this requirement for saves for the reasons specified above.

N.J.A.C. 8:26-8.11 and 8.12 provide for the assessment of penalties and the separability of any and all provisions of this chapter.

The Appendix provides a listing of organizations currently recognized by the Council and the Department to certify the personnel and/or programs required in subsection 5 of these rules and lists the approved contents of a 24 Unit First Aid Kit. The proposed amendment would add the National Pool and Waterpark Lifeguard Training Association to the listing of recognized lifesaving/lifeguarding certification organizations.

Social Impact

The Council and the Department believe that this readoption with amendments will continue to have a positive social impact; that is, to ensure the health and safety of the recreational bathing public. The public benefits that would be derived from these rules are the prevention of waterborne disease and serious injury or death through water related accidents.

The effect of the rules as proposed will impact primarily on all public recreational bathing facilities such as ocean and bay beaches; hotel, motel, campground, condominium, youth camp, and apartment swimming pools; government entities providing recreational bathing activities (fire, police, and city, etc.). These facilities are required to comply with this comprehensive set of rules which the Council and the Department consider reasonable, necessary, understandable, and responsive for the purposes for which they were promulgated.

It is expected that the regulated community will welcome the proposed amendments, since they were developed utilizing input provided by the regulated community over several years and represent, overall, a relaxation of a number of rules which were found to be either unnecessary, unreasonable, or impracticable since the rules were first promulgated in 1986. Several rules are also being amended by adding explanatory language for clarification, which will also be welcomed by the regulated community, since clarification will limit confusion, ambiguity, and encourage consistent interpretation of the rules. The Council and the Department also expect that the rules as proposed will receive a positive reaction from the general public, since the public at large not only expects, but demands, that public beaches and bathing places be well maintained, the water is of safe quality, and properly trained lifesaving personnel be provided.

Economic Impact

The economic impact of the proposed readoption with amendments primarily falls on the owners and operators of public recreational bathing places. However, it is expected that the proposed amendments will have a positive economic impact on the regulated community especially on common interest communities and private lake/river/bay associations, since, with the relaxation of the lifeguarding and first aid personnel standards, cost savings will be realized in salaries and penalties for noncompliance.

Another example of a potential cost savings for compliance is the proposed deletion of the recordkeeping and reporting of saves. This aspect at the time of development of the current rules was burdensome and labor intensive and will no longer be required as proposed in the rule amendments. The general public may also benefit economically from the proposed amendments since user fees may stabilize or be reduced at a level commensurate with cost savings realized by the regulated community.

It is also predicted that the proposed readoption with amendments will have a positive economic impact on the Department, since, with the improvements to the rules being proposed, it is expected that less Department staff time will be expended in addressing problems associated with unclear requirements, confusion in interpretation, and matters of a controversial nature. Finally, the Council and the Department feel that the proposed readoption with amendments will have a positive economic impact on the State’s tourism industry since these rules provide the necessary controls to ensure the safe and sanitary operation of recreational bathing places which is an integral part of the State’s tourism industry.

Regulatory Flexibility Analysis

The readopted rules and amendments primarily impact on all public recreational bathing places, many of which can be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption with amendments imposes reporting, recordkeeping, and compliance requirements on all public recreational bathing facilities as outlined in the Summary and does not establish differential compliance requirements for small businesses, since public health may be compromised should the standards not be followed. Professional services likely to be needed to comply with the requirements include engineering for the design, construction, and in-
stallation of new facilities; certified analytical laboratories to evaluate water quality; lifeguards, first aid personnel; and certified pool operators. However, the amendments as proposed would relax or provide an alternative method for compliance to a number of the health and safety requirements including removing the mandatory lifeguard and first aid personnel requirement for common interest communities and private lake/river/bay associations that restrict the use of their public recreational bathing facilities to the owners of the dwelling units and their invited guests, allowing head first entries into less than five feet of water during competitive swim meets as long as certain conditions are met, and eliminating the paperwork and recordkeeping requirement of logging all saves incidents and reporting same to the health authority by November 1 of each year. Many small businesses will benefit from these proposed amendments.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:26.

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

8:26-1.3 Definitions
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Common interest community” means:
II. A housing corporation or association, commonly known as a cooperative, which entitles the holder of a share or membership interest thereof to possess and occupy for dwelling purposes a house, apartment, manufactured or mobile home or other unit of housing owned or leased by the corporation or association, or to lease or purchase a unit of housing constructed or to be constructed by the corporation or association;
III. Real estate with respect to which a person, by virtue of the ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in the instrument, however denominated, which creates the common interest community. Ownership of a unit does not include holding a lease-hold interest of less than 20 years in a unit, including renewal options.

“Private lake/river/bay or private community lake/river/bay association” means an organization of property owners within a fixed or defined geographical area with deeded or other rights to utilize, with similarly situated owners, various lakefront, riversfront, or bayfront properties, which said properties are not open to the general public, other than bona fide guests of a member of the private lake/river/bay or private community lake/river/bay association.

“I” means any incident that requires assistance to a person in the water that is injured or in distress

8:26-3.12 Enclosure
(a) Pools shall meet the fencing and enclosure requirements of the New Jersey Uniform Construction Code, N.J.A.C. 5:23.
[b] NOTE: A 10 foot high fence for public swimming pools is recommended.]
(b) Electrical, illumination and ventilation requirements
(a) (No change.)
(b) Illumination shall be such that a black disk six inches (15.2 centimeters) in diameter, superimposed upon a white field placed at the bottom of the deepest end of the pool shall be clearly visible from the pool sidewalk, at all distances up to 10 yards, measured in a horizontal distance from the project of the disk onto the pool surface when the pool is in use.
8:26-3.14 (No change)
8:26-3.15 Recirculation system
(a)-(e) (No change.)
(f) Filters shall be designed so that after cleaning per manufacturer’s instructions, the system can provide the water clarify noted in N.J.A.C. 8.26-7.10.
1. (No change.)
2. (No change.)
3. Rate of flow meters shall be installed and located so that [both] the rate of circulation [and backwashing] will be registered in gallons per minute.
   i. Flow meters shall have a range between 10 percent below and 10 percent above the established filtration rate [and 10 percent above the established backflush].
   ii. (No change.)
   4. (No change.)
   g) (No change.)
8:26-3.20 Disinfection
(a)-(e) (No change.)
(d) Chemical feeders installation and use shall conform to the following:
1. When using chemical feeders, they shall be installed downstream from the filter and heater. [The only exception to this would be erosion-type chlorinators which feed their solution to the suction side of the pump.]
2. (No change.)
(e) (No change.)
8:26-5.1 Exceptions
(a) This subchapter in its entirety applies to all public recreational bathing places, with the exception of private lake/river/bay or private community lake/river/bay associations and common interest communities that restrict the use of its recreational bathing places to the owners of the dwelling units thereof and their invited guests. Under this condition, said facilities shall be exempt from mandatory compliance with N.J.A.C. 5:23-4.2(b), (d), (f), (g) and (i); 5:26(b); 5.6(a); 5.7(a)l; 5.8(c)2, 4, 6 and 7; and 5.8(d). This exception does not apply to facilities utilizing ocean waters.
(b) Private lake/river/bay or private community lake/river/bay associations and common interest communities that restrict the use of its recreational bathing places to the owners of the dwelling units and their invited guests which do not voluntarily comply with the specific sections referenced above shall post a sign which shall be prominently displayed at every entrance of the recreational bathing place stating:
   "No lifeguard on duty."
   "Persons under the age of 16 must be accompanied by an adult."
   "No swimming alone."
8:26-5.115.2 Swimming pool supervision
(a) (No change.)
(b) At least one person currently certified in standard first aid and cardiopulmonary resuscitation (CPR) by an organization listed in the Appendix shall be [present at all times when the swimming pool is open for use.] on the premises, available, and readily accessible when the pool is in use. If the trained and qualified personnel are not stationed at the pool side, then the facility shall effectively demonstrate to the health authority that said personnel are available, in reasonable proximity to the pool, and can be easily contacted to enable them to render
the necessary and appropriate assistance in a timely manner. [These certifications shall be from an organization recognized by the New Jersey State Department of Health. (See Appendix.)]

(c) [Within three years of the promulgation of this chapter, the] The maintenance and mechanical operation of a swimming pool, when open for use, shall be under the supervision of a certified pool operator (CPO). The CPO shall be available to respond to mechanical and maintenance problems if they occur or to detect the potential for such a problem before it occurs; however, it is not necessary for the CPO to be at pool side or on the premises at all times when the pool is in operation. The property owner, a resident, a facility employee, or an employee of a contracted pool service firm are examples of individuals that can be used to fulfill this requirement, once the individual has successfully completed the CPO course and assumes responsibility for providing this function. The certification of a pool operator shall be from an organization recognized by the New Jersey State Department of Health. (See see Appendix.

(d)(i) (No change.)

8:26-[5.21]-5.3 Emergency equipment for swimming pools
(a) Swimming pools shall be provided with the following equipment, which shall be properly stored and readily accessible:
1. (4) (No change.)
2. Every swimming pool capable of accommodating 500 patrons or more shall have readily accessible a room or area designated and equipped for emergency care. [A telephone, citizen band radio signaling devices, or other approved means of communication shall be provided as close as possible to the lifeguard station for emergency use. Emergency numbers of the nearest rescue squad, physician, ambulance, police department, hospital, clinic, or other appropriate entity shall be posted in a weather resistant display adjacent to the telephone.
3. A telephone, citizen band radio signaling devices, or other approved means of communication shall be provided as close as possible to the pool for emergency use. [Emergency numbers of the nearest rescue squad, physician, ambulance, police department, hospital, clinic, or other appropriate entity shall be posted in a weather resistant display adjacent to the telephone.
4. (No change.)
5. Every swimming pool capable of accommodating 500 patrons or more shall have readily accessible a room or area designated and equipped for emergency care.

(b) (No change.)
6. A telephone, citizen band radio signaling devices, or other approved means of communication shall be provided as close as possible to the pool for emergency use. Emergency numbers of the nearest rescue squad, physician, ambulance, police department, hospital, clinic, or other appropriate entity shall be posted in a weather resistant display adjacent to the telephone.

8:26-[5.3]=-5.4 Bather rules for swimming pools, wading pools, hot tubs and spas
(a) Bather rules covering admission, bathing and conduct of patrons shall be conspicuously posted and shall include the following:
1. Water depth of the pool at the bulkhead (at pool side) where starting blocks are located shall be at least four feet; 2. Only the "flat dive" also known as a "formed start" shall be used;
3. Signs shall be conspicuously placed to remind swimmers of the danger of using any other type of dive when diving into waters less than five feet deep;
4. Swimmers shall be under the direct supervision of the team swim coach; and
5. When the diving blocks cannot be removed, a safety policy shall be established to assure that the diving blocks are not inadvertently used by an untrained swimmer or by the general public.

8:26-[5.4]=-5.5 (a) (No change.)
(b) A diving pool [operating independently and not in conjunction with a swimming pool] shall have a person currently certified in standard first aid and [basic life support in] child and infant cardiopulmonary resuscitation (CPR) present when the wading pool is in operation. [The certification of a pool operator shall be from an organization recognized by the New Jersey State Department of Health. (See see Appendix.

(c) [Within three years of the promulgation of this chapter, the] The maintenance and mechanical operation of a swimming pool, when open for use, shall be under the supervision of a certified pool operator (CPO). The CPO shall be available to respond to mechanical and maintenance problems if they occur or to detect the potential for such a problem before it occurs; however, it is not necessary for the CPO to be at pool side or on the premises at all times when the pool is in operation. The property owner, a resident, a facility employee, or an employee of a contracted pool service firm are examples of individuals that can be used to fulfill this requirement, once the individual has successfully completed the CPO course and assumes responsibility for providing this function. The certification of a pool operator shall be from an organization recognized by the New Jersey State Department of Health. (See see Appendix.

(d)(i) (No change.)

8:26-[5.5]=-5.6 Water slides
(a) Supervision of the waterfront areas of water slides shall be protected by a lifeguard as specified in N.J.A.C. 8:26-[5.1]-5.2 and as follows:
1. (No change.)
(b)(c) (No change.)
8:26-[5.6]=-5.7 Hot tubs and spas
(a) Supervision of a hot tub or spa, when open for use, shall be provided by a designated adult supervisor, who is knowledgeable of these rules and shall be responsible for all phases of the operation, and as follows:
1. At least one person currently certified in standard first aid and cardiopulmonary resuscitation (CPR) shall be present at all times when the spa is in use. [On the premises, available, and readily accessible when the hot tub or spa is in use. If the trained and qualified personnel are not stationed at the hot tub or spa, then the facility shall effectively demonstrate to the health authority that said personnel are available, in reasonable proximity to the hot tub or spa, and can be easily contacted to enable them to render the necessary and appropriate assistance in a timely manner. These certifications shall be from an organization recognized by the New Jersey State Department of Health. (See see Appendix.

(b)(e) (No change.)
8:26-[5.7]=-5.8 Bathing beaches
(a) (No change.)
(b) Each bathing beach shall be designated by means of water buoys, flags, or any other method approved by the health authority.
1. A neutral zone of 200 feet between the bathing area and watercraft activities, such as motorboats and sailboats, shall be maintained. Bathing beaches that can not maintain a 200 foot neutral zone shall establish and enforce a policy subject to the approval of the health authority in which boat traffic is restricted within a specific area by channeling boat traffic and regulating boat speed to ensure bath safety. Each bathing beach shall establish its own policy to allow for a buffer zone based upon the size constraints of its bathing beach, for human-powered, slow-moving water craft, such as rowboats and pedal-boats.
(c) A bathing beach open for use shall establish and post hours of operation and shall be under the management of a designated adult supervisor who is familiar with these regulations and who shall be responsible for all phases of the operation, during set hours which shall include a reasonable time period, such as 9:00 A.M. to 5:00 P.M., or similar time period, reflecting hours of maximum use.
2. A lifeguard training program certified by the United States Lifesaving Association, Office of Certification, Mid-Atlantic Region, P.O. Box 1, Avon, New Jersey 07717, shall be established by the owner or operator for ocean and tidal waters. Tidal water beaches that are not influenced by strong currents and tides may provide lifeguard provision as specified in N.J.A.C. 8:26-5.2(d), subject to the approval of the health authority.
3.-3. (No change.)
4. At least one person currently certified in standard first aid and cardiopulmonary resuscitation (CPR) shall be present at all times when the swimming pool is open for use.]

(CITE 23 N.J.R. 380) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
and readily accessible when the bathing beach is in use. If the trained and qualified personnel are not stationed at the bathing beach, then the facility shall effectively demonstrate to the health authority that said personnel are available, in reasonable proximity to the bathing beach, and can be easily contacted to enable them to render the necessary and appropriate assistance in a timely manner. These certifications shall be from an organization recognized by the New Jersey State Department of Health (see Appendix).

5.8. (No change.)

8:26-5.9 Bather rules for bathing beaches

Bather rules and policies shall be provided as specified in the regulations governing swimming pools at N.J.A.C. 8:26-5.3 governing swimming pools.

8:26-5.10 Lifesaving equipment for bathing beaches

(a) Lifesaving equipment shall be provided in case of an emergency. The equipment shall include, but not be limited to:

1. -3. (No change.)

4. A paddle rescue board that is [a minimum of 12 feet and] capable of supporting [sufficient people for rescue work] two adults:

5.8. (No change.)

8:26-5.11 Diving stands and boards for bathing beaches

(a) Diving stands and boards shall conform to the bather rules as specified in N.J.A.C. 8:26-5.3 5.4 governing swimming pools.

(b) Fixed platforms [and floats] may be permitted if constructed with a visible one foot (30.5 centimeters) air space below the platform [or floats]. There shall be as little underwater construction as is consistent with strength and all braces and struts shall be designed to prevent entanglement or tripping of bathers.

1. Fixed platforms [and floats are not] permitted for ocean, bay, or tidal waters provided that there is a visible one foot (30.5 centimeters) air space below the platform at the flood high tide mark.

2. (No change.)

8:26-5.12 Water closet and lavatories

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

(c) Fixtures shall conform to the following requirements:

1. Toilet tissue holders, supplied with tissues, shall be provided at each toilet.

2.-4. (No change.)

5. [Only] Safety glass or unbreakable mirrors shall be provided.

8:26-7.9 Chemical water quality standards for swimming pools and wading pools

(a) Free chlorine, combined chlorine, bromine and pH values shall be continuously maintained within the following ranges:

<table>
<thead>
<tr>
<th></th>
<th>Minimum</th>
<th>Ideal</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Free chlorine</td>
<td>0.1</td>
<td>1.0-1.5</td>
<td>2.0-3.0</td>
</tr>
<tr>
<td>Combined chlorine (ppm)</td>
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<td>None</td>
<td>0.2</td>
</tr>
<tr>
<td>Bromine (ppm)</td>
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<tr>
<td>pH</td>
<td>7.2</td>
<td>7.4-7.6</td>
<td>7.8</td>
</tr>
</tbody>
</table>

(b) (e) (No change.)

8:26-7.17 Collection of samples at bathing beaches

(a) Bathing beach water, with the exception of ocean waters, sample(s) shall be obtained one week prior to the opening of the beach and at intervals of no longer than one week during the bathing season. Sample(s) shall be obtained whenever possible during peak bathing loads at a depth representative of the water being used for bathing. Subject to the approval of the health authority, sampling frequency may be changed to biweekly (every other week), based on three months of consecutive satisfactory samples.

1.3. (No change.)

8:26-7.18 Techniques of sampling

(a) Technique of sampling shall be as specified in N.J.A.C. 8:26-7.4(d) and also include the following, in the case of natural bathing waters:

1. Water samples shall be taken in an area with a stabilized water depth between the sampler's lower thighs and chest with an optimum depth being at the sampler's waist.

2. At the desired depth facing away from the shoreline and in an area of the bathing zone not in close proximity to bathers, sample container shall be placed, with lid or stopper still attached, approximately eight to 12 inches below the water surface. With arms extended in front, the container shall be held near its base and downward at a 45 degree angle, the cap removed and the container filled in one slow sweeping motion (downward or horizontally, not upward) with the mouth of the container ahead of the sampler's hand and the container recapped while it is still submerged. The cap shall remain submerged during the sample collection and care shall be taken not to touch the inner surfaces of the cap. The only exception to this procedure would be in the event that samples need to be taken during cold water conditions that require the use of reach assist poles to obtain the samples.

In this situation, the cap may be removed prior to submersion as long as the container is pointed downward upon entry into the water. If a head space in the container is needed, the sampler, once on the beach, can carefully pour out a small amount of the sample and recap.

(b) No sampling shall be performed when such oceanographic or meteorological conditions exist that present an imminent health and safety hazard.

8:26-8.9 Record keeping

(a) Accurate and complete records on the following items shall be kept on the premises and be available upon request of the authorized agent or the health authority. Such records shall be kept for a minimum period of one year.

1.7. (No change.)

[8. Records on the number of saves shall include the date, the description of the occurrence and, if possible, the name and address of the person.]

8:26-8.10 Deaths and/or serious injuries

All deaths, head, neck, and spinal cord injuries, and any injury which renders a person unconscious shall be reported to the health authority within 24 hours of occurrence. [All saves shall be reported in writing to the health authority by November 1, of each year.] The local health authority shall report such injuries [and saves] to the State Health Department in January of each year.

APPENDIX

The following organizations are currently recognized by the New Jersey State Department of Health to certify the personnel and/or program required in N.J.A.C. 8:26-5.

First Aid Certification

American Red Cross

CPR Certification

American Red Cross

American Heart Association

Lifesaving/Lifeguarding Certification

Swimming Pools and Lake Bathing

American Red Cross

American Red Cross

Boy Scouts of America

YMCA

National Pool and Waterpark Lifeguard Training

Deep water guard certificate

Pool guard certificate

Advanced lifesaving certificates

Lifeguarding certificate

BSA lifeguard certificate
The agency proposal follows:

HUMAN SERVICES

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Social Services Program for Individuals and Families

Personal Needs Allowance: Residential Health Care Facilities and Boarding Homes

Proposed Amendments: N.J.A.C. 10:123-3.1 through 3.4

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


Proposal Number: PRN 1991-84.

Submit comments by March 21, 1991 to:

Kathryn A. Clark
Administrative Practice Officer
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625-0717

The agency proposal follows:

Summary

The proposed amendments make changes in the existing text of N.J.A.C. 10:123-3. Personal Needs Allowance. Firstly, the purpose and scope statements and the definition of “eligible resident” in N.J.A.C. 10:123-3.1, 3.2 and 3.3 are amended to state in clear, direct language that the population served by this program consists of Supplemental Security Income and General Public Assistance recipient residents of residential health care facilities and boarding houses.

These amendments are proposed as a result of discussions between the Division of Youth and Family Services and the Director of the Ocean County Board of Social Services, who commented on the lack of clarity in the definition and the apparent expansion of the program to persons not previously covered when these rules were readopted. In the re-adoption notice published at 22 N.J.R. 2318(b), the Division stated that it would work with the commenter to resolve these problems. In doing so, it became clear that the definition under review, N.J.A.C. 10:123-3.3, would be better stated in plain language, and that the inclusion of the phrase “rooming house” in the purpose and scope statements, N.J.A.C. 10:123-3.1 and 3.2, was a misstatement. Consequently, the Division has decided to amend the purpose and scope statements and the definition. The Division also thanks the Director of the Ocean County Board of Social Services for her comment and her assistance.

Additionally, N.J.A.C. 10:123-3.4, Amount, is being amended. The amount of the personal needs allowance to be reserved by owners and operators of residential health care facilities and boarding houses, for the use of Supplemental Security Income or General Public Assistance recipient residents, is being increased by three dollars from $59.00 to $62.00. This increase is based on a proportionate share of the total 1991 Federal cost-of-living increase in the Federal Supplemental Security Income (SSI) rate, published at 55 Fed. Reg. 45856 (1990).

Social Impact

The amendments to the purpose, scope, and definition will assist in the implementation of the Personal Needs Allowance rules by making it clear exactly who is eligible to receive a personal needs allowance. Since the amendments spell out in plain language the actual conditions under which this program has always operated, these amendments will not result in any increase or decrease in the number of eligible recipients of personal needs allowances. Residents of rooming houses have never received personal needs allowances under this program, although the text of the rules implied that they were eligible. These amendments remove the possibility of misinterpretation.

The personal needs allowance increase will have a beneficial impact on residents in that it will allow residents who rely on Supplemental Security Income or General Public Assistance to maintain their spending power in equilibrium with the cost of living. The personal needs allowance will continue to be used at the resident’s discretion to purchase clothing and incidentals which the residential health care facilities and boarding homes do not provide.

Economic Impact

There will be no economic impact from the amendments to the purpose, scope, or definition of “eligible resident.” The amendments merely reflect, in clearer terms, the persons who have always been deemed eligible to receive a personal needs allowance.

The approximately 8,000 residents in over 500 New Jersey residential health care facilities and boarding houses who are eligible to receive a personal needs allowance will benefit by having their spending power increased to keep pace with the cost of living. There will be no negative impact on facility owners, since they also will benefit from the Federal cost-of-living increase in the Supplemental Security Income rate.

Regulatory Flexibility Statement

The proposed amendments do not impose reporting, record keeping or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required. The proposed amendments are intended to clarify the purpose and scope statements, and the definition of “eligible resident” and to increase the amount of the personal needs allowance from $59.00 to $62.00 for SSI and GA recipient residents of residential health care facilities and boarding houses.

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

10:123-3.1 Purpose

The purpose of this subchapter is to ensure that each eligible resident of a [rooming house[,] boarding house or residential health care facility has reserved to him or her a monthly amount as a personal needs allowance.

10:123-3.2 Scope

This subchapter applies to all eligible residents, as defined in this subchapter, of all [rooming houses[,] boarding houses and residential health care facilities in the State of New Jersey as such are defined in this subchapter.

10:123-3.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings.

…

“Eligible resident” means a resident of a [rooming house[,] boarding house[,] or residential health care facility who receives [services from agencies funded under the latest New Jersey Social Services Block Grant Pre-Expenditure Report for the use of funds appropriated under Title XX of the Federal Social Security Act.] Supplemental Security Income or General Assistance, and as otherwise
CORRECTIONS

THE COMMISSIONER

Security and Control

Introduction; Keep Separate Status

Proposed Amendments: N.J.A.C. 10A:3-1.1 through 1.4

Proposed New Rules: N.J.A.C. 10A:3-2

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

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

Proposed Number: PRN 1991-82.

Submit comments by March 21, 1991 to:

Elaine W. Ballai, Esq.,
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposal adds another “purpose” to N.J.A.C. 10A:3-1.1 and defines at N.J.A.C. 10A:3-1.3 “keep separate status” as “the intentional assignment of certain inmates to different correctional facilities or different units within a correctional facility so as to maintain a separation between these inmates in order to prevent the possible retaliation because of a previous act or occurrence.” At N.J.A.C. 10A:3-1.2, reference to subchapter 2 was added and “keep separate status” forms were added at N.J.A.C. 10A:3-1.4.

The proposed new rules, at N.J.A.C. 10A:3-2, establish the policies and procedures to be followed by the correctional facility staff in recommending placement in and removal from keep separate status and authorize the Superintendent to place an inmate in or to remove an inmate from keep separate status.

Social Impact

The proposed amendments and new rules will ensure that inmates placed to keep separate status do not come into contact with other inmates who may wish to retaliate against them for some previous act or occurrence. Assigning certain inmates to keep separate status contributes to the safety of these inmates, to the maintenance of security and enhances the orderly operation of a correctional facility.

Economic Impact

The proposed amendments and new rules will have no economic impact because additional financial resources will not be required to implement or maintain these amendments or new rules. The proposed rules do not require additional facilities or staffing to implement.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these amendments and new rules do not impose reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rules impact on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed rules at N.J.A.C. 10A:3-2 establish the policies and procedures regarding the transportation of inmates outside the correctional facility and from one jurisdiction to another.

7. Establish procedures for placing inmates in and removing inmates from keep separate status.

10A:3-1.2 Scope

(a) Subchapters 2, 3, 5, 6 and 7 shall be applicable to the Division of Adult Institutions and the Division of Juvenile Services.

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

10A:3-1.3 Definitions

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

“Keep separate status” means the intentional assignment of certain inmates to different correctional facilities or different units within a correctional facility so as to maintain a separation between these inmates in order to prevent the possibility of retaliation because of a previous act or occurrence.

10A:3-1.4 Forms

(a) The following forms related to Security and Control shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

- 173-1 Placement In Keep Separate Status
- 173-11 Removal From Keep Separate Status

(b) (No change.)

SUBCHAPTER 2. [(RESERVED)] KEEP SEPARATE STATUS

10A:3-2.1 Recommending placement of an inmate in keep separate status

(a) Any staff person may recommend that an inmate be placed in keep separate status.

(b) The staff person recommending that an inmate be placed in keep separate status shall complete the recommendation section of Form 173-3, PLACEMENT IN KEEP SEPARATE STATUS, and submit Form 173-1 to the Superintendent giving the reason(s) for the recommendation.

(c) The Superintendent may order an immediate Internal Affairs investigation and written report to determine whether the information received is accurate and placement of the inmate in keep separate status is warranted.

10A:3-2.2 Authorization of placement of inmate in keep separate status

(a) The Superintendent shall authorize the placement of an inmate in keep separate status in instances when the Superintendent determines that such placement is warranted for the maintenance of security and the orderly operation of the correctional facility.

(b) If the Superintendent authorizes that an inmate be placed in keep separate status, the completed Form 173-1, along with the supporting documents shall be forwarded to:

1. The Senior Classification Officer to be filed in the inmate’s classification folder; and
2. The correctional facility housing the other inmate(s) involved in this assignment of keep separate status.

(c) A “Keep Separate” notation should be prominently placed in the inmate’s disciplinary, assignment and transfer notes.

10A:3-2.3 Recommending removal from keep separate status

(a) Any staff person may recommend that an inmate be removed from keep separate status.

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 383)
INSURANCE

DIVISION OF FRAUD

Reductions in Premium Charges for Private Passenger Automobiles Equipped with Anti-Theft and Safety Features


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

Authority: N.J.S.A. 17:1-8, 17:1C-6e, and 17:33B-44.


Submit comments by March 21, 1991 to:

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

The agency proposal follows:

Summary

In accordance with Section 53 of the Fair Automobile Insurance Reform Act, P.L. 1990, c.8 (hereinafter, N.J.S.A. 17:33B-44), the Commissioner of Insurance is authorized to order reductions in the base rates of physical damage coverages for private passenger automobiles which are equipped with anti-theft devices and safety features. The following proposed new rules are an exercise of the authority provided by N.J.S.A. 17:33B-44.

The proposed new rules establish the reductions to be provided for the various types of devices, and describe which devices qualify for a base rate reduction. Anti-theft devices have been divided into four categories, with progressively greater percentages in base rate reductions assigned to those categories of devices considered to be more effective in deterring theft, and/or facilitating recovery. Safety features, at this time, are fewer and less varied, and therefore have not been comprehensively categorized and detailed.

The proposed new rules provide that automobile insurers may require reasonable proof that a device or feature is actually in use on the insured automobile. Under the proposed new rules inspection of the automobile in accordance with N.J.A.C. 11:3-36 is considerable reasonable proof. N.J.A.C. 11:3-39.1 sets forth the purpose of the subchapter. N.J.A.C. 11:3-39.2 sets forth the scope of the subchapter. This subchapter applies to all insurers and to all policies which include provisions for collision and comprehensive and/or fire and theft coverages regardless of the type of private passenger vehicle, or the primary driver of that vehicle.

N.J.A.C. 11:3-39.3 defines certain terms used in the subchapter.

Full text of the proposed new rules follows:

SUBCHAPTER 39. REDUCTIONS IN PREMIUM CHARGES FOR PRIVATE PASSENGER AUTOMOBILES EQUIPPED WITH ANTI-THEFT AND SAFETY FEATURES

11:3-39.1 Purpose

The purpose of this subchapter is to encourage consumers to invest in and use anti-theft devices and safety features in private passenger automobiles by providing that there shall be a reduction in the base rates applicable to automobile physical damage coverage, in accordance with N.J.S.A. 17:33B-44, for those private passenger automobiles equipped with anti-theft devices and safety features.

11:3-39.2 Scope

(a) This subchapter shall apply to all insurers which write private passenger automobile insurance in this State.

(b) This subchapter shall apply to all policies which include provisions for physical damage coverage and which are issued or renewed on or after the operative date of this subchapter.

(CITE 23 N.J.R. 384)
11:3-29.3 Definitions

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

“Alarm” means a device which emits sounds audible at 300 feet or more, such as a horn, bell or siren, but does not include those sounds that reasonably may be confused with police or emergency vehicle sirens.

“Automobile physical damage insurance” means a policy providing one or more of the following coverages:
1. Collision;
2. Comprehensive; and
3. Fire and theft.

“Electronic lock or keyless lock device” means an electronic coding device possessing 10,000 possible combinations or more, which may be unlocked by use of a keyboard or similar data entry device or by means of a remote control device.

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

“Insured” means the named insured, as defined in the policy, or an applicant for automobile physical damage insurance.

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

“Nonpassive” means a device or system designed to remain inoperative and nonfunctional until actively engaged by the user.

“Passive” means a device or system designed to become automatically operative and functional when the automobile’s ignition key is moved or stationed in the off position.


“Tubular lock” means a lock which may be opened by a specific cylindrically shaped key and which possesses at least 50,000 possible combinations.

11:3-39.4 Reductions in rates for anti-theft devices

(a) Every insurer writing automobile physical damage insurance shall provide a reduction in the base rates of its comprehensive and fire and theft coverages, as described at N.J.A.C. 11:3-39.5. The reductions in the base rates shall be as follows:
1. At least five percent for devices which qualify as Category I anti-theft devices;
2. At least ten percent for devices which qualify as Category II anti-theft devices;
3. At least twenty percent for devices which qualify as Category III anti-theft devices; and
4. At least twenty-five percent for devices which qualify as Category IV anti-theft devices.

(b) Insurers are not required to provide greater or additional reductions in the base rates of the comprehensive and fire and theft coverages when a private passenger automobile is equipped with more than one qualified anti-theft devices, except as follows:
1. The greater category reduction shall apply when a private passenger automobile is equipped with two or more anti-theft devices qualifying from two or more categories.
2. A private passenger automobile equipped with a Category III anti-theft device and a Category IV anti-theft device in combination shall receive a reduction of at least thirty percent, (b) above notwithstanding.

(c) An insurer may require reasonable proof that a private passenger vehicle is equipped with or has been installed with a device which qualifies as a Category I, II, III, or IV anti-theft device, or a combination of such categories, before providing any reduction in the base rates for comprehensive and fire and theft coverages for that private passenger automobile.

1. An inspection for the issuance or renewal of physical damage coverages, as set forth at N.J.A.C. 11:3-36, shall be considered reasonable proof.

2. Insurers shall not refuse to provide a reduction for a private passenger automobile in which a qualifying anti-theft device has been installed solely on the grounds that the device was installed by the owner of the private passenger automobile.

(d) Insurers may elect not to provide a reduction for a private passenger automobile in which an anti-theft device has been installed for a period of up to 24 months following installation of the device, if the device is provided to the insured by the insurer without charge or at a below retail market price, where the reduction in price is equivalent to the reduced premium charges which would otherwise apply.

(e) If an insurer provides an insured with an anti-theft device pursuant to (d) above, and the insured terminates the automobile insurance policy, or elects not to renew such insurance with the insurer, prior to the end of the 24 month period, the insurer may demand payment for the cost of the anti-theft device provided.

11:3-39.5 Categories of anti-theft devices

(a) A device qualifies as a Category I anti-theft device if it meets the requirements of one of the devices listed below:
1. An ignition or starter cut-off switch device is qualified if a warning label announces the presence of the device, and the device is designed so that the cut-off switch:
   i. Is wired into the ignition’s wiring;
   ii. Is tripped and activated upon exiting of the automobile;
   iii. Shall be re-set in order to start the automobile; and
   iv. Is installed so as not to be visible from the driver’s normal seating position.
2. A nonpassive, externally operated alarm is qualified if a warning label announces the presence of the device, and the device is designed so that the alarm is:
   i. Turned off and on by a key used in an externally mounted lock; and
   ii. Triggered by the opening of a door, the trunk or hood, when engaged.
3. A steering column armored collar is qualified if a warning label announces the presence of the device, and the device is designed so that the collar:
   i. Clamps onto the steering column, over the ignition lock;
   ii. Prevents access to the ignition lock;
   iii. Prevents the automobile from being steered, if the automobile is started; and
   iv. Is in no manner attached to the steering column when the device is not in use.
(b) A device qualifies as a Category II anti-theft device if it meets the requirements of one of the devices listed below:
1. A nonpassive fuel cut-off device is qualified if a warning label announces the presence of the device, and the device is designed so that the device:
   i. Shall be activated and deactivated by a switch or key, which is hidden from normal view; and
   ii. Blocks the fuel line, when activated.
2. A nonpassive steering wheel lock device is qualified if a warning label announces the presence of the device, and the device is designed so that:
   i. A steel collar and barrel, into which the shackle of a lock fits, are permanently attached to the steering column;
   ii. The shackle fits over the steering wheel spoke and into the barrel of the collar;
   iii. A tubular key must be used to operate the lock;
   iv. When in use, the steering wheel is prevented from turning;
   v. The shackle is made of case hardened alloy steel; and
   vi. The shackle, collar and barrel resist cutting by a file.
3. An armored cable hood lock and ignition cut-off switch is qualified if the device is designed so that:
   (b) Is wired into the ignition’s wiring;
   (2) Is tripped and activated by exiting of the automobile;
   (3) Shall be re-set in order to start the automobile; and
   (4) Is installed so as not to be visible from the driver’s normal seating position;
   ii. The armored cable hood lock:

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 385)
(1) Shall be engaged and disengaged by a push button or such similar device installed within the driver's reach when the driver is seated;
(2) Shall extend through the firewall and be secured so as to prevent retraction; and
(3) Must be of a material similar to that used in outdoor telephone booths.

4. An emergency hand brake lock is qualified if the device is designed so that:
   i. A lock replaces the hand brake grip and is permanently attached to the hand brake lever;
   ii. The lock is only released by entering a preset digital combination;
   iii. The lock encasement is of all metal construction; and
   iv. The hand brake cannot be released without releasing the lock. (c) A device qualifies as a Category III anti-theft device if it meets the requirements of one of the devices listed below.
   i. A passive alarm system is qualified if a warning label announces the presence of the system, and the system is designed so that:
      i. The alarm is triggered by entry of the automobile's doors, hood or trunk;
      ii. The alarm sounds for not more than eight minutes and is automatically re-set upon its cessation from sounding;
      iii. The alarm is installed in the engine compartment so as to be inaccessible without opening the hood;
      iv. The hood shall not open unless unlocked from within the automobile by a key or a keyless device;
      v. The ignition or starter shall be cut-off or disabled automatically upon triggering of the alarm; and
      vi. The system shall be disengaged by use of a tubular lock or an electronic keyless device.
      (1) Shall be engaged and disengaged by a push button or such similar device installed within the driver's reach when the driver is seated;
      (2) Shall extend through the firewall and be secured so as to prevent retraction; and
      (3) Must be of a material similar to that used in outdoor telephone booths.
      iv. The control module, if separate from the electronic lockin mechanism, shall be hidden in the engine compartment or other part of the automobile, so that the control module is not easily detectable and
      v. The automobile cannot be started unless the device is deactivated through a locking system installed within the interior of the vehicle. The locking system shall be accessible to the driver in normal seating position. The lock may be either of a tubular type or a system which uses an electronic keyless device.

5. A passive time delay ignition system is qualified if a warning label announces the presence of the system, and the system is designed so that:
   i. The system allows the automobile to be started only if the operator waits a prescribed time period before moving the ignition key from on to start;
   ii. The prescribed time period varies from one system to another in a range of three seconds to 20 seconds;
   iii. The system requires an additional waiting period of at least 90 seconds before the operator may try to start the automobile again with success;
   iv. The system includes a hood lock which is operated by a tubular key; and
   v. The system shall resist tampering.

6. An armored cable or electronically operated hood lock and ignition cut-off switch system is a qualified system if a warning label announces the presence of the system, and the system is designed so that:
   i. When engaged, the ignition cannot be started, or is cut-off;
   ii. When an armored cable hood lock is used:
      (1) The cable shall be made of case-hardened solid steel tubing which resists cutting;
      (2) The cable shall extend through the firewall and be secured so as to prevent retraction;
      (3) No portion of the cable may be accessible so as to be graspable from beneath the automobile, and if accessible through the grill work the armor shall extend to the hood locking mechanism; and
      (4) The system shall be engaged by a push button within the automobile's interior, or a similar device, which is installed so as to be readily accessible to the driver in normal seating position;
   iii. When an electronically operated hood lock is used:
      (1) The hood lock is electronically operated and functions so as to remain locked even when wiring which operates the hood is cut;
      (2) The hood lock, if accessible through the grill work, or from beneath the car, shall be shielded or armored to prevent manual operation;
      (3) The system shall be passively engaged by turning the ignition key to the off position; and
      (4) The system shall be disengaged through use of a separate key and lock, or an electronic keyless device; and
      iv. The locks controlling the hood lock systems shall be either of the tubular type or be operated electronically.

7. A passive delayed ignition cut-off system is qualified if a warning label announces the presence of the system and the system is designed so that:
   i. The ignition circuit is interrupted automatically when the engine reaches a pre-set speed, unless the system is actively disengaged;
   ii. The speed is pre-set in a range between 1500 and 2000 revolutions per minute (RPM);
   iii. The system is engaged when the ignition is turned off;
iv. The system may be disengaged by a push button or other specific device within the interior of the vehicle, but shall be hidden from view;

v. The system may be disengaged by use of either a lock of the tubular type or an electronic keyless device;

vi. Wiring shall blend with factory wiring, if placed under the dash;

vii. An alarm shall sound when the ignition is disabled; and

viii. If an override switch is provided, the switch shall be hidden from view, and work in conjunction with an alarm that sounds continuously while the engine is running.

8. A passive ignition lock protection system is qualified if a warning label announces the system, and the system is designed so that:
   i. A case-hardened steel protective cap fits over the ignition;
   ii. The cap fastens to a steel collar fitted around the steering column and over the ignition lock; and
   iii. The cap contains a slotted opening through which the ignition key fits and is operable.

9. A high security replacement lock device is qualified if a warning label announces the device, and the device is designed so that it is a case-hardened steering column ignition lock conforming to the National Highway Traffic and Safety Association's Standard No. 114-1, incorporated herein by reference. A copy of Standard No. 114-1 may be obtained by writing:
   National Highway Traffic and Safety Association
   Docket Room
   NAD-52
   400 Seventh Street, S.W.
   Washington, D.C. 20590

10. A hydraulic brake lock device is qualified if a warning label announces the presence of the device and the device is designed so that:
   i. The device is mounted on the dash;
   ii. When activated and pressurized with the brake pedal, hydraulic pressure is maintained on the brakes at two or more of the automobile's wheels;
   iii. The device has a high security locking system with at least 50,000 combinations; and
   iv. The lock is such that it cannot be pulled using a conventional slide hammer or lock puller equipment.

11. A window etching vehicle identification system is qualified if a warning label announces the presence of the system, and the system is designed so that:
   i. A specific, identifiable set of numbers is permanently etched into all primary window glass areas, either by sandblasting or a chemical process;
   ii. The set of numbers must be traceable to the automobile's registered owner; and
   iii. Immediate telephonic notification or identification of the registrant must be available 24 hours a day, seven days per week.

(d) A device or system qualifies as a Category IV anti-theft device if it meets the following requirements:
1. The device or system is activated or initiated when an automobile is stolen;
2. Information concerning the automobile must be transmittable to the police in the jurisdiction where the automobile was stolen; and
3. The system shall be designed so that upon recovery, information concerning the automobile's location may be transmitted to the proper authorities and/or automobile's owner and insurer.

(e) All warning labels announcing the presence of an anti-theft device or system shall be located so as to be visible from the automobile's exterior, preferably on the forward passenger and driver's side door windows.

11:3-39.6 Reductions in rates for safety features

(a) Every insurer writing automobile physical damage insurance shall provide a reduction in the base rates of its collision damage coverage for all private passenger automobiles equipped with one or more safety features. Reductions in the base rates shall be as follows:
1. At least five percent for a private passenger automobile equipped with one safety feature;
2. An additional 2.5 percent reduction shall be provided for each additional safety feature with which the automobile is equipped; and
3. No insurer shall be required to provide more than a 10 percent total reduction for safety features, (a)(2) above notwithstanding.

(b) Insurers shall develop a list of features which will qualify as collision damage safety features. This list may include features which are standard features for some private passenger automobiles, but which are options or not available for other private passenger automobiles. This list shall include:
1. Anti-lock braking systems;
2. Traction control systems; and
3. Five-mile-per-hour bumpers.

(c) An insurer may require reasonable proof that a private passenger automobile is equipped with a safety feature before providing any reduction in the base rates for collision damage coverage for private passenger automobiles. An inspection for the issuance or renewal of physical damage coverages, as set forth at N.J.A.C. 11:3-36, shall be considered reasonable proof.

11:3-39.7 Penalties
Any insurer which fails to comply with the terms of this subchapter shall be in violation of this subchapter, and subject to the assessment of any and all penalties in accordance with the laws of this State.

11:3-39.8 Severability
If any provision of this subchapter or application thereof to any person or circumstances is held invalid, the remainder of the subchapter and application of such provisions to other persons or circumstances shall not be affected thereby.

LAW AND PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES

Private Inspection Center Licensing


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

Submit written comments by March 21, 1991 to:
Col. Clinton L. Pagano, Director
Division of Motor Vehicles
25 South Montgomery Street, 7th Floor
Trenton, NJ 08666

The agency proposal follows:

Summary
The proposed new rule provides that notwithstanding any other provision of N.J.A.C. 13:20 to the contrary, no initial private inspection center (hereinafter "PIC") license authorizing such licensee to initially inspect and reinspect motor vehicles in this State pursuant to N.J.S.A. 39:8-1 et seq. shall be issued by the Division of Motor Vehicles to any person or business applying for same more than 10 days after the effective date of the rule, with one exception. The exception to the foregoing is that an initial PIC license may be issued by the Division of Motor Vehicles to a person or business applying for same more than 10 days after the effective date of the rule if the applicant is seeking such licensure for a business which it has purchased which was licensed as a private inspection center on the date of such purchase, provided: the applicant meets all applicable legal requirements for such licensure; the application for such licensure is submitted to the Division of Motor Vehicles not more than 30 days after the date of purchase; the existing private inspection center license is not to be relocated by the seller to another location pursuant to subsection (b) of the proposed new rule; and the purchase included the real estate or leasehold interest of the existing licensee or the applicant who has entered into a lease with the owner of the real estate on which the seller conducted business. The rule also contains language specifying that nothing in the rule is intended to restrict or in any way affect the application for renewal of a private inspection center license by a person or business, or the issuance of such renewal licenses by the Division of Motor Vehicles, or the relocation of a licensed private inspection center, or the
The proposed new rule will have a slight negative economic impact upon the State to the extent that because the Division now proposes (subject to the previously mentioned exception) to limit the number of private inspection centers which may be licensed to those which are currently licensed or who have applied for such license not more than 10 days after the effective date of the proposed new rule, the number of initial applicants for such initial licensure will decrease, thereby resulting in fewer $25.00 application fees for such licenses being collected by the Division pursuant to N.J.S.A. 39:8-16 to be remitted to the General Treasury. That portion of the public desiring to utilize a PIC rather than a State operated inspection station will not be limited to any appreciable degree since there are approximately 4,000 currently licensed PICs as well as those entities applying for such initial license not more than 10 days after the effective date of the proposed new rule.

STATE BOARD OF PHYSICAL THERAPY

Fees

Proposed Amendment: N.J.A.C. 13:39A-1.4


Submit written comments by March 21, 1991 to: Patricia E. Stuart, Executive Director State Board of Physical Therapy 1207 Raymond Boulevard Newark, NJ 07102

The agency proposal follows:

Summary

In order to cover increased investigative, examination and program costs associated with the administration of the New Jersey Board of Physical Therapy, the Board is proposing to increase a group of fees listed in its current schedule. Examination fees for physical therapists will rise to $25.00 from the present $125.00, and for physical therapist assistants to $160.00 from the present $110.00. The initial licensure fee for both types of licensees is increased to $150.00 from $100.00. The fee for a temporary license for certain purposes (assistance in a medical emergency

(CITE 23 N.J.R. 388) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
The proposed increases, which will affect all current and potential licensees of the Board of Physical Therapy, are necessary for the Board to continue to protect the public health, safety and welfare by ensuring professional competence and the maintenance of high standards in the practice of physical therapy.

Social Impact

The proposed amendment will increase all except three categories of fees charged by the Board. The economic impact of the amendment will be felt directly by its licensees; however, the Board has a statutory duty to cover its expenses. The increases have been calculated not to exceed the amount necessary to fund the Board’s administration. The Board believes that the increased fees are not burdensome and that they will not result in higher charges to patients.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 12:14B-16 et seq., physical therapists are deemed “small businesses” within the meaning of the statute, the following statement is applicable:

The proposed amendment, which constitutes a general increase in the Board’s fee schedule, is needed in order to avoid operating at a loss. It does not involve any reporting or recordkeeping nor do they necessitate the retention of professional services for compliance. As a business expense, the proposed fees will have minimal effect on licensees, and since they have been set at the lowest amount that will cover the Board’s operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

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

13:39A-1.4 Fees and charges
(a) The following fees shall be charged by the New Jersey State Board of Physical Therapy:

1. Examination fee for Physical Therapist (includes temporary license) $125.00 $185.00
2. Examination fee for Physical Therapist Assistant (includes temporary license) $110.00 $160.00
3. Initial licensure fee for Physical Therapist and Physical Therapist Assistant $100.00 $150.00
4. Fee for issuance of a temporary license pursuant to N.J.S.A. 45:9-37.29(b) to practice on a temporary basis to assist in a medical emergency or to engage in a special project or teaching assignment $60.00 $90.00
5. Biennial renewal licensure fee for Physical Therapist and Physical Therapist Assistant $60.00 $90.00
6. Restoration charge for lapsed license $60.00 $90.00
7. Provision of duplicate license or wall certificate $10.00
8. Provision of certification of eligibility for examination (persons not yet seeking the issuance of a temporary license) or certification of licensure status $25.00
9. Recordation of name change and issuance of replacement license and wall certificate $25.00

STATE BOARD OF CHIROPRACTIC EXAMINERS

Advertising


Authorized By: The State Board of Chiropractic Examiners, Charles Bender, D.C., President.
Authority: N.J.S.A. 45:9-41.23(h).

Submit written comments by March 21, 1991 to: Jay Church, Executive Director State Board of Chiropractic Examiners 1207 Raymond Boulevard Newark, NJ 07102

The agency proposal follows:

Summary

The newly created State Board of Chiropractic Examiners is proposing a new rule, N.J.A.C. 13:44E-2.1, in order to set forth specific standards which will govern and define advertising conduct. The rule is intended to provide licensees with a framework within which to clearly and accurately advertise their services to the public.

The proposed rule provides examples of advertising conduct deemed to be professional misconduct and specifically prohibits uninvited, in-person solicitation of potential patients who, because of their particular circumstances, are vulnerable to undue influence. The rule also requires that references to a fee must be limited to references to a fixed or a stated range of fees for a specifically described professional service and must include all relevant variables; no additional charges may be made for an advertised service unless the advertisement includes a disclaimer that additional charges may be incurred for related services which may be required in individual cases. The rule also sets forth provisions regarding offers of discounts, fee reductions or free services, testimonials and the required content of the advertisement. Under the rule, licensees must keep copies of advertisements for three years and may be required to provide to the Board factual substantiation of the truthfulness of any objective assertion or representation set forth in the advertisement. Video or audio tapes of advertisements must be retained and made available to the Board for review upon request.

The Board has made every effort in this proposal to carefully balance the chiropractor’s right to advertise truthful information with the Board’s duty and responsibility to protect the public from advertising which may be misleading or deceptive.

Social Impact

Under the Chiropractic Board Act of 1989, N.J.S.A. 45:9-41.17 et seq., the State Board of Chiropractic Examiners is charged with the duty of ensuring standards of competency and integrity of the profession and preventing unsafe, fraudulent or deceptive practices. The proposed new rule, which provides a comprehensive scheme for the regulation of advertising by chiropractic licensees, will aid the Board in fulfilling its duties under the Act.

The proposed new rule will have a beneficial impact on the public by improving the quality of information available about a practicing chiropractor’s services and expertise in order to better enable the consumer to make an informed choice from among those offering chiropractic services. In addition, the rule mitigates against overzealous or deceptive solicitation of potential patients by prohibiting any guarantee that services rendered will result in a cure and by limiting testimonials to matters which the commenter is competent to assess. An additional safeguard provided to the public is the requirement that all advertisements, including video or audio tapes of every advertisement communicated by electronic media, must be retained for Board review to determine the propriety of the content.

Finally, the specificity of the rule will benefit Board licensees by eliminating any uncertainty with regard to proper advertising practices, thereby enabling licensees to provide clear and accurate advertising services to the public.

Economic Impact

The proposed new rule should have a favorable economic impact upon the consumer. The requirement that advertising setting forth a fee for a specifically described professional service be limited to that which contains a fixed or stated range of fees and that all variables be disclosed
The term "advertisement" shall refer to the attempt, directly or indirectly by publication, dissemination, solicitation, endorsement or circulation in print or electronic media or in any other way, to attract directly or indirectly any person to enter into an express or implied agreement to accept chiropractic services or treatment or goods related thereto.

The term "routine professional service" shall refer to a service which the advertising licensee, professional association or institution providing chiropractic care routinely performs.

The term "print media" shall refer to newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, fliers or other publications, the content of which is disseminated by means of the printed word.

The term "electronic media" shall include, but not be limited to, radio, television, telephone, facsimile machine, and computer.

The term "range of fees" shall refer to an expressly stated upper and lower limit on the fee charged for a professional service.

A licensed chiropractor who is actively engaged in the practice of chiropractic in the State of New Jersey may provide information to the public by advertising in print or electronic media.

A licensee who engages in the use of advertising which contains the following shall be deemed to be engaged in professional misconduct:

1. Any statement, claim, or format which is false, fraudulent, misleading or deceptive;
2. Claims that the professional service performed or the material used are superior to that which is ordinarily performed or used unless such claims can be substantiated by the licensee;
3. Promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform;
4. Techniques of communication which appear to intimidate, exhaust undue pressure or undue influence over a prospective patient;
5. The communication of personally identifiable facts, data, or information about a patient without the patient's signed written permission obtained in advance;
6. The use of any misrepresentation;
7. The suppression, omission or concealment of any material fact under circumstances which a Board licensee knows or should know that the omission is improper or prohibits a prospective patient from making a full and informed judgment on the basis of the information set forth in the advertisement;
8. Any print, language or format which directly or indirectly obscures a material fact;
9. Any guarantee that services rendered will result in a cure; or
10. Any violations of (d) through (m) below.

(d) The Board may require a licensee to provide factual substantiation of the truthfulness of any objective assertion or representation set forth in an advertisement.

(e) A Board licensee shall not engage directly or indirectly in any solicitation of actual or potential patients who because of their particular circumstances, are vulnerable to undue influence. This subsection shall not prohibit the offering of service by a Board licensee to any bona fide representative of prospective patients including, but not limited to, employers, labor union representatives, or insurance carriers.

(f) Advertising making reference to or setting forth a fee shall be limited to that which contains a fixed or a stated range of fees for a specifically described professional service or class of services. Any licensee who advertises shall disclose all the relevant variables and considerations which are ordinarily included in such a service so that the fees will not be misunderstood. In the absence of such a disclosure, the stated fees shall be presumed to include everything ordinarily required for such a service. No additional charges shall be made for an advertised service unless the advertisement includes the following disclaimer:

"Additional charges may be incurred for related services which may be required in individual cases." The disclaimer cannot be used for treatment where related services are ordinarily required.

1. In any advertisement in which examination fees are set forth the cost of x-rays shall also be set forth along with the disclosure "if needed."

(g) Offers of discounts or fee reductions or free services shall indicate the advertiser's fixed or stated range of fees against which said discount is to be made and/or the value of the free services. Any service for which there is routinely or ordinarily no charge shall not be advertised as "free."

1. The fixed or stated range of fees or value of free services shall mean and be established on the basis of the advertiser's most commonly charged fee for the stated service within the most recent 60 days prior to, or to be charged in the first 60 days following, the effective date of the advertisement.

2. Offers of across-the-board discounts shall include a representative list of services and the fixed or stated range of fees against which discounts are to be made for these services. The list shall include a sampling of the advertiser's most frequently performed services.

3. "Across-the-board discounts" shall mean the offer of a specific discount on an undefined class of services or the offer of a specific discount to a defined class of patients. For example, "15% discount during April on all chiropractic services" or "15% discount to senior citizens on all chiropractic services."

(CITE 23 N.J.R. 390)
Records

Graph labels. All of which records must be maintained for at least seven years from the date of the last entry. Provisions for the release of records to the patient or another designated health care provider and the circumstances under which the licensee may refuse to release the record to the patient are set forth in subsection (d). The rule makes clear that a failure to release the record because of nonpayment of fees is professionally unacceptable when there is a medical need for the record. Subsection (e) sets forth the general rule that all patient records must be protected from unwarranted disclosure and details three exceptions to this general rule. The provisions of subsection (f) concern the licensee's obligations when a third party has requested examination or evaluation of a person for a purpose unrelated to treatment. The final subsection of the rule, subsection (g), specifies the procedure for the care of patient records in the event a licensee must be presumed to have approved and shall be personally responsible for the form and contents of an advertisement which contains the licensee's name, office address, or telephone number. A licensee who employs or allows another to employ for his or her benefit an intermediary source or other agent in the course of advertising shall be personally responsible for the form and contents of said advertisement.

(j) A licensee shall be presumed to have approved and shall be personally responsible for the form and contents of an advertisement which contains the licensee's name, office address, or telephone number. A licensee who employs or allows another to employ for his or her benefit an intermediary source or other agent in the course of advertising shall be personally responsible for the form and contents of said advertisement.

(k) A video or audio tape of every advertisement communicated by electronic media shall be retained by the licensee and made available for review upon request by the board or its designee.

(l) A licensee shall be required to keep a copy of all advertisements for a period of three years. All advertisements in the licensee's possession shall indicate the accurate date and place of publication.

STATE BOARD OF CHIROPRACTIC EXAMINERS

Patient Records

Proposed New Rule: N.J.A.C. 13:44E-2.2

Authorized By: The State Board of Chiropractic Examiners,
Charles Bender, D.C., President.
Authority: N.J.S.A. 45:9-41.23(h).
Submit written comments by March 21, 1991 to:
Jay Church, Executive Director
State Board of Chiropractic Examiners
1207 Raymond Boulevard
Newark, NJ 07102

The agency proposal follows:

Summary

In its ongoing effort to establish a detailed regulatory scheme in order to fulfill its duties under the Chiropractic Board Act, N.J.S.A. 45:9-41.17 et seq., the State Board of Chiropractic Examiners is proposing a new rule, N.J.A.C. 13:44E-2.2, Patient records. The rule is intended to provide Board licensees with minimum requirements for the creation, maintenance and transfer of patient records and to create uniformity in the profession with regard to recordkeeping.

Subsections (a), (b) and (c) set forth in specific detail the information required to appear on treatment records, bills, claim forms and radiograph labels, all of which records must be maintained for at least seven years from the date of the last entry. Provisions for the release of records
Full text of the proposed new rule follows:

13:44E-2.2 Patient records

(a) A contemporaneous, permanent patient record shall be prepared and maintained by a licensee for each person seeking chiropractic services, regardless of whether any treatment is actually rendered or whether any fee is charged. Licensees shall also maintain records relating to billings made to patients and third party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment or services rendered. Such records shall include, as a minimum:

1. The name, address, and date of birth of the patient and, if a minor, the name of the parent or guardian;
2. The patient complaint/rationale for visit;
3. A pertinent case history;
4. Findings on appropriate examination;
5. Diagnosis/analysis;
6. A treatment plan;
7. Any orders for tests or consultations and the results thereof;
8. The dates of each patient visit;
9. A description of treatment or services rendered at each visit together with the name of the licensee or other person rendering the treatment;
10. Notation of significant changes in patient's condition and/or significant changes in treatment plan;
11. Periodic notation of patient status regardless of whether significant changes have occurred; and
12. The amount billed and received on patient's account.

(b) Patient records, including all radiographs and other diagnostic findings, shall be maintained for at least seven years from the date of the last entry.

(c) All radiographs shall be labeled, as a minimum, with the following identifying information:
1. The name of patient;
2. The date of radiograph;
3. The age of patient and/or date of birth;
4. The name of facility; and
5. Right or left identity.

(d) Licensees shall provide access to patient records to the patient or the patient's authorized representative in accordance with the following:
1. Upon receipt of a written request from a patient or an authorized representative and within 30 days thereof, legible copies of the patient record including, if requested, copies of radiographs, shall be furnished to the patient or another designated health care professional.
2. The licensee may elect to provide a summary of the record, as long as that summary adequately reflects the patient's history and treatment, where the written request comes from an insurance carrier or its agent with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement.
3. A licensee shall provide copies of records in a timely manner to a patient or another designated health care provider where the patient's continued care is contingent upon their receipt. The licensee shall not refuse to provide a patient record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.
4. If, in the exercise of professional judgment, a licensee has reason to believe that the patient may be harmed by release of the subjective information contained in the patient record or a summary thereof, the licensee may refuse to provide such information. That record or the summary, with an accompanying notice setting forth the reasons for the original refusal, shall nevertheless be provided upon request of and directly to:
   1. The patient's attorney;
   2. Another licensed health care professional; or
   3. The patient's health insurance carrier.
5. The licensee may charge a reasonable fee for the reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the cost of copying or transcription.

(e) Licensees shall maintain the confidentiality of patient records except that:
1. The licensee shall release patient records as directed by a subpoena issued by the Board of Chiropractic Examiners or the Office of the Attorney General, or by a Demand for Statement in Writing under Oath, pursuant to N.J.S.A. 45:1-18. Such records shall be originals, unless otherwise specified, and shall be unedited, with full patient names. To the extent that the record is illegible, the licensee upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the licensee shall also provide a translation. All radiographs and reports maintained by the licensee, including those prepared by other health care professional shall also be provided.
2. The licensee, in the exercise of professional judgment and in the best interests of the patient (even absent the patient's request), may release pertinent information about the patient's treatment to another licensed health care professional who is providing or who has been asked to provide treatment to the patient, or whose expertise may assist the licensee in his or her rendition of professional services.
3. The licensee, in the exercise of professional judgment, who has a good faith belief that the patient because of a mental or physical condition may pose an imminent danger to himself or herself or to others, may release pertinent information to law enforcement agency or other health care professional in order to minimize the threat of danger.

(f) Where a third party or entity has requested examination or an evaluation of a person for a purpose unrelated to treatment and where a report of the examination is to be supplied to the third party the licensee rendering these services shall prepare appropriate record and maintain their confidentiality, except to the extent provided by this section. The licensee's report to the third party relating to the patient shall be made part of the record. The licensee shall:
1. Assure that the scope of the report is consistent with the request to avoid the unnecessary disclosure of diagnoses or personal information which is not pertinent;
2. Forward the report to the individual entity making the request and in accordance with the terms of the patient's authorization; if no specific individual is identified, the report should be marked "Confidential"; and
3. Should the examination disclose abnormalities or condition not known to the patient, the licensee shall advise the patient to consult another health care professional for treatment.

(g) If a licensee ceases to engage in practice or it is anticipated that he or she will remain out of practice for more than three months the licensee or a designee shall:
1. Establish a procedure by which patients can obtain treatment records or acquireess in the transfer of those records to another licensee or health care professional who is assuming the responsibilities of that practice;
2. If the practice is unattended by another licensee, publish a notice of the cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the licensee's practice, at least once each month for the first three months after the cessation; and
3. File a notice of the established procedure for the retrieval of records with the Board of Chiropractic Examiners.

DIVISION OF MOTOR VEHICLES

Boating Regulations

Proposed Repeal and New Rule: N.J.A.C. 7:6-1.31
Proposed Amendments: N.J.A.C. 7:6-1.37, 1.42, 6.2, 6.3, 6.4

Authorized By: The Boating Regulation Commission, Robert J. De Tufo, Attorney General, Department of Law and Public Safety.

(CITE 23 N.J.R. 392)


Submit written comments by March 21, 1991 to:
Captain James W. Momm
New Jersey State Police
Marine Law Enforcement Bureau
P.O. Box 7068
Trenton, New Jersey 08628-0068

he Agency proposal follows:

Summary

The New Jersey Boat Regulation Commission ("Commission") and the Department of Law and Public Safety ("Department") propose to amend "eer rules regarding the operation of boats on tidal and non-tidal waters of the State. Specifically, the agencies propose to amend the rules regarding speed of power vessels, waterskiing, diving and swimming, and noise on power vessels.

The proposed repeal and new rule at N.J.A.C. 7:6-1.31 regarding speed of power vessels requires that power vessels be operated at such a speed as to avoid injury not only to property but also to life or limb. The proposed new rule also specifically identifies those situations where power vessel operators are to reduce their speed to slow so as to avoid the possibility of damage to docks, piers, other moored vessels and the like caused by vessel wake. The proposed new rule will apply uniformly throughout the State and the distinction for allowable vessel noise levels based upon year of manufacture of the particular vessel’s engine, and instead, establish uniform maximum noise levels for power vessels.

The proposed amendment of N.J.A.C. 7:6-1.37, Waterskiing, reduces the minimum allowable length of waterskiing tow ropes from 50 feet to 5 feet for increased safety. In addition, the proposed amendment extends the definition of "waterskiing" to include the use of training buoys, recognition of the current allowable use of these devices on the waterways of the State. A new subsection is also being proposed which requires that a permit be obtained from the Marine Law Enforcement Bureau ("Bureau") for the use of a training boom for instruction in barefoot waterskiing. This permit will allow for such waterskiing only between sunset and sunrise and may be denied or cancelled by the Bureau for good cause stated.

The proposed amendment of N.J.A.C. 7:6-1.42 requires that boaters use the current allowable noise levels for operation in or upon the waters of this State of any vessel or watercraft capable of emitting noise totalling in excess of that new level. In addition, the agencies propose to delete the existing test method used for establishing noise level solutions by use of a sound level meter on a prescribed test course on the open water. Instead, a noise emissions test which facilitates at-the-dock testing is being proposed. The new test will be administered by use of a sound level meter which, among other things, is certified by the Department of Environmental Protection, Office of Noise Control with reference to standards of the New Jersey Office of Weights and Measures and the National Bureau of Standards or both, or competent authority designated by the Office of Noise Control. The test measurements will be made with the above-described meter at a distance of four feet above the water at a point where the transom gunwale and port or starboard gunwale intersect.

The proposed amendments also allow any marine police officer or other law enforcement officer certified by the Office of Noise Control, including those on the local level, who suspects that a vessel is exceeding the allowable noise limitation to require the vessel operator to submit a noise emissions test as described in the rule. Any failure to comply with directive to submit to a noise emissions test shall now be considered distinct offense and shall subject that person to prosecution under N.J.A.C. 7:6-6.4. In addition, the offending vessel operator shall be ordered to immediately return the vessel to its mooring and cease operations. The amendment removes the discretion formerly vested in law enforcement officers to simply order the operator of a vessel suspected of exceeding the noise level limits to cease operations and return the vessel to its mooring without prosecution under N.J.A.C. 7:6-6.4.

The proposed amendment also changes the time within which authorized race tests shall be conducted by limiting tests to the hours between 10:00 A.M. and sunset as opposed to a set hour of 6:00 P.M. This change is being made so that race tests will only be permissible during daylight hours for increased safety. The time distinction currently found in the rule for race tests conducted on the Navesink and Shrewsbury Rivers in Monmouth County is being deleted so that sunset, and the onset of darkness, will be the uniform end time for race tests throughout the State.

The proposed amendments to subchapter 6 also make numerous spelling and other technical changes in the text of the rules. Specifically, the definition of Department is changed from the Department of Environmental Protection to the Department of Law and Public Safety to reflect the transfer of responsibilities called for by the Legislature in N.J.S.A. 12:7A-29. Also, whenever in that subchapter reference is made to the N.J. Marine Police, the correct term—N.J. State Police Marine Bureau—has been substituted.

Social Impact

The proposed new rule and amendments will have a positive social impact on the people of the State by continuing and refining the State's regulation of boating activities and the enforcement of the regulations regarding those activities. In this way, boating on the waterways of New Jersey will be conducted in a safe manner, increasing the enjoyment of boating for all vessel operators while also protecting the health and property of all persons.

Economic Impact

The proposed new rule and majority of the proposed amendments will have little or no economic effect on the approximately 200,000 water vessels in the State since they require compliance with standards of operation that involve no additional equipment or other costs. However, the proposed changes to the rules regarding watercraft noise control may have a negative economic impact on vessels which presently operate with a measured level of noise abatement equipment because of the year of manufacture of the vessel's engine. In those cases, the operator may incur costs in order to check the vessel for compliance with the new noise emission limitation and may need to retrofit the vessel in order to achieve compliance with that limit.

Regulatory Flexibility Analysis

The proposed new rule and amendments will apply to water vessels in New Jersey. It is estimated that of the approximately 200,000 water vessels impacted by the rule, 5,000 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As described in the Economic Impact statement, above, some of these small businesses may incur costs associated with compliance with the proposed noise emissions limitation in the form of testing vessel engines for noise level production and possibly, retrofitting equipment so that the noise limit is not exceeded. It is unlikely that small businesses will need professional services such as accountants and attorneys to comply with these rules, but they may need the professional services of noise testing specialists and mechanics.

In developing the proposed new rule and amendments, the Commission and the Department have balanced the need to protect the public health and safety against the economic impact of the proposed new rule and amendments and have determined that to minimize the impact of the proposed new rule and amendments would endanger the public health and safety. Therefore, no exemption from coverage is provided.

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

7:6-1.31 Speed

[Taken from the preceding text; no changes made]

(a) No person shall operate a power vessel or allow a power vessel to be operated in a manner where the speed of the power vessel may cause danger of injury to life or limb or damage to property. The speed
of every power vessel shall be regulated so as to avoid the risk of damage or injury by any means, from the power vessel's wake.

(b) All power vessels shall reduce their speed to a slow speed when passing:
1. Any marina, pier, dock or wharf at a distance of 200 feet or less, except on Lake Hopatcong which shall be in accordance with N.J.A.C. 7:6-4.5;
2. Work barges or work floats while actually engaged in construction;
3. Through bridge spans;
4. Through lagoons, canals and confined areas of less than 200 feet in width;
5. Vessels not under command; or
6. Emergency vessels displaying sequential flashing or rotating blue lights.

(c) “Slow speed” as used in this section is defined as the speed at which a power vessel moves through the water and is able to maintain minimum headway in relation to the vessel or structure being passed.

(d) All power vessels, when moving through an area that has been marked a “Slow Speed/No Wake” area either by buoys or by signs with those words, shall move only at a no-wake speed. No vessel may be operated on plane or at other than minimum headway speed while in a “Slow Speed/No Wake” area. “No wake speed” as used in this subsection shall mean the speed at which a power vessel moves through the water while maintaining minimum headway and producing the minimum wake possible.

7:6-1.37 Water skiing
(a) All [operations] operators of power vessels towing ski or aquaplane riders while underway, must at all times keep at least 100 feet distant from any shore, wharf, pier, bridge structure, abutment or persons in the water. In passing another boat, the operator thereof must keep at least 100 feet [distance] distant from any other craft.
(b) and (c) [No change.]
(d) Tow lines shall not be less than [50] 35 feet nor more than 75 feet in length.
(e) Waterskiing [or], aquaplaning or towing of skiers or aquaplanes will be permitted only during the hours between sunrise and sunset.
(f) The ski boat shall contain at least one throwable personal flotation device [PFD].
(g) [No change.]
(h) The term “waterskiing” shall be defined as anything with a rider, being towed [behind] by a power vessel by means of a tow rope [or], tow line, or training boom except that another vessel being towed shall not be considered to be waterskiing.
(i) The use of a training boom for instruction in barefoot waterskiing may be allowed only by permit issued by the Marine Law Enforcement Bureau. The permit for the use of a barefoot waterskiing training boom shall only be issued for the time period between sunrise and sunset. Permits may be denied or cancelled by the Marine Law Enforcement Bureau for good cause.

7:6-1.42 Diving and swimming
(a) General provisions with respect to diving and swimming are as follows:
1. [No change.]
2. Any person while diving shall mark his or her position with a buoyed flag approved by the New Jersey Boat Regulation Commission:
   i. Such flag shall be displayed so that it is visible all round the horizon from a buoy, float, boat or other floating object;
   ii. [No change.]
   3-6. [No change.]
   (b)-(d) [No change.]

7:6-6.2 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:
“Department” means the Department of [Environmental Protection] Law and Public Safety, Division of State Police.

7:6-6.3 Noise limitation provisions
(a) [No vessel or watercraft capable of emitting noise totaling in excess of 86 dba measured at a distance of 50 feet from the vessel shall be operated upon the waters of this State. For vessels with engines manufactured on or after January 1, 1979, and before January 1, 1982, the noise level shall not exceed 84 dba measured at a distance of 50 feet from the vessel. For vessels with engines manufactured on or after January 1, 1982, the noise level shall not exceed 82 dba measured at a distance of 50 feet from the vessel. ] No person shall operate or give permission for the operation of any vessel or watercraft capable of emitting noise totaling in excess of 90 dba in or upon the waters of this State.
(b) Measurements shall be made by a sound level meter which satisfies ANSI-S1.4, type 2, or equivalent, and is certified by the Department of Environmental Protection, Office of Noise Control with reference, as applicable, to standards of the New Jersey Office of Weights and Measures or the National Bureau of Standards or both, or by other competent authority designated by the Office of Noise Control.
(c) [Measurements shall be made with the sound level meter at a distance of not less than 50 feet from the closest point of the boat's hull amidships. Any marine policeman or other law enforcement officer certified by the Office of Noise Control with a reason to suspect that a boat is exceeding the noise limitation may require the vessel operator to traverse a noise emission test course as set forth herein.] The noise emission test measurement shall be made with the sound level meter at a distance of not less than four feet above the water at a point where the transom gunwale and port or starboard gunwale intersects. The vessel being tested shall operate its engine at the lowest throttle setting in neutral gear. In the case of a vessel with multiple engines, said engines shall operate together at the lowest throttle setting in neutral gear. Personal watercraft, jet boats and all other vessels which have no neutral gear shall operate at the lowest throttle setting with minimum or no headway motion.
(d) Any marine police officer or other law enforcement officer certified by the Office of Noise Control with a reason to suspect that a vessel is exceeding the noise limitation may require the operator to submit to a noise emissions test as described in (b) and (c) above.
(e) Any person who fails to comply with the directive to traverse the test course submit to a noise emissions test shall be subject to prosecution [or, at the discretion of the law enforcement officer, such vessel or engine] under N.J.A.C. 7:6-6.4 and shall be ordered to immediately return the vessel to its mooring and cease operations.
(f) The noise emission test course shall consist of a straight course of approximately 100 yards long through which the vessel shall be operated at full throttle. The sound level meter shall be located a perpendicular distance of not less than the specified 50 feet from the approximate midpoint of the course. The ambient noise level shall be a factor in positioning the test course.
1. Any person operating any vessel or other watercraft found in violation of the established noise levels may be subject to prosecution by the Department.
2. The noise limitation provisions of this section shall not apply to vessels registered and actually participating in racing events or tune-up periods for such racing events, when authorized by the Department or by any other public authority with the Department's approval. Tune-up periods approved pursuant to this section shall be limited as follows:
   i. Before any race boat is tested, the driver shall secure a Race Test Permit from the N.J. [Marine Police] State Police Marin Bureau.

(CITE 23 N.J.R. 394) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Bureau of Traffic Engineering and Safety Programs

Proposed Readoption: N.J.A.C. 16:27


Proposal Number: PRN 1991-86.

Submit comments by March 21, 1991 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:27.

(b)

DIVISION OF BUILDING AND CONSTRUCTION COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

DIVISION OF DEVELOPMENT FOR SMALL BUSINESSES, AND WOMEN AND MINORITY BUSINESSES

Subcontracting Targets

Joint Proposed Amendment: N.J.A.C. 17:14-1.9 and 12A:10-2.9

Authorized By: Nathan Scovronick, Executive Director, Department of the Treasury, and George R. Zoffinger, Commissioner, Department of Commerce, Energy, and Economic Development.


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TREASURY-GENERAL

Submit comments by March 21, 1991 to:
Lana T. Sims, Senior Executive
Department of Treasury
State House, 1st Fl.
CN 002
Trenton, New Jersey 08625
Leland McGee, Director
Division of Development for Small Businesses
and Women and Minority Businesses
20 West State Street, 4th Fl.
CN 835
Trenton, New Jersey 08625

The joint agency proposal follows:

Summary

On October 13, 1989, the Department of the Treasury (Treasury) and the Department of Commerce, Energy and Economic Development (DOE) adopted new rules governing minority and female subcontractor participation in State construction contracts to establish a procedure to guarantee that State construction contractors engage in market outreach efforts and do not presently discriminate against minority and female businesses in the awarding of construction subcontracts. The rules provide that each construction contract will be reviewed and target levels set for female and minority utilization. The Departments of Treasury and Commerce are proposing to amend those rules to make more explicit the methodology to be used in setting target levels for minority and female subcontractors.

Social Impact

The amendments proposed at N.J.A.C. 17:14-1.9 and 12A:10-2.9 recognize the State's interest in eliminating unlawful discrimination based on race and gender and encouraging affirmative action in construction contracting. By making the target setting methodology more explicit, the State's contractors will have a greater understanding of the process, and contracting officials can achieve greater consistency in setting targets. The reduction of discrimination and the more systematic approach to setting targets are expected to have a positive social impact.

Economic Impact

The proposed amendments will help ensure equal opportunity for minority and female subcontractors in securing construction contracts. This will improve the growth potential of such firms thereby creating job opportunities and generating additional tax revenue.

Regulatory Flexibility Analysis

The proposed amendments do not impose any additional requirements on small businesses, but do delineate the method to be used by the Division of Building and Construction project architects, within the Department of Commerce, in setting target levels to be satisfied by bidders. Requirements are currently set on an individual basis by the project architects. The proposed amendments will make the requirements more explicit and consistent and will identify for the contractors, whether small businesses, the method to be used in setting target levels for minority and female owned business subcontracting.

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

17:14-1.9 (12A:10-2.9) Subcontracting targets
(a) The Division of Building and Construction or other State contracting agency, consistent with its statutory authority, in consultation with the Department of Commerce, shall set target levels for the participation of minority businesses and female businesses as subcontractors for each construction contract awarded through the public bidding process. These target levels shall be set on an individual basis for each construction contract and shall be based upon the number of registered minority and female businesses qualified to participate as subcontractors.

1. To compute the target levels, the project architect shall identify all subcontractable segments of the contract.
2. The availability of registered minority and female businesses qualified to perform each subcontractable segment shall then be determined.
3. Availability is to be characterized as either "high" or "low" based on an evaluation of the availability of qualified registered minority and female businesses to perform each subcontractable segment in relation to all other segments. Availability will be considered "high" only if there are at least three female and minority businesses. In making the availability determination, any geographical or capacity restrictions of the subcontractor and all other relevant factors may be considered.

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

TREASURY-TAXATION

DIVISION OF TAXATION

Sales and Use Tax

Coin-Operated Vending Machines

Proposed Amendments: N.J.A.C. 18:24-16.6, 16.7, 16.9 and 17.1 through 17.4

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation


Submit comments by March 21, 1991 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary


The proposal amends the vending machine rules in order to reflect the current tax rate (seven percent) and the substantive statutory change which includes sales of cigarettes as taxable transactions. The rule text including examples, has been changed to delete the prior cigarette sale exemption and amend the tax rate.

Social Impact

The specific group affected by the proposed amendments is operator of vending machines in New Jersey. The amendments will provide vendors with an explanation of the taxability of vending machines sales and provide guidelines for computing and remitting the applicable tax. The projected reaction to amendments will be positive, since the rule change is merely an embodiment of the legislative change made by P.L. 1990 c.40. The Division of Taxation does not anticipate any negative consequences from these rule amendments, if adopted.

Economic Impact

The proposed amendments reflect legislative changes (P.L. 1990, c.40 in the tax rate (from six percent to seven percent) and the taxability of a specific product (cigarettes). Thus, the amendments will affect consumers, as well as retailers who own and operating vending machine dispensing cigarettes and other taxable products. Projected sales tax revenue from all sales of cigarettes in this State is estimated to be $87 million for the 1991 fiscal year. Since cigarettes are widely sold through vending machines, there is a clear economic effect on the consumer, and tax revenue generated by vendor compliance with the rules will be significant. In addition, the one percent sales tax increase on all taxable transaction will significantly affect both the taxpayer and the tax collector.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposal amendments to the vending machine rules merely incorporate some of the legislative changes set forth in P.L. 1990, c.40. This act, in part, increased the sales tax rate and removed the sales tax exemption on cigarette sales.

(CITE 23 N.J.R. 396) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
Full text of the proposal follows (additions indicated in boldface as; deletions indicated in brackets [thus]):

24:16-6 Tax on gross receipts
(a) Vendors operating vending machines which dispense tangible personal property, other than food and drink, must report and pay the State the tax upon the gross receipts from all sales of such items made through such machines, subject to the exemptions set forth in N.J.S.A. 54:32B-8.9.
(b) Effective January 3, 1980 (P.L. 1979, c.274; N.J.S.A. 32B-3(e)(4)), vendors operating vending machines which dispense food and beverage must report and pay to the State the tax upon all machine sales as defined in subsection (c) below from all sales of such items made through such machines subject to the exemptions set forth in N.J.A.C. 18:24-16.7(b) and (c).
(c)-(d) (No change.)

Example: Total receipt from all vending machine sales $10,000
less deductions:
  cigarettes $1,000
  milk 1,000
percent of receipts from food and beverage sales (30 percent x $8,000)
receipts subject to tax $2,400
sx Due (at 5 percent) $120

Example: receipts from sales of taxable tangible personal property $1,000
receipts from sales of milk 1,000
receipts from sales of food and beverages (other than milk) 8,000
 total receipts from all vending machine sales $10,000
less deductions:
ilk $1,000
percent of receipts from food and beverage sales (30 percent x $8,000) 2,400
total deductions 3,400
receipts subject to tax $6,600
sx Due (at 7 percent) $462

24-16.7 Tax exemptions
(a) Receipts from sales of food or drink exempted from the tax [subsection (8)(b)] 8.2 of the Sales and Use Tax Act, are not allowable deductions from gross receipts derived from sales through vend­
ing machines.
(b)-(c) (No change.)
24-16.9 Responsibility for tax payment
(a) (No change.)
(b) The tax to be remitted to the State of New Jersey[,] by the vendor is the amount of the actual tax collected from all taxable sales, [five] seven percent of the taxable sales, whichever amount is greater.

24-17.1 Statutory basis
N.J.S.A. 54:32B-8.9 provides that the following receipts shall be exempt from the sales tax:
"Tangible personal property sold through coin-operated vending machines at $0.10 or less, provided the retailer is primarily engaged in making such sales and maintains records satisfactory to the director".

24-17.2 Definition
The phrase "primarily engaged in making such sales"., as used in N.J.S.A. 54:32B-8.9(b), refers to vendors engaged in making sales through coin-operated vending machines, and for this subsection to be applicable the vendor must show that more than half of the total receipts from his business are derived from sales through coin-operated vending machines.

18:24-17.3 Reports qualifying exemption; contents
(a) In addition to the filing of Form ST-50 (Quarterly Return) and/or Form ST-51 (monthly remittance statement), a vendor who seeks to exempt a portion of his gross receipts pursuant to N.J.S.A. 54:32B-8.9 shall report quarterly to the [Sales Tax Bureau] Division of Taxation on Form ST-3229 the following information:
1.-2. (No change.)
3. The total receipts from exempt sales, including:
   i. Receipts from sales of [cigarettes] milk;
   ii.-iii. (No change.)
4. The total taxable receipts, calculated by subtracting the exempt sales [set forth in subsection (c) of this Section] from total receipts of the vending machine company [set forth in subsection (a) of this Section].

18:24-17.4 Tax amount payable
The amount of New Jersey Sales Tax payable is the net taxable receipts [Section 15.12(d) of this Chapter] multiplied by [.05] .07 to effectuate application of the [five] seven percent tax rate, or the actual tax collected, whichever is the greater.

OTHER AGENCIES

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedure for Exchange of Checks Submitted by Gaming Patrons
Slot Booths
Proposed Amendments: N.J.A.C. 19:45-1.25 and 1.34

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c) and 69(c).

Submit comments by March 21, 1991 to:
Barbara A. Mattie, Chief Analyst
Casino Control Commission
CitiCenter Building, 4th Floor
1300 Atlantic Avenue
Atlantic City, NJ 08401

The agency proposal follows:

Summary
The proposed amendments to N.J.A.C. 19:45-1.25 and 19:45-1.34 would permit a person to obtain cash to be used for gaming purposes by presenting a recognized credit card to a slot cashier at a slot booth. Presently, the rules permit this type of transaction only at the cashiers' cage. Since slot booths are designed and constructed to provide maximum security for the transactions performed therein, these proposed amendments would permit patrons to also obtain cash advances at slot booths on the casino floor in addition to the cashiers' cage.

Social Impact
The proposed amendments would make it more convenient for slot patrons by providing additional locations in which they can present their recognized credit cards. In addition, these proposed amendments would the potential to have more efficiency to casino operations by alleviating some of the lines at the cashiers' cage.

Economic Impact
The proposed amendments merely offer additional locations for patrons to also obtain cash advances at slot booths by presenting a recognized credit card to a slot cashier at a slot booth. Since slot booths are designed and constructed to provide maximum security for the transactions performed therein, these proposed amendments would permit patrons to also obtain cash advances at slot booths on the casino floor in addition to the cashiers' cage.
Regulatory Flexibility Statement

The proposed amendments only affect the operations of casino licensees, and therefore, do not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.25 Procedure for exchange of checks submitted by gaming patrons
   (a)-(h) (No change.)
   (i) A person may obtain cash at the cashiers' cage or slot booth to be used for gaming purposes by presenting a recognized credit card to a general cashier or slot cashier. Prior to the issuance of cash to a person, the general cashier or slot cashier shall verify through the recognized credit card company the validity of the person's credit card or shall verify through a recognized electronic funds transfer company which, in turn, verifies through the credit card company the validity of the person's credit card and shall obtain approval for the amount of cash the person has requested. The general cashier or slot cashier shall then prepare such documentation as required by the casino licensee to evidence such transactions and to balance the imprest fund prior to the issuance of the cash.
   (j)-(p) (No change.)

19:45-1.34 Slot booths
   (a) Each establishment may have on or immediately adjacent to the gaming floor a physical structure known as a slot booth to house the slot cashier and to serve as the central location in the casino for the following:
   8. The issuance of Payouts in conformity with N.J.A.C. 19:45-1.40; and
   9. The issuance of cash to patrons upon the presentation of a recognized credit card in accordance with N.J.A.C. 19:45-1.25(i); and
   10. The exchange with the cashiers' cage of any coin, currency, slot tokens, chips, plaques and documentation and the related preparation of a Slot Booth Exchange Slip, which shall be a two-part serially prenumbered form signed by the cage cashier, slot cashier and the security department member responsible for transporting the funds. Except for the exchanging of change with changepersons the slot booth shall not be allowed to obtain coin, from other than patrons, through exchange or otherwise, from any source other than the cashiers' cage. Exchanges with the cashiers' cage must be accompanied by the Slot Booth Exchange Slip or by a Fill Slip authorizing the distribution of coins or slot tokens to the slot booths.
   (b)-(c) (No change.)
RULE ADOPTIONS

ADMINISTRATIVE LAW

OFFICE OF ADMINISTRATIVE LAW

Rules for Agency Rulemaking

A doption with Amendments: N.J.A.C. 1:30-2

Adopted: January 23, 1991 by Jaynee LaVecchia, Director, Office of Administrative Law.
Amended: January 25, 1991 as R.1991 d.85, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 52:14B-4, 52:14B-7 and 52:14F-5(f), (h) and (i).
Expiration Date: January 25, 1996.

Summary of Public Comments and Agency Responses:

Economic Impact

COMMENT: The Division of Economic Assistance, Department of Human Services (DEA), believes that the proposed amendments are a significant departure from the current rulemaking rules, and will require augmentation of staff or increased staff activity beyond the level currently required.
RESPONSE: The proposed amendments do impose some requirements different from those currently imposed, and clarify other existing requirements. While a need for increased staff activity may result, this will vary substantially depending upon the nature of each proposed rulemaking. The Office of Administrative Law (OAL) does not anticipate that the proposed amendments will necessitate additional staff.

N.J.A.C. 1:30-1.2 Definitions

COMMENT: The Department of Environmental Protection (DEP) commented that the proposed definition of “regulatory material” uses be conjunction “and” to indicate that regulatory material exists only if all six factors are present. The Metromedia decision upon which the definition is based [Metromedia v. Director, Division of Taxation, 97 N.J. 113 (1984)] does not require that all six criteria be met.
RESPONSE: The relevant language from the Metromedia decision states, “These relevant factors can, either singly or in combination, determine in a given case whether the essential agency action must be adhered through rulemaking or adjudication.” OAL had hoped to reflect his in the proposed definition by requiring that the criteria be “substantially” met. Upon due consideration, OAL has decided not to adopt the proposed definition of “regulatory material,” and to consider further the issue.

N.J.A.C. 1:30-1.9 Copies of documents; fees

COMMENT: The Division of Water Resources, DEP, stated that N.J.A.C. 1:30-1.9(a) should be clarified to reflect that document copies may be obtained from OAL or other agencies.
RESPONSE: As the rule is intended to relate only to obtaining copies from OAL, no change is required. However, the rule has been clarified to specifically refer to “Division of Administrative Rules and Publication” rather than OAL.

N.J.A.C. 1:30-2.2 Incorporation by reference

COMMENT: DEP commented that N.J.A.C. 1:30-2.2(f) prohibits the incorporation by reference of agency produced regulatory documents. Is the intention to prohibit the incorporation by reference of documents which contain “regulatory material” as defined in N.J.A.C. 1:30-1.2?
RESPONSE: In light of OAL’s decision not to adopt the proposed definition of “regulatory material,” this subsection (f) is not adopted. The issue raised by DEP in this comment, and the issues raised by other commenters on this subsection as set forth below, will be considered by OAL in contemplating future rulemakings.

COMMENT: The Water Supply Element, Division of Water Resources, DEP, asked whether proposed subsection (f) would prohibit the incorporation by reference of Federal regulations.
RESPONSE: See previous response to DEP’s comment.

COMMENT: The Division of Water Resources, DEP, requested that an exception to the subsection (f) prohibition should be made for agency produced documents that are adopted pursuant to express statutory provisions that have independent regulatory force, such as the Statewide Sludge Management Plan.
RESPONSE: OAL agrees, given such documents express statutory authority, and will consider incorporation of such an exception in any subsequent reproposal.

COMMENT: The Division of Medical Assistance and Health Services, Department of Human Services (DMAHS), questioned whether the subsection (f) prohibition of incorporation by reference included newsletters and other informational bulletins.
RESPONSE: See previous response to DEP’s comment.

COMMENT: The Central Office Contract and Policy Unit, Department of Human Services (Central Office CPU), asked whether, if the same information is referenced in several rules, full inclusion of the reference material is mandatory at each reference.
RESPONSE: See previous response to DEP’s comment.

COMMENT: Central Office CPU stated that it is not always possible to have the material necessary for cross-referencing published as a rulemaking prior to the necessary cross-referencing.
RESPONSE: See previous response to DEP’s comment.

COMMENT: The Division of Executive Services, Department of Education (DES/DOE), commented, “There may be some instances where an agency produced document such as the Department of Education Chart of Accounts for Bookkeeping should be allowed for incorporation by reference. A document of this kind is a standard for all school districts to use and should not have to be printed in code. This makes the code too cumbersome. Inclusion in code of a “desk guide” type of document is not practical.”
RESPONSE: See previous response to DEP’s comment.

N.J.A.C. 1:30-2.7 Administration corrections and changes

COMMENT: DEA requested the OAL devise a form to be used by agencies in submitting administrative changes and corrections to OAL. The Division also suggests that OAL accept a designated agency liaison’s signature authorizing the change or correction, rather than the agency head’s signature.
RESPONSE: Because of the many types of changes and corrections that might arise, no form can be produced to cover all circumstances. A memorandum specifically describing the corrections or changes to be made, and the reasons thereof, signed by the agency Administrative Practice Officer, would be acceptable.

COMMENT: DEA requested that the current practice of allowing corrections and changes to be telephonically communicated to OAL be retained. The written communication requirement should be reserved for “substantial changes.”
RESPONSE: While, in some instances, minor correction requests have been accepted by OAL over the telephone, the written communication requirement for all changes and corrections is necessary to ensure the accuracy of the corrections or changes, and to provide a written record of the reason for the correction or change. Miscommunication by telephone may result in a compounding of errors in the Code.

COMMENT: The Division of Youth and Family Services, Department of Human Services (DYFS), requested that OAL reinstate the requirement that an originating agency’s concurrence is required before an OAL-initiated correction is made.
RESPONSE: Before an OAL-initiated notice of administration correction is filed, all pertinent documentation on file with OAL is examined to confirm the existence of an error. The agency will be consulted if a question of the accuracy of the research materials or other questions arise. Also, N.J.A.C. 1:30-2.7(a) is revised upon adoption to provide the OAL with notice to the appropriate agency of an OAL-initiated administrative correction.

COMMENT: DYFS welcomed the increased flexibility of allowing administrative changes and recodification by administrative correction.
RESPONSE: DYFS’s comment is appreciated.

COMMENT: DEP asked when an administrative correction or change initiated by OAL is effective.

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RESPONSE: As with those which are agency-initiated, such corrections or changes are effective upon the filing of a notice for publication in the New Jersey Register.

N.J.A.C. 1:30-2.8 Appendices

COMMENT: DEP commented that N.J.A.C. 1:30-2.8(c) requires that an amendment to regulatory material in an appendix be done through rulemaking. The rule should also provide that an amendment to non-regulatory material be done without rulemaking.

RESPONSE: OAL agrees, and will consider proposal of such a change in the near future in conjunction with any repropose of the oral comments, regulatory material and incorporation by reference amendments proposed, but not adopted, in this rulemaking.

N.J.A.C. 1:30-3.1 Notice of proposed rule

COMMENT: N.J.S.A. 52:14B-4[a](3) requires that agencies afford the public opportunity to comment "orally or in writing." DEP contends that providing a public hearing and allowing written comment satisfies this requirement. In opposition to the proposed requirement that oral comments outside of hearings be accepted, DEP cites the difficulty in assuring receipt of oral comments, their accuracy and agency response capability outside of a hearing context, the potential for large numbers of oral comments, and confusion from the possible application of an oral comment to numerous outstanding proposals.

RESPONSE: In light of the numerous potential difficulties concerning receipt of oral comments mentioned by DEP and other commenters (as set forth below) and upon further consideration, OAL has decided not to adopt the proposed amendments to N.J.A.C. 1:30-3.1(e)(1) through 3.2(c)4iv and 3.3(a). OAL will reexamine the oral comments issue and consider proposing amendments to its rules in the near future. The concerns raised by the commenters will be addressed in any such future proposal.

COMMENT: The Division of Water Resources, DEP, stated that, due to the difficulty of ensuring the accuracy of oral comment recording, oral comments should be submitted only at public hearings.

RESPONSE: Please refer to the previous response. OAL will consider this hearing alternative as part of its oral comments reconsideration.

OAL COMMENT: All divisions of the Department of Human Services expressed opposition to the amendments concerning acceptance of oral comments. Specific division comments follow.

COMMENT: The Division of Developmental Disabilities (DDD) questioned how a person is to make oral comments; whether the agency has to identify a staff member to meet with interested persons; whether oral comments can be given over the telephone; whether oral comments are to be transcribed or recorded; and how is an oral comment record to be retained.

RESPONSE: See previous response to DEP's comment.

COMMENT: DMAHS believes that oral comments lend themselves to abusive practices, such as filibusters and call-in campaigns. Allowing oral comments will require additional staff and the installation of additional telephone equipment. With 30 days in which to comment, it should be no problem for timely [written] comments to be submitted, especially utilizing FAX machines and inexpensive overnight delivery services. Individuals may be reluctant to have their telephone conversations taped. Taking comments over the telephone is time-consuming and not a cost effective use of limited staff resources.

RESPONSE: See previous response to DEP's comment.

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RESPONSE: See previous response to DEP's comment.

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RESPONSE: See previous response to DEP's comment.

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RESPONSE: See previous response to DEP's comment.
N.J.A.C. 1:30-3.2 Informal public input; notice of pre-proposal for a rule

COMMENT: Concerning proposed subsection (a), the Water Supply Element, Division of Water Resources, DEP, asked for clarification of "reasonable informal procedures and means." Does this include councils established by governmental committees set up by the Department to review existing rules and solicit potential changes?

RESPONSE: "Reasonable informal procedures and means" includes those elements mentioned by the Water Supply Element. OAL does not believe clarification of the proposed text is necessary.

COMMENT: DYFS supports the informal procedures in proposed subsection (a), which is similar to a process the Division is now using regarding its operational policies, oriented towards the group process favored by the social services community.

RESPONSE: OAL appreciates the Division's support.

COMMENT: The Division of Water Resources, DEP, requests clarification that action under proposed subsection (a) does not constitute a pre-proposal. The Division also requests that the cross-reference in this rule in the N.J.A.C. 1:30-1.2 definition of pre-proposal be clarified.

RESPONSE: Agency action under proposed subsection (a) does not constitute a pre-proposal. OAL does not consider it necessary to change the subsection's language to make this more clear. Upon adoption, the definition of pre-proposal in N.J.A.C. 1:30-1.2 is revised to include "pursuant to N.J.A.C. 1:30-3.2(b)" at the end of the first sentence, to remove a subsection procedure from the definition's parameters.

COMMENT: DES/DOE states that proposed subsection (a) is an excellent addition to the rules for encouragement of public input prior to actual rulemaking. In the long run, it should cut down on long debate and interplay period with constituencies.

RESPONSE: OAL appreciates the Division's support.

N.J.A.C. 1:30-3.3 Opportunity to be heard

COMMENT: DEP commented that the reference in N.J.A.C. 1:30-3.3(a) to pre-proposal under N.J.A.C. 1:30-3.2 should be limited to N.J.A.C. 1:30-3.2(b) and (c).

RESPONSE: Because of the addition of the informal input process at N.J.A.C. 1:30-3.2(a), the cross-reference in N.J.A.C. 1:30-3.3(a) is changed upon adoption to N.J.A.C. 1:30-3.2(b) and (c).

COMMENT: DYFS supports the clarifying provision added in N.J.A.C. 1:30-3.3(c) concerning extending the comment period where a public hearing is scheduled after the comment period ends. This codifies past helpful OAL advice and provides future guidance.

RESPONSE: OAL appreciates the Division's support.

N.J.A.C. 1:30-3.3A Public hearings

COMMENT: DYFS supports Register notice publication of pre-proposal public hearings, but believes other options should be available, due to resource (time/paper) and publishing cost constraints. The following are offered as alternatives to Register notice publication: public notices in newspapers or journals to inform constituents; inform constituents by letter or telephone; and announce public hearings at regularly scheduled meetings of constituents.

RESPONSE: The alternative forms of hearing notice mentioned by DYFS are permissible in the circumstances specified under N.J.A.C. 1:30-3.3A(b), where a hearing is scheduled after a proposal or pre-proposal notice has been published in the Register, or, at the agency’s discretion, in addition to timely notice in the New Jersey Register. In all other circumstances, notice of a hearing on a proposal or pre-proposal must be provided as part of the Register proposal or pre-proposal notice, at least 15 days in advance of the hearing date. This requirement, representing a change from hearing notice requirements under former N.J.A.C. 1:30-3.3(b), is imposed to ensure that the statutory 15 days notice of a public hearing on a proposal or pre-proposal, is provided in the official Register rulemaking notice, in circumstances where such hearing notice can be so provided.

COMMENT: DES/DOE states that N.J.A.C. 1:30-3.3A(a) should require that hearing requests be received within 15 days after publication of the proposal.

RESPONSE: The Administrative Procedure Act, at N.J.S.A. 52:14B-4(a)(3), states that the hearing request must be made within 15 days. The rule's requirement for submitting the request means that the proposal must be received within 15 days.

COMMENT: Concerning N.J.A.C. 1:30-3.3A(d), DDD asked if a summary of public hearing comments and agency responses needs to be published even if the proposal is withdrawn or not adopted?

RESPONSE: If a proposal is withdrawn or not adopted, a summary of public comments and agency responses from the public hearing need not be published. However, the summary of the hearing officer's recommendations and agency's responses thereto, must be published the situations described by DDD, may contain a summary of public hearing comments and the hearing officer's responses.

COMMENT: Concerning N.J.A.C. 1:30-3.3A(e), DEA stated that, because of the cost of having a new hearing transcript made from the original for each request, the rule should be changed to give the requesting party the option to pay for the transcript, arrange to listen to an electronic recording of the hearing (if available), review the written summary of hearing comments or obtain a copy of the summary at reproduction cost.

RESPONSE: If a transcript has been produced, it must be kept on file by the agency, is considered a public record and a copy must be made available for the cost of reproduction. If a transcript is not produced, the requester can pay for transcript production or listen to the electronic hearing recording, if one was made.

COMMENT: DES/DOE inquired whether a previously scheduled public hearing would satisfy a hearing request made pursuant to N.J.A.C. 1:30-3.3A(a).

RESPONSE: A rulemaking public hearing in accordance with the Administrative Procedure Act and N.J.A.C. 1:30-3.3A already scheduled to occur after the Register publication of the proposal would satisfy a hearing request made under N.J.A.C. 1:30-3.3A(a).

COMMENT: The Division of Water Resources, DEP, asked several questions concerning hearing officers.

1. N.J.A.C. 1:30-3.3A(d) should provide that, if for reasons of death, disability, termination of employment, etc., the hearing officer who conducted the public hearing is unable to prepare recommendations, another person may serve as hearing officer and prepare recommendations.

RESPONSE: OAL agrees. If a hearing officer, for whatever reason, cannot prepare the recommendations, another person may review the hearing transcript and record and prepare the recommendations.

2. Must the hearing officer consider all public comments, or just those from the public hearing?

RESPONSE: At a minimum, only those comments from the public hearing, but a hearing officer's ultimate responsibilities are determined by the proposing agency.

3. Must the hearing officer summarize and respond to the hearing comments as part of his or her recommendations?

RESPONSE: It is up to the hearing officer and his or her agency to determine what the format is for recommendations.

4. Can the hearing officer consult with agency personnel, the Office of Administrative Law or the Attorney General’s Office in preparing his or her recommendations?

RESPONSE: Yes. Because the rulemaking public hearing is a quasi-legislative proceeding, the hearing officer should be allowed to make suitable recommendations taking into account the agency's position and concerns on the rulemaking and the comments received at the public hearing.

5. On legal issues, can the hearing officer refrain from making recommendations because he or she is not licensed to practice law or due to lack of expertise?

RESPONSE: Although the OAL believes the person assigned as a hearing officer should be capable of addressing legal questions, the OAL recommends that the Attorney General's Office be consulted on this question within the context of a particular public hearing.

6. Can a hearing officer refrain from making recommendations on technical issues, based upon lack of expertise?

RESPONSE: Because the purpose of a public hearing is to gather information in the form of public comments, a hearing officer's lack of technical expertise should not affect his or her ability to consider comments received. In order to make educated recommendations, a hearing officer should be able to obtain assistance in understanding issues beyond his or her areas of knowledge. If the public presents technical comments, a hearing officer should be capable of dealing intelligently with those comments. Because of the concern expressed about the role of the hearing officer, the OAL will be considering further amendment of the rule to clarify the hearing officer's responsibilities.

COMMENT: The Division of Water Resources, DEP, stated that it is standard Department practice to obtain a transcript of all public hearings and not to retain the stenographic tapes. Under N.J.A.C. 1:30-3.3A(e), is it necessary to retain the hearing tapes if a transcript has been produced, available from the agency?

RESPONSE: Once a hearing transcript is produced and is available from the proposing agency, the hearing tapes need not be retained. However, the purpose of the rule change is to clarify that transcripts are...
not required in all cases. Perhaps the Department should reconsider its practice in view of the rule change.

N.J.A.C. 1:30-3.4 Rulemaking record

COMMENT: DYFS stated that more emphasis should be placed on including a statement of an agency's reasons for accepting or rejecting a comment.

RESPONSE: OAL appreciates the Division's support of this existing requirement.

COMMENT: DEP asked whether a record of pre-proposal proceedings needs to be maintained.

RESPONSE: A pre-proposal record does not need to be maintained, unless an agency wishes to do so. However, the pre-proposal must be discussed in the Summary of any resulting rule proposal.

N.J.A.C. 1:30-3.6 Notice of petition for a rule

COMMENT: The Division of Water Resources, DEP, questioned the rationale for the six-month maximum limit for further deliberations on a petition for rulemaking. The six-month limit may be too short for petitions raising numerous complex legal, technical or policy issues.

RESPONSE: OAL is not adopting that portion of the proposed amendment to N.J.A.C. 1:30-3.6(c) concerning the limits on further deliberation, and will reconsider the issue for a future proposal. All that will then be required is for further deliberations to conclude "upon a specified date."

COMMENT: DES/DOE questioned the necessity for public notice of further agency deliberation on a petition, viewing such notice as an unnecessary additional paper process.

RESPONSE: The purpose for the notice of further deliberation is to keep the public informed of agency action on a petition, including the agency's attempts to resolve issues raised by the petitioner. N.J.S.A. 52:14B-4(f) establishes the legislative intent that the public be notified of receipt of and action on petitions for rulemaking. Deferring action on a petition for further deliberation is itself an agency action on a petition, albeit an intermediate step. In keeping with this legislative intent, the rule's notice requirement is appropriate.

COMMENT: Legal Services of New Jersey stated that the requirements of N.J.A.C. 1:30-1.6(c) should be mandatory, revised to state, "Agency action on a petition shall include one of the following." This change would clarify a potential source of ambiguity.

RESPONSE: In light of Legal Services' comment, OAL will consider the mandatory nature of the subsection's language for a possible future proposal.

COMMENT: DEP stated that an agency should be able to obtain informal public input on a petition for rulemaking, as an agency response option.

RESPONSE: N.J.A.C. 1:30-3.6(c) does not preclude an agency from seeking informal public input on a petition. A call for such input could be considered an aspect of further agency deliberations.

N.J.A.C. 1:30-4.1 Notice of adopted rule

COMMENT: DEP questioned whether the form referenced as "OAL/ARP-I" in N.J.A.C. 1:30-4.1(b) is the same as OAL form APF-1, the Certificate of Proposal, Adoption and Promulgation.

RESPONSE: The reference in the proposal is incorrect. The correct designation of the form is "OAL/APF-1". This will be corrected upon adoption.

COMMENT: DMAHS questioned the rationale for publishing a list of commenters in the adoption notice, and expressed concern over violating the confidentiality of Division clients who comment.

RESPONSE: N.J.S.A. 52:14B-4(a)(4) requires that a "listing of all parties offering written or oral submissions concerning a rule" be prepared for public distribution. OAL has interpreted this requirement to provide for publication of the commenters' list in the notice of adoption. If protection of commenter confidentiality is indeed required, such commenters need not be included on the list. However, in such circumstances, OAL recommends that the list or comment/response summary include a statement that (a specified number of) individuals whose identities are confidential pursuant to (authority) also made comments. N.J.A.C. 1:30-4.1(c) is revised to begin, "Except for commenters requesting confidentiality or commenters whose confidentiality is protected by law, . . . ."

COMMENT: DEA questioned whether the commenters' list had to include commenters who request that their names not be listed.

RESPONSE: The names of such commenters do not have to be included. However, OAL recommends that a statement that (a specified number of) individuals who requested their names not be listed also commented be included in the list or comment/response summary.

COMMENT: DEA asked what, exactly, is required in the commenters list? Just names, or titles and agencies represented also?

RESPONSE: The recitation of commenters must include the name of the commenter and his or her affiliation, if any. Titles need not be included.

N.J.A.C. 1:30-4.2 Time for filing adopted rule

COMMENT: The Division of Water Resources, DEP, requested that the "one year from the date of proposal publication" deadline for filing a rule adoption be changed to "one year from the date of the close of the comment period." This change would allow an agency more time to work on massive, technical proposals generating substantial comment.

RESPONSE: OAL believes that the current requirement provide ample time for adoption of a proposed rulemaking. Since the overwhelming majority of proposed rulemakings are adopted within the timeframe, OAL considers the current limitation to be reasonable.

Summary of Agency-Initiated Changes:

At N.J.A.C. 1:30-1.2, the definitions of "administrative correction or change" and "Executive Order No. 66(1978)" are revised for clarity. The "intra-agency statement" definition is moved to the correct alphabetical location.

At N.J.A.C. 1:30-2.7(b), the first sentence phrase "may be to correct" is corrected to read, "may be made to correct."

At N.J.A.C. 1:30-3.6(c), the two erroneous cross-references are corrected.

At N.J.A.C. 1:30-4.1(c)(8), the "list" requirement is replaced by a requirement that "the names and affiliations, if any," of all persons commenting be included in the notice of adopted rule. This change will afford agencies greater flexibility in presenting the names of commenters such as integrating the name of the commenter into a comment summary or using a list format.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 1:30.

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

1:30-1.2 Definitions

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

... "Administrative correction or change" means *[to correct] *a correction* or change *to* the text of a rule without formally promulgating the amendment (see N.J.A.C. 1:30-2.7).*

... "Emergency adoption" means the promulgation of an amendment, repeal or new rule without public comment in response to an imminent peril to the public health, safety and welfare (see N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30-4.5).

... "Executive Order No. 66(1978)" means the 66th executive order issued by Governor Byrne in 1978[, which requires the expiration of a promulgated rule within five years of its effective date]..

... Commonly referred to as the "Sunset" provision, the *executive order requires the establishment of an expiration date for a promulgated rule which is not later than five years from the rule's effective date*.

... *["Intra-agency statement" means a communication between members of a single agency that does not substantially impact upon the rights or legitimate interests of the regulated public.]*

... "Intra-agency statement" means a communication between members of a single agency that does not substantially impact upon the rights or legitimate interests of the regulated public.*

... "Inter-agency statement" means a communication between separable agencies that does not substantially impact upon the rights or legitimate interests of the regulated public.*

... "Organizational rule" means a rule promulgated pursuant to N.J.S.A. 52:14B-3(1), including a description of the structure of the agency, the persons from whom and places from which information, applications and other forms may be obtained; and the persons to
whom and places to which applications, requests and other sub-
missions may be made.

"Pre-proposal" means a preliminary proceeding for the purpose of 
eliciting ideas, views and comments of interested persons on a 
contemplated rulemaking proceeding, pursuant to N.J.A.C. 
1:30-3.2(b)*. This preliminary proceeding precedes the filing of a 
formal rule proposal.

..."Public hearing" means a legislative type proceeding conducted 
whether or not a rulemaking or to consider a possible rulemaking 
which affords the public an opportunity to present to the promulgating 
agency oral and written comments, arguments, data and views on 
the rulemaking or the contemplated rulemaking.

* "Regulatory material" means an agency document which 
substantially meets the following features:
1. Is intended to have wide coverage encompassing a large segment 
of the regulated or general public, rather than an individual or a 
narrow select group;
2. Is intended to be applied generally and uniformly to all similarly 
situated persons;
3. Is designed to operate only in future cases, that is prospectively;
4. Prescribes a legal standard or directive that is not otherwise 
expressly provided by or clearly and obviously inferable from the 
enabling statutory authorization;
5. Reflects an administrative policy that:
   i. Was not previously expressed in any official and explicit agency 
determination, adjudication, or rule; or
   ii. Constitutes a material and significant change from a clear, past 
agency position on the identical subject matter; and
6. Reflects a decision on administrative policy in the nature of the 
interpretation of law or general policy.*

1:30-1.3 Offices
(a) Division of Administrative Rules and Publications, Office of 
Administrative Law, is located at Quakerbridge Plaza, Building No. 
9, CN-049, Quakerbridge Road, Trenton, New Jersey 08625.
(b) Hours during which documents may be submitted or reviewed 
are from 9:00 A.M. to 4:00 P.M., Monday through Friday, holidays 
excepted.
(c) Information may be obtained by telephoning the following for:
1. Rule inquiries (609) 588-6543;
2. Customer services (609) 588-6606; and

1:30-1.8 Access to documents
(a) (No change.)
(b) Any person shall, upon request, be afforded an opportunity 
to examine any document maintained by the Division of Adminis-
trative Rules and Publications during business hours 9:00 A.M. to 
4:00 P.M., Monday through Friday, holidays excepted.

1:30-1.9 Copies of documents; fees
(a) Any person may obtain copies of filed documents *from the 
Division of Administrative Rules and Publications* pursuant to the 
provisions of N.J.S.A. 47:1A-2 upon payment of a fee as follows:
1. First page to 10th page: $.50 per page;
2. Eleventh page to 20th page: $.25 per page;
3. All pages over 20: $.10 per page.
(b) Original filed documents shall not be released from the custody 
of the Office of Administrative Law.

1:30-1.13 Invalidation of rule
In the event that a proposed or adopted rule is suspended or 
otherwise rendered inoperative or ineffective by Court rule or ruling, 
by legislative action or by Executive Order, the Office of Adminis-
trative Law shall, upon receipt of notice of the event prepare and 
publish a notice in the Register and the Code, as appropriate.

1:30-1.14 Filing of a document
(a) Upon receipt of a document for filing, shall be stamped 
on its face the following:
1. The hour and date of receipt; and
2. The word "received".
(b) Upon acceptance for publication, the document shall be 
stamped filed and is deemed filed as of the date of receipt.
(c) All proposals shall be assigned a proposed rule number (PRN) 
by Administrative Rules and Publications. All adoptions shall be 
assigned a rule document number (R.d.) by Administrative Rules and 
Publications.

1:30-2.2 Incorporation by reference
(a)-(e) (No change.)
[*] (f) Agency produced documents which are regulatory may not 
be incorporated by reference.*

1:30-2.7 Administrative corrections and changes
(a) Upon being advised in writing by an agency or upon its own 
initiative, *with notice to the appropriate agency,* the OAL may make 
an administrative correction or change to any rule published in the 
New Jersey Register or New Jersey Administrative Code. An adminis-
trative correction or change shall be effective upon filing with the 
OAL.
(b) An administrative correction may be *made* to correct an 
error which is obvious, easily recognizable, or apparent to the 
promulgating agency and the regulated public. An administrative 
correction may be made to conform a proposed or adopted rule to 
the intent of the agency as expressed in the proposal or adoption 
statements. Administrative corrections may be made to correct any 
part of a rule including, but not limited to, its text, spelling, grammar, 
punctuation, codification, and cross-references.
(c) An administrative change may be made to recodify a rule. 
Administrative changes may also be made to amend a rule to provide 
the public with notice of nonregulatory changes that have occurred 
since the rule was adopted. Administrative changes may include, but 
are not limited to, changes in:
1. Names of departments, agencies, divisions and bureaus;
2. Titles of specific individuals; and
3. Addresses, phone numbers and business hours.
(d) An administrative correction or change shall not be used to 
adjust the text of a rule to subsequent changes in circumstance or 
policy decisions.
(e) Notice of administrative correction or change shall be publish-
ed in the New Jersey Register. The administrative correction or 
change with appropriate annotation shall be included in a subsequent 
supplement to the New Jersey Administrative Code.

1:30-3.1 Notice of proposed rule
(a) (No change.)
(b) The notice of proposed rule shall include a suggested N.J.A.C. 
citation for any proposed new rule and shall include the existing 
citation for any amendment, repeal or readoption.
(c)-(d) (No change.)
(e) The notice of proposed rule shall include an announcement of 
the public's opportunity to be heard regarding the proposed rule, 
which shall include:
1. When, where, and how persons may present their views orally 
*[and]* *oral* in writing;
2. When and where persons may attend any formal rule adoption 
proceeding; and
3. The name, address and telephone number of the person(s) to 
receive written *[and]* *oral* oral comments.
(d)-(g) (No change.)
(b) Upon receipt of the proposal notice which conforms to these 
requirements:
1. (No change.)
4. The agency shall undertake an additional method of publicity 
other than publication in the Register, reasonably calculated to in-
form those persons most likely to be affected by or interested in the 
proposed rule:
1. (No change.)
iii. The additional method of publicity shall be provided *[no later 
than the Register publication date for the notice of proposal] *at 
least 30 days prior to the close of the public comment period*.
(i) (No change.)

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 403)
I:30-3.2 Informal public input; notice of pre-proposal for a rule
(a) Where, prior to the initiation of a formal rulemaking proceeding, an agency seeks assistance in formulating a rule or wishes comments on a preliminary rule draft, it may solicit public input regarding the rulemaking. An agency may use any reasonable informal procedures and means of notice to solicit participation from the regulated or interested public.

(b) Where, pursuant to N.J.S.A. 52:14B-4(e), an agency determines to conduct a deliberative proceeding with respect to a contemplated rulemaking, the agency shall submit a "notice of pre-proposal for a rule" to the OAL for publication in the New Jersey Register at least 30 days prior to submission of any formal notice of proposed rule on the same subject.

(c) The notice of pre-proposal for a rule shall include:
1. The name and title or position of the presiding person;
2. The name and title or position of the presiding person; and
3. The certificate of the adopting officer attesting that all submissions received have been considered.

(d) In addition to any other publication of results, the recommen-
dations of the hearing officer, and the agency's response either accepting or rejecting the recommendations, shall be summarized and published in the New Jersey Register as set out in (c) through (f) below.

1. When no proposed rulemaking results from the public hearing, the summary shall be published as a public notice.
2. When a proposed rulemaking results from the public hearing, the summary shall be published as part of the proposal notice.
3. When a public hearing is held as part of a proposed rulemaking and the proposed rule is adopted, the summary shall be published as a notice of adoption.
4. When a public hearing is held as part of a proposed rulemaking but the proposed rule is withdrawn or not adopted, the summary shall be published as a notice of agency action.

(e) The public hearing shall be recorded electronically or steno graphically, and audio tapes, stenographic tapes or other untranscribed record of the proceeding shall be maintained by the agency. If a transcript is requested by any interested person, the agency shall arrange for the production of the transcript and on copy. After the requester pays for the transcript and copy, the original shall be delivered to the requester and the transcript copy filed with the agency.

I:30-3.3A Public hearings
(a) A Legislative Committee, a State agency, or a county, local or municipal governmental entity may request that an agency conduct a public hearing on a proposed rule or other matter received in response to a proposal (N.J.A.C. 1:30-3.1) or a public hearing (N.J.A.C. 1:30-3.3A) for a period of one year following the date of publication. The rulemaking record shall include the following:
1. The date, the method of issuance and a copy of any notice concerning the rule activity, including any notice mailed to interested persons pursuant to N.J.A.C. 1:30-3.1*[(b)3]**[(h)3]* and any additional public notice pursuant to N.J.A.C. 1:30-3.4A[(b)4]**[(h)4]*.
2. A description of the public comments on the notice of proposal rule;
3. The names of the persons commenting on the notice of proposal rule; and
4. The name of any trade, craft or professional organization or association making written or oral submissions;
5. A copy or summary of each written submission and a summary of each oral submission of any person made in response to the notice of proposed rule, and any written answer of the agency;
6. The certificate of the adopting officer attesting that all submissions were examined and that due consideration was given their merits prior to adoption of the proposed rule; and
7. A description of the principal points of controversy revealed during the proceeding; and
8. A statement of the reasons for accepting and rejecting the public comments.

3. A description of any public hearing or other proceeding which was held as a result of the proposed rule (see N.J.A.C. 1:30-3.3A) including:
1. The date, time and place;
2. The name and title or position of the presiding person;
3. The nature of the proceeding; and
4. The recommendations of the hearing officer, in the case of a public hearing conducted pursuant to N.J.S.A. 52:14B-4(g).

(b) An agency may, but is not required to, maintain a record of any proceedings conducted pursuant to N.J.A.C. 1:30-3.2. If, however, any preliminary proceedings conducted pursuant to N.J.A.C. 1:30-3.2 result in a formal proposed rulemaking, the agency shall discuss in the proposal summary such preliminary proceedings and the public's participation therein.
(c) If the proposed rule is adopted, the agency shall retain the rulemaking record for a period of not less than three years from the effective date of the adopted rule.
(d) The rulemaking record constitutes an official document of the administrative agency, is evidence of its compliance with the legislative mandate to provide opportunity for public comment, and shall be available for public inspection at the agency.

(CITE 23 N.J.R. 404) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
1:30-3.6 Notice of petition for a rule
   (a) When a person petitions an agency to begin a rulemaking proceeding pursuant to N.J.S.A. 52:14B-4(f), the agency shall, within 15 days of receipt of the petition, file with the Office of Administrative Law for publication in the Register a notice of the petition’s receipt. The notice of petition shall include:
   1. The name of the petitioner;
   2. The substance or nature of the rulemaking action which is requested;
   3. The problem or purpose which is the subject of the request; and
   4. The date the petition was received.
   (b) (No change.)
   (c) Agency action on a petition may include:
   1. Denying the petition, in which case the agency shall provide a written statement of its reasons to the petitioner, and include such reasons in its notice of action;
   2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
   3. Referring the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude [*within three months from the initial receipt of the petition. If the matter is not concluded within three months and further deliberations are necessary, the agency may extend the deliberation time an additional three months and shall mail to the petitioner and file with the Office of Administrative Law for publication in the Register a notice of such extension]* upon a specified date*. The results of these further deliberations shall be mailed to the petitioner and submitted to the OAL for publication in the Register.
   (d) Each agency shall prescribe by rule the form of a petition and the procedures for its submission, consideration and disposition.

1:30-4.1 Notice of adopted rule
   (a) When an agency adopts a proposed rule, the agency shall prepare a “notice of adopted rule” and submit the notice to the OAL. The notice of adopted rule shall comply with the requirements of this section.
   (b) The agency shall complete and submit to the OAL a Certificate of Proposal, Adoption and Promulgation (form *OAL/ARF-1*) *OAL/ARF-1* signed by the adopting agency head, or other person authorized by statute to adopt rules, that the rule was duly adopted according to law and in compliance with the requirements of the Administrative Procedure Act, P.L. 1968, c.410, as amended by P.L. 1978, c.67 and P.L. 1981, c.21, and of this chapter.
   (c) The notice of adopted rule shall also contain:
   1. The publication date of the notice of proposed rule;
   2. The date of adoption, the name of the agency and the name and signature of the adopting agency head or any other person authorized by statute to adopt agency rules;
   3. The date the notice of adopted rule is filed with the OAL;
   4. The effective date of the rule;
   5. The operative date of the rule if later than the date of Register promulgation;
   6. The expiration date of the rule pursuant to Executive Order No. 66(1978) or an exemption from the Order with reasons for the exemption;
   7. A summary of any changes between the rule as proposed and adopted, and the reasons for the changes;
   8. [A list]* *Except for commenters requesting confidentiality or commenters whose confidentiality is protected by law, the names and affiliations, if any,* of all persons who submitted oral or written comments, arguments, data and views concerning the proposed rule;
   9. A summary of the comments, arguments, data and views received and points of controversy developed during the rulemaking proceeding; the reasons for adopting the public comments accepted; and the reasons for rejecting the public comments rejected; *and*
   10. The text of any changes between the rule as proposed and as adopted, specifically indicating additions and deletions.

COMMUNITY AFFAIRS

DIVISION OF HOUSING AND DEVELOPMENT

Maintenance of Hotels and Multiple Dwellings Ceiling Heights in Multiple Dwellings
Adopted Amendment: N.J.A.C. 5:10-22.5
Adopted: January 10, 1991, by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: January 16, 1991, as R.1991 d.59, without change.
Effective Date: February 19, 1991.
Expiration Date: November 17, 1993.

Summary of Public Comments and Agency Responses:
A comment supporting the proposed amendment was submitted by a legislator representing a district that includes shore area municipalities.

Full text of the adoption follows.

5:10-22.5 Required ceiling height
   (a) Except as otherwise provided in (a)1 and 2 below, no room or space or portion of a room or space shall be considered habitable unless that room or space or portion of a room or space has a clear ceiling height of at least seven feet, zero inches.
   i. (No change.)
   2. Dwelling units and portions of dwelling units in multiple dwellings located in municipalities bordering on the Atlantic Ocean shall be deemed to be habitable with a ceiling height of less than seven feet, zero inches provided that the dwelling unit was occupied prior to the effective date of this amendment and is in conformity with any applicable mercantile license requirement prior to May 27, 1991 and:
   i. The ceiling height is less than seven feet, zero inches but at least six feet, four inches and there is no clear and present danger to the health or safety of the occupants;
   ii. If the ceiling height is less than six feet, four inches but at least five feet, ten inches, there is no clear and present danger to the health or safety of the occupants and the volume of the unit, as measured in cubic feet, is at least seven times the minimum square footage required for the number of occupants in the unit; or
   iii. If the ceiling height is less than five feet, ten inches, an exception is granted by the Bureau in accordance with N.J.S.A. 55:13A-11 and N.J.A.C. 5:10-1.15.
   (b) (No change.)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Gas Utility Meters
Adopted Amendment: N.J.A.C. 5:23-2.14
Adopted: January 10, 1991 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: January 16, 1991 as R.1991 d.60, without change.
Effective Date: February 19, 1991.
Expiration Date: March 1, 1993.

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

Full text of the adoption follows.

5:23-2.14 Construction permits—when required
   (a) (No change.)
   (b) The following are exceptions from (a) above:
ENVIRONMENTAL PROTECTION

(b) DIVISION OF COASTAL RESOURCES
Notice of Rule Invalidation
Waterfront Development
N.J.A.C. 7:7-2.3(a2)

Take notice that N.J.A.C. 7:7-2.3(a2), as amended effective September 14, 1990 (see 22 N.J.R. 2361(a) and 3222(a)), has been held invalid by the Superior Court of New Jersey, Appellate Division, in Long Beach Township Oceanfront Property Owners Association v. New Jersey Department of Environmental Protection, et al., ___ N.J. Super. ___, Dkt. Nos. A-6697-90T2 and A-783-90T2 (App. Div. December 26, 1990).

Please contact the Department of Environmental Protection regarding any further action on the case. This notice is provided by the Office of Administrative Law pursuant to N.J.A.C. 1:30-1.13.

(c) DIVISION OF WATER RESOURCES
Water Pollution Control
Readoption: N.J.A.C. 7:9

Proposed: November 5, 1990 at 22 N.J.R. 3297(a)
Adopted: January 17, 1991 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Filed: January 18, 1991 as R.1991 d.68, without change.
DEP Docket Number: 034-90-10.
Effective Date: January 18, 1991.
Expiration Date: January 18, 1996.

Summary of Public Comments and Agency Responses:
1. General Comments
   COMMENT: Several commenters stated that the discussion contained in the public notice is not in accordance with the State Administrative Procedure Act as it fails to address or analyze the substantial issues that have been previously raised regarding, in particular, N.J.A.C. 7:9-4 and 7:9-5. The statement that the requirements of these rules are necessary “to restore, maintain and enhance the ... integrity of the state waters” is an overstatement and is not supported by substantial evidence. Procedures outlined in EPA’s “Technical Support Document for Water Quality-Based Toxics Control” verify that the current State procedures for developing effluent limitations are more stringent than necessary to protect the environment. In addition the United States Environmental Protection Agency (USEPA) Gold Book criteria verify that many water quality standards (WQS) are overly stringent. As such, these procedures exceed DEP authority and should be amended.
   RESPONSE: The New Jersey Department of Environmental Protection (Department or DEP) considers the discussions contained in the public notice to be in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. N.J.A.C. 7:9 contains rules, such as the surface water quality standards and the ground water quality standards, that are necessary to maintain and enhance the integrity of the State waters. The Department also recognizes its responsibility to amend certain material contained in this chapter to include the most recent and accepted technology/methodology. The Department will be proposing amendments to N.J.A.C. 7:9 in order to address the substantial issues which have been raised with respect to this chapter.
   COMMENT: Several commenters stated that a positive environmental or social impact does not occur when excessive treatment is required as (1) limited local resources are wasted, (2) increased chemical and electrical usage occurs causing air pollution, and (3) additional sludge is generated, wasting the limited sludge disposal capacity of the State. The economic impact analysis underestimates the cost of complying with these outdated rules and must be revised. For example, the stringent enforcement of four hour BOD, and percent removal requirements in N.J.A.C. 7:9-5.8 has
recently occurred due to a reinterpretation of this rule. Previously municipalities were not required to construct facilities to meet this requirement as verified by the Department's construction grant records. This reinterpretation will cost municipalities several billion dollars to comply unless the rule is interpreted or deleted. Also the Department's erroneous interpretation of chronic WQS to require daily maximum limitations will also cause millions in additional treatment and inappropriate sewer bans.

RESPONSE: The Department agrees that in general positive environmental and social impacts may not occur when permittees and other persons affected are required to comply with rules that are in need of substantial modification; however, due to the expiration of N.J.A.C. 7:9, the Department was unable to propose amendments during the re-adoption process. Since the Department will be proposing to amend the outdated section of this chapter during the first half of 1991, those affected by the rules will not be subject any detrimental social or economic impact.

COMMENT: Several commenters requested that the Department cease further action on this rule until the public is provided an adequate opportunity to review the information relied upon by the Department to support the continued need for these rules. At a minimum, issues raised during the comment period should be addressed.

RESPONSE: As previously stated in the proposed readoption of N.J.A.C. 7:9, the Department will be proposing substantial amendments to N.J.A.C. 7:9. It is being notified that numerous permittees that the four-hour requirements are not applicable once the wastewater allocation has been established, State permitting personnel have not removed the condition from the permit as required by the applicable rules. The stated rationale for maintaining the four-hour requirement is to serve as an enforcement tool for penalizing permittees. This needlessly exposes facilities to potential civil and criminal enforcement actions as well as citizen suits. Such exposure is unsupportable where there is no valid environmental basis for the four-hour limitation and the only known reason for it is administrative convenience.

There is no merit in maintaining the four-hour BOD 90 percent removal and concentration requirements, and their apparent use for penalizing facilities which are otherwise properly operated and maintained is highly objectionable. If fully implemented, the four-hour requirement could dramatically increase the cost of pollutant reduction within the State of New Jersey without commensurate environmental improvement. Utilizing a four-hour time frame instead of the 30-day average period would easily result in tripling or quadrupling the size of a facility in order to reduce the effluent load. The four-hour requirement is inconsistent with monitoring schedules. Because the State does not properly enforce or implement this requirement, engineers do not effectively design for this requirement and the requirement appears to serve no useful purpose other than a punitive function. Thus, the requirement should be deleted.

II. Substantive Comments

The following comments express issues of concern to most of the commenters. Fourteen of the 17 comments received by the Department incorporated by reference the "white paper" entitled, "REVIEW OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION NPDES PERMITTING RULES AND PRACTICES", prepared by Zorc, Rissetto, Weaver & Rosen for the Authorities Association of New Jersey, now known as the Association of Environmental Authorities. One commenter also submitted a petition for rulemaking as a comment and as a separate request for rulemaking action pursuant to the Administrative Procedure Act. Both the petition and "white paper" address the same issues, pertaining to N.J.A.C. 7:9, N.J.A.C. 7:14A and N.J.A.C. 7:14. The comments pertaining to N.J.A.C. 7:9 are set forth below.

COMMENT A: The minimum treatment requirement section of N.J.A.C. 7:9-5.8 should be revised immediately to reflect current effluent limits associated with the federal NPDES PROGRAM and the New Jersey Water Pollution Control Act, specifically; the footnotes to N.J.A.C. 7:9-5.8 provide:

1. "Minimum percent reduction of BODs at all times including any four-hour period of a day when the strength of the wastes to be treated might be expected to, or actually exceed average conditions."

2. "Average over any four-hour period of the day, including periods when the strength of the wastes to be treated might be expected to actually exceed average conditions."

The referenced four-hour period of the day is out of date in the Federal/State regulatory scheme where the applicable period for averaging results is 30 days or seven day averages for Biological Oxygen Demand (BOD). The provisions in the rule which is up for adoption are far more stringent than the applicable average period is any four-hour period. It is submitted that proper footnotes be revised to include 30-day and seven day averages as the relevant basis for review. All references to four-hour averages should be deleted from the rules. As a matter of fundamental fairness, the existing language should be replaced with the suggested language during the readoption process. Its continued presence in the rule is a threat to all permittees under the Clean Water Enforcement Act (CWEA).

One commenter states that unless footnote number 2 is revised as suggested, their $18 million plant upgrade will increase by $2 million.

COMMENT B: Percent removal and minimum technology-based requirements vary widely from permit to permit. The requirements range anywhere from 85 percent removal on a 30-day average to greater than 90 percent removal on a four-hour average. BOD concentrations are often established on a four-hour compliance basis. It appears that the basis for applying percent removal and minimum technology-based requirements is not well known or understood within the Department or by permittees. Many of the State minimum technology-based requirements appear to be premised on (1) outdated requirements that do not reflect the latest Federal guidelines on appropriate use of percent removal, (2) based on misapplications of the existing law, or 3) used solely as an enforcement tool for penalizing permittees. All references to BOD are meant to include CBOD (carbonaceous biochemical oxygen demand).

Minimum Federal secondary treatment requirements state that 85 percent removal of BOD TSS (total suspended solids) should be achieved by all facilities. These limitations may be made less stringent where influent wastewater strength is less than 200 mg/l BOD. (40 C.F.R. 132.2) Concerning primary treatment, the percent removal limitation is always established as a 30 day average value.

In the early 1970s, the State established more stringent requirements as preliminary effluent limitation targets due to a lack of available data on the actual instream impacts of municipal dischargers. State requirements reflect the Federal percent removal limitations and also establish, for certain discharges, that a more stringent percent removal and BOD concentration limitation must be met on a four-hour basis (N.J.A.C. 7:5-5.8). The more stringent State regulations expressly specify that where the permittee or the State has conducted wasteload allocation analyses to demonstrate the site-specific effluent limitations, the more stringent requirements (that is, the four-hour percent BOD removal and concentration limitations) are no longer applicable.

It is suggested that the footnotes be revised to include 30 day and seven day averages as the relevant basis for review. All references to four-hour averages should be deleted from the rules. As a matter of fundamental fairness, the existing language should be replaced with the suggested

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 407)
In specific instances, technology-based percent removal limitations may be less stringent (such as weak influent wastewater allowing a relaxation of the 85 percent removal requirement). However, TSS limitations can only be made more stringent than the above technology-based standards if there are overriding water quality concerns. State water quality standards for TSS are as follows:

- 25 mg/L—Trout Streams
- 40 mg/L—Non-Trout Streams

A review of the current water quality limitations for TSS demonstrates that the establishment of suspended solids limitations more stringent than Federal secondary treatment requirements would rarely, if ever, be necessary. For all non-trout streams (which are the majority of the streams in the State), the 30 mg/L Federal requirement is more stringent than the applicable standard of 40 mg/L. Nonetheless, permit writers, as a matter of course, appear to be in the habit of establishing more stringent suspended solids limitations whenever they establish CBOD or BOD limitations which are more stringent than secondary treatment standards. For example, if the CBOD limitation is established at 15 mg/L, permit writers normally establish TSS limitations at 15 mg/L, although there is no commensurate technical or regulatory justification for establishing the more stringent TSS limitation. Because suspended solids levels are virtually always greater than the commensurate CBOD pollutant level for any given wastewater, the requirement that the permit provide additional treatment to achieve the more stringent (and controlling) suspended solids limitations. As one can see, this may not only cause an unnecessary increase in pollution control costs, but more importantly, can also subject the facility to effluent limitation violations (exposing the facility to possible civil or criminal enforcement) even though there is no legal or regulatory basis for the stringent limitation.

Suspended solids regulatory requirements should not be established more stringent than the Federal technology based requirement unless there is a demonstrated water-quality basis for a more stringent requirement.

**COMMENT E:** Permit averaging periods are established in each NPDES permit typically from instantaneous to a 30-day average for various pollutants. The requirement to establish more stringent averaging periods (for example, daily of instantaneous) does not appear to be based on any reasonable need to protect water quality or to prevent instream use impacts, nor is it always consistent with monitoring schedules. Permit averaging periods vary significantly from community to community even though the situations and the parameters being regulated are similar, if not identical. Consistency must be brought to the establishment of permit averaging periods to avoid unnecessary expenditure for increased facility reliability and to avoid penalizing dischargers for effluent discharges that are acceptable to meet standards and projected stream uses.

Effluent limitations established in water quality based permits usually have two components. One is the numerical limitation for the parameter (either in concentration or mass) and the other is the averaging period over which the permittee must achieve the numerical limitation. Depending on the type of parameter and its effects on the aquatic environment, the averaging period may be instantaneous (that is, no sample may ever exceed the numerical value) or it may be up to a 30-day average, whereby the permittee is allowed to average the samples taken over the month to meet the specific numerical limitation. Obviously, it is more difficult to achieve an instantaneous limitation than it is to achieve a 30-day average limitation.

EPA studies of the effects of permit averaging period changes on municipal construction needs have indicated that to achieve limitations on a one-day or instantaneous basis rather than a 30-day average basis requires the facility's size to be doubled, if not tripled. For this reason the selection of the period of the averaging period over which the permittee must achieve the numerical limitation. Depending on the type of parameter and its effects on the aquatic environment, the averaging period may be instantaneous (that is, no sample may ever exceed the numerical value) or it may be up to a 30-day average, whereby the permittee is allowed to average the samples taken over the month to meet the specific numerical limitation. Obviously, it is more difficult to achieve an instantaneous limitation than it is to achieve a 30-day average limitation.

**COMMENT D:** TSS requirements vary substantially from permit to permit without apparent technical or regulatory bases. TSS limitations appear to be established at the same level as BOD limitations, even though TSS are only subject to the minimum Federal technology-based requirements (40 C.F.R. Part 133) in the vast majority of cases. By law, more stringent limitations for TSS may only be established where necessary to meet water quality standards (33 U.S.C. 1311(b)(8)).

Suspended solids are discharged by all municipal wastewater facilities due to particulate matter placed into the sanitary system. TSS requirements are generally established by the Federal secondary treatment regulation (40 C.F.R. Part 133) which imposes the following limitations:

- 7 day average TSS, 45 mg/L
- 30 day average TSS, 30 mg/L
- 85 percent removal of TSS
Recently, the Department has begun to establish limitations for chronic parameters based on a one-day or instantaneous maximum limitations. This is in view of the purpose of the limitations being to protect against chronic impacts and the applicable State regulations which specify that municipal waste allocations should be established at either 0-day or 10-day averages. This is despite the fact that ammonia limitations need to be established on a daily maximum basis and, in fact, such a restriction has been explicitly required by the USEPA. Limitations for other pollutants, such as phosphorus, have also been set as instantaneous maximums for certain communities although there can be no possible technical justification for his requirement. Permit limits for municipalities should be based on 30-day average requirements for water quality standards based on chronic water quality criteria.

COMMENT F: Both Federal and State law allow the use of seasonal permit limits and flow-variable limits whenever seasonal conditions affect the degree of treatment. State permits vary dramatically in their use and allowance of flow-based and seasonal limits. Many facilities have year-round limitations, while others have two-season limitations. Where seasonal limits are established, the State appears to be utilizing a two-season approach without consideration of the actual instream conditions. The State should allow appropriate seasonal limitations to be established instead of adhering to a rule of thumb it follows under the current informal procedures.

Water quality standards (WQS) based permits are developed by considering the critical period in the receiving water and determining the amount of pollutants that may be discharged into the receiving water during those periods. The EPA has published several guidance documents on the establishment of seasonal and flow-based effluent limitations. Use and incorporation of these well-recognized procedures for establishing appropriate limitations should occur.

Currently, the Department will not establish flow-based limits unless they are based on an assumed critical flow. That is, for these years where the instream flows are much higher than the critical drought flow, it is used for modeling purposes, the State does not allow for less stringent permit conditions. EPA has published several guidance documents on the establishment of seasonal and flow based effluent limitations. Use and incorporation of these well-recognized procedures for establishing appropriate limitations should occur.

Seasonal and flow-variable permits should be allowed whenever seasonal or flow conditions influence the degree of protection required. The number of seasons utilized should depend upon the individual and fact specific circumstances of the discharge. In some instances two seasons may be appropriate whereas quarterly or monthly limits may be appropriate in other instances. Use of flow-variable permits allow for increased pollutant discharge loadings during wetter years or wetter periods of a given year should be recognized as a basis to avoid being penalized for acceptable discharges where greater dilution exists. Specifically, NJDEP should clarify its policy regarding the application of seasonal limitations with NJPDES water quality based permits (see N.J.A.C. 7:9-4.5(d)). Additionally, NJDEP should establish regulatory provisions providing for the use of low variable permits which allow for increased pollutant discharges during wetter years or wetter periods of a given year (see N.J.A.C. 7:9-4.6).

COMMENT G: The State utilized a series of modeling techniques for determining the appropriate effluent limitations that are based on technical procedures developed decades ago. Since that time, newer procedures have been developed and approved by the EPA allowing for more precise determination of effluent limitation needs based on the particular conditions of the receiving water. State regulators are reluctant to utilize the new procedures due to the existing regulatory framework and lack of familiarity with the new procedures.

The steady state modeling procedures currently used may serve as a valuable tool in instances which do not warrant the use of more extensive and complicated evaluation techniques. Therefore, it may not be necessary to abandon the old techniques entirely. It would appear more appropriate, as implemented by the State of Utah, to allow the use of either the statistical modeling procedure or the steady state procedure using a fixed low-flow in assessing effluent limitations. The choice of procedure may be at the discretion of either the regulator or the permittee, and should be guided by the particular circumstances in each case.

permit limitations should be developed by using the best scientific information available. NJDEP should review its regulations to allow for the use of statistical modeling in lieu of the steady state, low flow modeling presently utilized by State permit writers. Where water quality based limitations are established, permit writers should carefully identify the procedure used in establishing all permit effluent limitations and specify the types of procedures used for evaluating the discharge requirements. In addition the Department has failed to allow for statistical modeling.

COMMENT H: Establishment of ammonia limitations in municipal permits appears subject to significant variation and confusion. Some limitations are established on seasonal bases and others are not. Some limitations are established as instantaneous maximums, whereas 30-day average limitations are allowed in most cases. At three facilities, the State proposed pH and alkalinity limitations alleging that they were necessary to prevent excess of the ammonia toxicity standard. These additional requirements are inconsistent with hundreds of previously issued permits and are not considered necessary by any other State in the country or EPA. The Department needs to develop a uniform procedure for establishing appropriate ammonia limitations for municipal discharges to avoid unnecessary expenditures and establishment of inconsistent limitations.

Water quality based limitations for ammonia are typically established for two reasons: (1) to achieve instream dissolved oxygen requirements and (2) to meet ammonia toxicity requirements based on the applicable ammonia toxicity criteria. Generally, ammonia removal for dissolved oxygen purposes is only necessary during the warmer weather months when ammonia may be oxidized instream and create an oxygen demand, thereby lowering the instream dissolved oxygen concentration.

Nitirifying bacteria are very temperature-sensitive; nitrification, and therefore, ammonia oxidation, does not occur in the natural environment below 15°C and occurs at very diminished rates between 15-10°C. For this reason, there is rarely a need to remove ammonia for dissolved oxygen purposes during the cooler weather period.
ENVIRONMENTAL PROTECTION

Similarly, ammonia toxicity is generally less of a problem when ambient temperatures decrease. The unionized fraction of ammonia (which is the toxic fraction) is diminished during cooler weather periods. As a result, ammonia discharges generally, may be increased during cooler weather periods without any adverse impact on aquatic biota of the reduced amount of the toxic unionized fraction of ammonia under those conditions. In addition to temperature effects, the adverse impacts of ammonia are diminished where greater stream flow is available for dilution, therefore reducing the overall instream concentration of the parameter. Most analyses for ammonia toxicity are conducted for the seven-day, one-in-ten-year (MA7CD10) low flow which is by definition a rare event which occurring only 0.19 percent of the time. For all flows greater than this MA7CD10 flow, the amount of ammonia that can be tolerated for either DO or ammonia toxicity purposes is typically greater because of the increased instream dilution. For waters that are classified as warm water fisheries, ammonia removal is generally not required where there is greater than a 10.1 dilution of stream to treatment plant flow.

The Federal government has recognized in a series of guidance documents that is appropriate to establish effluent limitations on flow and temperature bases. This more refined basis for determining treatment needs results in achievement of existing water quality standards but does not require the discharger to achieve high levels of ammonia reduction on a year-round basis because such levels are not required to protect the environment. EPA has demonstrated that major cost savings can occur where seasonal limitations are established. In general, the sizing of a facility is a function of a factor of two where year-round nitrification is required as opposed to requiring nitrification only during the warmer weather periods.

Flow-based limitations provide an added advantage to municipal dischargers in that the facility will not be penalized for a violation of an effluent limitation during higher flows periods when no water quality standard violation can actually occur. Under such circumstances where stream flows are above the critical cutoff for requiring nitrification, the facility should be allowed to discharge a concentration or loading above the requirement established under the MA7CD10 low flow condition. This Federally approved approach recognizes that it is not appropriate to demand that dischargers achieve stringent requirements under circumstances that do not require such stringent requirements. It would also avoid the need to initiate enforcement action against a discharger when no adverse impact to the environment has occurred. Given that achievement of water quality standards is the basis for establishing effluent limitations, it is not appropriate to penalize the facility for circumstances that clearly do not cause exceedance of water quality standards.

Alkalinity and pH are important parameters for determining the amount of unionized ammonia that will be present in a receiving water. This approach should only be utilized as a preliminary decision tool. Subsequent studies should be used to allow more or less stringent limitations, as the situation dictates.

Municipal facilities are not designed to regulate these parameters, and within the ranges found in domestic systems no environmental threat is created by pH and alkalinity in municipal effluent.

No State water quality standard has been adopted for alkalinity; therefore, no water quality standard based permit limitation for this parameter may be established. For pH, the State standard allows the pH to vary by a factor of two where year-round nitrification is required as opposed to requiring nitrification only during the warmer weather periods. Municipal facilities are not designed to regulate these parameters, and within the ranges found in domestic systems no environmental threat is created by pH and alkalinity in municipal effluent.

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This is consistent with the nature of the problem and the timing of the effects that may occur in the receiving water. The State should establish a standard operating procedure for setting phosphorus limitations. Phosphorus limits should not be established for any time frame shorter than 30 days due to the nature of the impacts and the lack of any direct, acute toxic impact of phosphorus. A presumption that a one mg/l phosphorus limitation is necessary is reasonable or discharges to lakes. For free-flowing streams, however, water quality modeling or instream sampling verifying that a problem exists and that it can be corrected through point source controls should be required to justify any phosphorus limitation on discharges to this type of receiving water. Where limitations are based on assumed rather than verified conditions, discharge limits should be based on utilization of low cost designs that may be readily incorporated into existing treatment works (see N.J.A.C. 7:9).

COMMENT J: Whole effluent toxicity testing requirements are being established for municipal dischargers throughout the State. On a nationwide basis, questions have arisen regarding the ability of the toxicity testing procedure to reflect instream use impacts and regarding inconsistencies with the application of the test. In many instances, the Department has established toxicity testing requirements without consideration of dilution or other receiving water characteristics which is contrary to the basis for utilizing the procedure (for example, to protect instream uses).

As described by EPA guidance documents, whole effluent toxicity testing can be used to estimate the overall toxicity of complex effluent discharges. Such procedures are useful because the synergistic and additive effects of pollutants are not well understood and can, therefore, vary significantly depending upon the characteristics of the wastewater. EPA specifies that establishment of the toxicity testing requirements should be based on the same factors considered in setting any water-quality-based permit limitations: effluent variability, receiving stream flow, and species sensitivity (54 Fed. Reg. 1303, January 12, 1989).

Whole effluent toxicity testing requirements are still in their infancy and substantial scientific uncertainty exists regarding whether or not the test reflects the actual instream use impacts. Exceedance of toxicity testing requirements (often established as a 96-hour LC50) does not necessarily reflect unacceptable toxic impacts to the receiving water; however, as established in existing permits, exceedance would constitute a violation of effluent limitation requirements. In particular, it should be noted that the acute test procedure is based on a continuous four-day (96-hour) exposure of aquatic organisms to a particular level of pollutant even though such conditions may not occur in the stream. Based on this continuous exposure, adverse impacts (death, growth or spawning impacts) may be noted which would not actually occur in the stream.

State requirements establish acute toxic requirements as instantaneous limitations to the available discharges occurring in the receiving water or the time frame necessary to cause an acute effect. While all parties would agree that acute effects should be strictly proscribed, failure to consider the time frame and the conditions required to produce an acute effect or whether the acute concentration can physically occur instream renders use of the test inappropriate as currently applied. Rather than serving as a water quality standard surrogate, whole effluent toxicity limitations are improperly used as discharge prohibitions, regardless of actual impacts.

EPA guidelines on use of whole effluent toxicity indicate that whole effluent toxicity should be considered no differently than any other water quality standard requirement and, therefore, should be based on actual instream conditions. A particular problem arises for municipal dischargers which are allowed increased ammonia discharges in the wintertime due to the reduced toxic effect of ammonia in cooler temperatures. This problem occurs because the test procedure is used by almost all municipal facilities as a disinfectant to control bacteria discharges. In almost all instances, chlorine limitations established in the permits were set below detection levels and therefore reliable compliance cannot be determined. In addition, many permit limitations establish the chlorine limitations as never to exceed or instantaneous maximum conditions requiring that the discharger insure that the plant be in full compliance 100 percent of the time, day in and day out, 365 days per year. Such reliability and assurance is impossible to achieve and therefore occasional chlorine violations are likely to occur at every facility that utilized this chemical to obtain effective disinfection of its wastewater. In addition, given the low detection limit and statistical variance associated with that detection limit, a facility with a reading only slightly above the detection limit but within the range of standard deviation could be deceived to be in violation when, in fact, no exceedance had actually occurred.

Establishment of a chlorine limitation as an instantaneous maximum condition, never to be exceeded, is inconsistent with the applicable information on chlorine limitations. Under low dosages, acute impacts only occur over several day exposure. Under such circumstances, requiring the discharger to insure instantaneous that the limitation is never exceeded to avoid potential acute impacts is not technically justified.

In other states, such as the Commonwealth of Virginia, a more reasonable approach is taken in regulating chlorine because of its understood dual role in disinfection and associated problems in causing impacts in the aquatic environment. The State of Virginia rules allow for “fine tuning” the dechlorination system to obtain a zero chlorine residual which

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 411)
is found in a single sample and requires that the discharger show diligence in increasing the dechlorination rate over a several hour period of the day to insure that zero residual is eventually obtained. This approach avoids unnecessary penalizing the discharger for chlorine discharges that will still result in an impact on the aquatic environment.

The Department should consider whether or not the stringent chlorine limitations currently established are reasonable and should take a more moderate approach on insuring that adequate dechlorination occurs. Approaches which do not require 100 percent compliance, day in and day out, should be utilized. The State should establish a reasonable basis for developing chlorine limits considering technical capabilities of treatment works and actual in-stream impacts. NJDEP should revise its regulations to allow for chlorine to be monitored as an indicator which would trigger a requirement to adjust discharge activities during an established time frame rather than exposing a permittee to substantial fines or penalties for violations which are unavoidable (see N.J.A.C. 7:9-4.14(c)14viii).

COMMENT L: Flow should not be regulated in the permit as an effluent limitation, unless the Department can establish that other pollutants restrictions are insufficient to assure attainment of water quality standards.

COMMENT M: Use of concentration limits in addition to mass limitations can result in over-regulation when the discharger is not at the maximum design flow.

COMMENT N: The setting of permit averaging periods lacks consistency. Permit limits for municipalities should be based on 30-day average requirements for water quality standards based on chronic water quality criteria.

COMMENT O: The DEP has failed to allow for site-specific water quality standards as allowed under 40 C.F.R. Part 131.

COMMENT P: The DEP has failed to update WQS to reflect appropriate application methodologies and new scientific information on water quality impacts.

COMMENT Q: The DEP has not justified the need for N.J.A.C. 7:9-5.7, particularly for situations involving substantial dilution, such as ocean dischargers.

COMMENT R: The Department has failed to adopt formal procedures for assessment of mixing zones.

COMMENT S: The Department has failed to address technical information provided, that chronic toxicity limitations do not reflect actual in-stream impacts.

COMMENT T: The DEP has failed to publish appropriate methodologies for conducting chronic bioassays.

COMMENT U: The DEP has failed to disclose reinterpretation of rules that substantially affect the proper development of effluent limitations.

COMMENT V: From an historical perspective, the DEP's methods of rulemaking as in the surface water quality standards have been inconsistent when arriving at the NJPDES permit drafting process.

RESPONSE: As set forth in the proposed readoption notice at 22 N.J.R. 3279(a), the Department proposed to readopt N.J.A.C. 7:9 without change in order to meet the chapter's expiration date of January 21, 1991. The Department also stated that it is developing major revisions to N.J.A.C. 7:9; however, these amendments were not finalized at the time the rule needed to be proposed for readoption. The Department does not recognize the need to amend N.J.A.C. 7:9. It is anticipated that major amendments to N.J.A.C. 7:9-4 and 5, which is the focus of most of the above comments, will be proposed in the spring or summer of 1991. During the process of proposing amendments to N.J.A.C. 7:9, the Department will consider each of the above comments and act on each as appropriate.

Due to the fact that one commenter incorporated a rulemaking petition by reference, many of the comments received were associated with the rules at N.J.A.C. 7:14A. The Department cannot consider these comments at this time. The Department is presently responding to the petition for rulemaking in accordance with N.J.A.C. 1:30-3.6.

III. Other Comments

COMMENT: The summary states that N.J.A.C. 7:9-2 was previously reserved by the Department. One commenter asked for a clarification of the meaning of “reserved.” One commenter references previously submitted concerns regarding individual subsurface disposal systems.

RESPONSE: N.J.A.C. 7:9-2 was the previous citation for the Standards for Individual Subsurface Sewage Disposal Systems. N.J.A.C. 7:9-2 was repealed and the new standards were adopted on July 28, 1989 and were placed in a new chapter, N.J.A.C. 7:9A.

N.J.A.C. 7:9-2 is a vacant subchapter, containing no information. It is therefore labeled as “reserved” for future use if necessary.

COMMENT: One commenter requested that the Department modify the definition of “qualified applicant” in N.J.A.C. 7:9-15 so as to include non-profit organizations.

RESPONSE: This is a unique situation which would not necessarily be best resolved by revising the definition of “qualified applicant.” Revising this definition for a unique situation would cause foreseeable confusion and complications in future projects. Alternatives to this comment were previously presented to the commenter directly and initially met with approval.

Full text of the adoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:9.

HEALTH

(a)

FACILITIES RATE SETTING

Residential Alcoholism Treatment Facilities

Cost Accounting and Rate Evaluation Guidelines

Adopted Repeal and New Rule: N.J.A.C. 8:31C-1.15

Adopted Amendment: N.J.A.C. 8:31C-1.18


Adopted: January 24, 1991 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: January 25, 1991 as R.1991 d.88, without change.


Effective Date: February 19, 1991.

Expiration Date: January 20, 1992.

Summary of Public Comments and Agency Responses:

COMMENTER: Center for Addictive Illnesses

COMMENT: Center for Addictive Illnesses questions the use of the DRI-McGraw Hill Health Care Costs as a valid index. The facility states that the BLS Non-Hospital Working Proxy would be more appropriate in assisting them in the recruitment for staff.

RESPONSE: The Department of Health's proposal to establish the DRI-McGraw Hill Health Care costs as a proxy for labor is consistent with the SHARE and Chapter 8 reimbursement systems. The Department has not received any information from the alcoholism facilities that would indicate that the proposed proxy would be inequitable when applied consistently to all facilities.

Full text of the adoption follows.

8:31C-1.15 Economic factor

(a) The industry-wide economic factor for services rendered after January 1, 1991 shall be comprised of the percentage changes in the following proxies for their relevant cost components weighted by their percentage of reported costs on Residential Alcohol Treatment Facilities Report forms for all facilities combined. The factor is determined exclusive of depreciation, interest, rental and lease, property insurance (land), and property insurance (building) costs.

1. Labor:
   i. Cost Component: Total Inpatient Salaries plus fringe benefits;
   ii. RATF Cost Center: All cost centers for which employee salaries are reported;
   iii. Proxy: DRI—McGraw Hill Health Care Costs average hourly earnings, Production workers, General Medical and Surgical hospitals—Northeast Region;

2. Other 1:
   i. Cost Component: Raw Food/Dietary (Total Inpatient Costs);
   ii. RATF Cost Centers: Raw Food, Dietary;
   iii. Proxies:
      (1) Consumer Price Index (CPI): Food at home (50 percent);
      (2) Producer Price Index (PPI): Processed food (50 percent);

(CITE 23 N.J.R. 412)
3. Other 2:
   i. Cost Component: Housekeeping (Total Inpatient Costs);
   ii. RATF Cost Center: Housekeeping;
   iii. Proxies:
      (1) PPI: 0915-01 Sanitary Paper and Health Products (30 percent);
      (2) PPI: 0722 Unsupported Film and Sheeting (30 percent);
      (3) PPI: 0671 Soap and Synthetic Detergent (40 percent);
   4. Other 3:
      i. Cost Component: Laundry and Linen (Total Inpatient Costs);
      ii. RATF Cost Center: Laundry and Linen;
      iii. Proxies:
         (1) PPI: 0671 Soap and Synthetic Detergent (60 percent);
         (2) CPI: Textile House Furnishings (40 percent);
   5. Other 4:
      i. Cost Component: Pharmacy (Total Inpatient Costs);
      ii. RATF Cost Center: Pharmacy;
      iii. Proxies:
         (1) PPI: 0635 Ethical (Prescription) Drugs (70 percent);
         (2) PPI: 0636 Proprietary (over the counter) Drugs (30 percent);
   6. Other 5:
      i. Cost Component: Laboratory (Total Inpatient Costs);
      ii. RATF Cost Center: Laboratory;
      iii. Proxies:
         (1) PPI: 138 Glass Containers (40 percent);
         (2) PPI: 061 Industrial Chemicals (60 percent);
   7. Other 6:
      i. Cost Component: Repairs and Maintenance/Other General Services (Total Inpatient Supplies);
      ii. Cost Center: Repairs and Maintenance/Other General Services;
      iii. Proxies:
         (1) CPI: Maintenance and Repairs, Commodities;

8.31-C-1.18 Final Payment Rate
(a) The Final Payment Rate will be based upon a certified audit performed by Blue Cross. The facility will be reimbursed at the lower of the approved rate or the Blue Cross certified rate. The Blue Cross certified rate will be subject to adjustments based upon major audit findings.
(b) The Final Payment Rate calculation for rates effective July 1, 1989 through December 31, 1990 will include an adjustment to the economic factor based upon the methodology applied to the reimbursement rates for services rendered January 1, 1991.

**HIGHER EDUCATION**

**(a)**

**BOARD OF HIGHER EDUCATION**

**Auxiliary Corporations**

**Organizational Personnel; Purchasing**

**Adopted Amendment: N.J.A.C. 9:2-13.11**

Adopted: January 24, 1991 by the Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.
Filed: January 24, 1991 as R.1991 d.72, without change as to N.J.A.C. 9:2-13.11, but with the proposed amendment to N.J.A.C. 9:2-13.9 not adopted at this time.
Effective Date: February 19, 1991.
Expiration Date: May 4, 1995.

**Summary of Public Comments and Agency Responses:**

**COMMENT:** The Department of Personnel commented that the proposed amendment to N.J.A.C. 9:2-13.9 is inconsistent with the language of N.J.S.A. 18A:64-38 which places employees of auxiliary corporations into the “unclassified service of the Civil Service.”

**RESPONSE:** The Board believes that the State College Autonomy Legislation, P.L. 1986, c.42, as a subsequent statute, supersedes the language of N.J.S.A. 18A:64-38 and that therefore, the Board of Higher Education may adopt the proposed amendment to N.J.A.C. 9:2-13.9. However, in deference to the views of the Department of Personnel, the Board determined that it will request an official Attorney General’s opinion on the issue prior to the adoption of the proposed amendment to N.J.A.C. 9:2-13.9. Thus, the Board does not intend to adopt the proposed amendment to N.J.A.C. 9:2-13.9 at this time but will leave the language of that provision as it currently stands until it receives the Attorney General’s opinion mentioned above.

**COMMENT:** IFPTE, Local 195, AFL-CIO, commented through their counsel stating that the removal of the employees from the unclassified service of the Civil Service would lead to non-uniform and arbitrary job titles and salaries for auxiliary employees at various State colleges and thus opposed the proposed amendment to N.J.A.C. 9:2-13.9.

**RESPONSE:** The Board does not see the necessity for uniformity for such employees at the various auxiliary corporations but determined not to adopt this proposed amendment for other reasons stated above.

**COMMENT:** The Communications Workers of America (CWA) AFL-CIO commented that the proposed amendment to N.J.A.C. 9:2-13.9 was “a bad idea” in that the “interests of employees to fair and equitable treatment are much better served by the current rule” and that the employees would be less protected from patronage.

**RESPONSE:** The Board does not agree that the proposed amendment would result in unfair or inequitable treatment of such employees or patronage; however, it determined not to adopt this proposed amendment for other reasons stated above.

**COMMENT:** CWA also commented that the proposed change to N.J.A.C. 9:2-13.11 would allow the auxiliary corporations to sidestep laws, regulations and standards created to protect the public.

**RESPONSE:** The Board disagrees. The language of N.J.A.C. 9:2-13.11 requires competitive bidding whenever possible and that the organizations follow the general guidelines for purchasing by State colleges. It is believed that these two standards will adequately ensure the interests of the public in this area.

**FULL TEXT** of the adoption follows.

**9:2-13.11 Purchasing**

An auxiliary organization shall make such purchases as are necessary for its operation. Such purchases shall be made through competitive bidding whenever possible. The standards of the college shall serve as general guidelines for competitive bidding.

**PUBLIC UTILITIES**

**(b)**

**BOARD OF PUBLIC UTILITIES**

**Energy Conservation**

**Adopted New Rules: N.J.A.C. 14A:3 (recodified upon adoption as N.J.A.C. 14:30)**

Proposed: November 5, 1990 at 22 N.J.R. 3315(b).
Adopted: January 16, 1991 by the Board of Public Utilities, Scott A. Weiner, President.
Filed: January 23, 1991 as R.1991 d.69, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 52:27F-11(g).
Effective Date: February 19, 1991.
Expiration Date: February 19, 1996.

**Summary of Public Comments and Agency Responses:**

No comments received.

Since N.J.A.C. 14A:3 expired October 7, 1990, pursuant to Executive Order No. 66(1978), the proposed rules are adopted herein as new rules, in accordance with N.J.A.C. 1:30-4.4(f).

A public hearing in this matter was held on November 27, 1990, at which no member of the public or other interested party appeared.

In order to properly codify the rules of the former Department of Energy, the Board of Public Utilities is recodifying N.J.A.C. 14A:3 upon adoption as N.J.A.C. 14:30. References to these rules within the chapter are also corrected to reflect the recodification.
CHAPTER [3]**30**
ENERGY CONSERVATION

SUBCHAPTER 1. GENERAL PROVISIONS

*14A:3*14:30-1 Purpose and scope
The purpose of these rules is to achieve substantial savings of one or more energy sources in compliance with the provisions of P.L. 1977, c.146, section 9g. These rules shall apply uniformly to each member of the segment of society within the State to whom such rule is directed unless otherwise specified in writing by the Board.

*14A:3*14:30-1.2 Construction and amendment
(a) These rules shall be liberally construed to permit the Board to effectively carry out its statutory functions and to insure the maximum conservation of energy sources within the State.
(b) These rules may be amended by the Board in accordance with the provisions of N.J.S.A. 52:14B-1 et seq.

*14A:3*14:30-1.3 Copies
Copies of all reports, correspondence, documents, data, analysis, and whatever other information, as required by the provisions of these rules, shall be filed in original plus three copies, and addressed to the Board of Public Utilities, Two Gateway Center, Newark, New Jersey 07102.

*14A:3*14:30-1.4 Variances and exemptions
(a) The Board will consider requests for variances or exemptions from any of the provisions of this chapter. Any person requesting a variance should complete an "Application for a Variance or an Exemption", which may be obtained from the:
   Board of Public Utilities
   Two Gateway Center
   Newark, New Jersey 07102
(b) The completed form should be submitted to the Board. The Board shall review the request and notify the person of its determination and the basis for the determination within 90 days of receipt of the application. This determination should constitute final agency action on the application.
(c) The Board may grant a variance if the person demonstrates to the satisfaction of the Board that compliance with the provisions of this chapter would:
1. Create undue economic, environmental or technical hardship;
2. Increase the amount of energy consumed by a building; or
3. Be detrimental to the public health, safety or welfare.

SUBCHAPTER 2. LARGE BOILER COMBUSTION EFFICIENCY STANDARDS

*14A:3*14:30-2.1 Scope
Unless otherwise indicated, the provisions of this subchapter shall apply to all fossil fuel-fired large boilers, operated within the State of New Jersey, as defined in N.J.A.C. *14A:3-2.2* *14:30-2.2*, except those operated by electric and gas public utilities subject to the jurisdiction of the New Jersey Board of Public Utilities.

*14A:3*14:30-2.2 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Board" means the New Jersey Board of Public Utilities.
"BTU" or "British Thermal Unit" means the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit from the temperature 60 degrees Fahrenheit at standard pressure (14.7 psia) conditions.
"Combustion efficiency" (Ec) means the percentage ratio of heat available minus heat lost in the products of combustion and excess air to heat available, where heat available is the higher heating value of the fuel.
Ec = (heat available – (heat lost in the products of combustion and excess air))/(heat available)

"High fire" means a condition at which the boiler is operating at its maximum firing rate within its normal operating range, when in service.
"In service" means a condition of the boiler when operating.
"Large boiler" means any fired steam boiler, steam generator, hot water boiler, or hot oil unit whose rated capacity exceeds either 400,000 square feet of heating surface or 100 boiler horsepower, or four million BTU/hour input, regardless of temperature or pressure conditions.
"Load" means the demand of the boiler in appropriate units per hour at the operating temperature and pressure conditions.
"Low fire" means a condition at which the boiler is operating at its minimum firing rate when in service.
"Optimum percent oxygen" means the lowest percent oxygen content in the flue gas which can be achieved without:
1. Exceeding 220 ppm carbon monoxide for gas fired boilers or the air pollution levels specified by N.J.A.C. 7:27-3 for coal and oil fired boilers; or
2. Causing delayed ignition, visible flame instability, flame carryover, flame impingement, pulsation noise.
"Optimum percent oxygen performance characteristic curve" means a relationship between the optimum percent oxygen in the flue gas and the load.
"Optimum temperature" means the temperature of the flue gas at the condition of optimum percent oxygen for that load condition.
"Optimum temperature performance characteristic curve" means a relationship between the optimum temperature of the flue gas and the load.
"Percent oxygen" means the ratio of the volume of oxygen contained in the sample of flue gas to the total volume of the sample. Percent oxygen may be determined directly from a device which measures oxygen content or equivalent percent oxygen content may be determined indirectly by conversion from devices which measure carbon dioxide.
"Responsible person" means the owner or operator, whoever has control, either directly or indirectly through an agent, over the large boiler.
"Performance characteristic curves" means optimum percent oxygen performance characteristic curve and optimum temperature performance characteristic curve.
"Steady state condition" means equilibrium condition as indicated by a variation in the flue gas temperature of not more than plus or minus 10 degrees Fahrenheit obtained in three consecutive readings taken 10 minutes apart.

*14A:3*14:30-2.3 Standards
Responsible persons shall operate all large boilers at a combustion efficiency such that neither the percent oxygen shall be higher than 1.25 times the optimum percent oxygen value nor the temperature of the flue gases shall be higher than 1.15 times the optimum temperature value obtained from the performance characteristic curves for that load condition. However, where optimum percent oxygen is below 2.4 percent, the boilers may be operated at a combustion efficiency such that the percent oxygen is not higher than 3.0 percent.

*14A:3*14:30-2.4 Performance characteristic curves
(a) Responsible persons shall obtain initial performance characteristic curves for every large boiler as soon as practicable following its next annual internal inspection required by N.J.A.C. 12:90-4.10. The initial performance characteristic curves shall be obtained for the type of fuel(s) in use.
(b) Points on the curves shall include low fire, the upper end of the normal operating range, and several intermediate points uniformly spaced. For nonmodulating burners, intermediate points are not required.
(c) Performance characteristic curves for each boiler shall be re-determined every five years, or when the fuel type, or any component of the boiler which could change its combustion efficiency, has changed, or at the request of the Board. Performance characteristic curves shall be re-determined only after the boiler is made ready in a state similar to that required for annual internal inspection cited in (a) above.

(CITE 23 N.J.R. 414) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
[14A:3]**14:30*-2.5 Test requirements
Responsibility persons shall test every large boiler in accordance with N.J.A.C. *[14A:3]**14:30*-2.6 not less than once during each calendar week when it is in service. Boilers used primarily for heating service shall be tested during the heating season.

*[14A:3]**14:30*-2.6 Test procedure
(a) The boiler test procedure is as follows:
   1. When the boiler is in service, continue operation until a steady state condition is reached at any point within the user’s operating range; and
   2. Measure and record the percent oxygen present in the flue gases and the temperature of the flue gases utilizing test equipment designed for such purposes. The test equipment shall be used in accordance with the equipment manufacturer’s operating instructions.

*[14A:3]**14:30*-2.7 Records and inspection
(a) Responsibility persons shall maintain performance characteristic curves and weekly test results at the plant wherein the boiler is situated for a period of at least five years. Such reports shall be made available, upon request, for inspection by officials of the Board during normal business hours.
(b) Inspection by officials of the Board for the purpose of determining compliance with the provisions of this subchapter shall be made during normal business hours.

*[14A:3]**14:30*-2.8 Variance
If compliance with the provisions of this subchapter creates undue economic, environmental or technical hardship, a variance of the provisions of this subchapter may be requested from the Board.

*[14A:3]**14:30*-2.9 Failure to comply
Upon failure to comply with the provisions of this subchapter, the Board may seek an injunction against the user to prevent that user from operating a boiler in violation of this subchapter, pursuant to P.L. 1977, c.146, sec. 19.

*[14A:3]**14:30*-2.10 Certification of compliance
(a) The responsible person shall complete in accordance with instructions provided by the Board, and post in a prominent location near the boiler, a “Certificate of Boiler Compliance”. The responsible person shall certify on the certificate that the boiler is in compliance with this subchapter. The certificate shall set forth all applicable variances and exemptions granted by the Board.
(b) The responsible person shall, within 30 days of the boiler’s initial compliance and thereafter upon request of the Board, submit to the Board in accordance with instructions provided by the Board a “Boiler Compliance Form.”
(c) It shall be deemed a violation of this chapter for a responsible person to knowingly provide false, misleading or incomplete information on the “Certificate of Boiler Compliance” or “Boiler Compliance Form.”

SUBCHAPTER 3. ANNUAL OIL FIRED HEATING UNIT MAINTENANCE STANDARDS

*[14A:3]**14:30*-3.1 Scope
The provisions of this subchapter shall apply to all oil-fired units on which maintenance is performed annually in residential premises, commercial premises and schools. Oil-fired units involving large boilers are defined in and covered by N.J.A.C. *[14A:3]**14:30*-2 shall not be covered by this subchapter.

*[14A:3]**14:30*-3.2 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:
“Boiler” means a device designed to be the primary heating source for a structure which uses water or steam as the heat transfer medium.
“Flue gas analyzer” means a device used to extract a sample of flue gas and measure the percentage of carbon dioxide in the sample or the percentage of oxygen in the sample if the measuring device is so designed.
“Furnace” means a device designed to be the primary heating source for a structure which uses air as the heat transfer medium.

“Maintenance” means any inspection, cleaning, lubrication, adjustment, testing or replacement of parts of a unit or its controls. Maintenance shall not include emergency services.
“Responsible person” means any fuel oil supplier, heating contractor, or any person who provides maintenance on boilers or furnaces.

“Smoke scale” means a photometric scale to which the filter paper stained by the flue gas sample extracted by the smoke tester is compared to determine the smoke condition of the unit. A smoke scale shall be considered approved if it is constructed and operated in accordance with American Society for Testing Materials (ASTM) D 2156-80.

“Smoke tester” means a device used to extract a sample of flue gas. A smoke tester shall be considered approved if it is constructed and operated in accordance with ASTM D 2156-80.

“Steady-state condition” means equilibrium conditions as indicated by changes in the flue gas temperature of not more than plus or minus five degrees Fahrenheit obtained in two consecutive readings taken five minutes apart.
“Unit” means a boiler or furnace.

*[14A:3]**14:30*-3.3 Listing requirement
(a) The Board shall maintain a list of all responsible persons who offer maintenance service to customers.
(b) All responsible persons who offer maintenance shall furnish the following information to the Board annually by the 30th of June:
   1. Name of corporation, partnership or individual and a primary contact;
   2. Business address;
   3. Business telephone number; and
   4. Summary account information, as follows:
      i. For fuel oil suppliers, the number of accounts by classification, that is, residential, industrial, and commercial (to include schools, hospitals and government building accounts), and the total number of accounts within each classification that receive maintenance from the fuel oil supplier; and
      ii. For all others, the total number of service accounts by classification, that is, residential, industrial, and commercial (to include schools, hospitals and government building accounts).

*[14A:3]**14:30*-3.4 Standard
All responsible persons shall achieve a minimum permissible efficiency rating, as determined by N.J.A.C. *[14A:3]**14:30*-3.5, of 72 percent for all oil-fired units subject to the provisions of this subchapter.

*[14A:3]**14:30*-3.5 Test procedure
(a) The test procedure to determine compliance with N.J.A.C. *[14A:3]**14:30*-3.4 is as follows. The responsible person shall:
   1. Initiate operation of unit and continue operation until unit reaches steady-state condition;
   2. Upon attaining steady-state conditions, measure and record:
      i. Unit intake air temperature (Ta), degree Fahrenheit;
      ii. Stack gas temperature (Ts), degree Fahrenheit;
      iii. Percentage of carbon dioxide or percentage of oxygen using a flue gas analyzer;
      iv. Smoke number of the flue gas using an approved smoke scale; and
   3. Adjust the draft to meet manufacturer’s specification, if required.
(b) The following calculations shall be used to determine the following efficiency rating:
   1. Calculate the difference in temperature (T) between the stack gas temperature (Ts) obtained in (b)2 and the unit intake air temperature (Ta) obtained in (b) as T = (Ts-Ta); and
   2. Using a stack loss chart and the values obtained in (b), and 
   (d), compute the stack loss percentage (% SL); and
   3. Calculate the percent efficiency using the following: % efficiency = 100% - (% SL).

*[14A:3]**14:30*-3.6 Maintenance requirements
(a) All responsible persons shall maintain oil-fired units subject to the provisions of this subchapter annually to meet the requirement specified in N.J.A.C. *[14A:3]**14:30*-3.4.
1. All oil-fired units shall be adjusted to obtain optimum efficiency consistent with combustion characteristic indicated by a smoke number not in excess of number 1 smoke on an approved smoke scale.

2. Where the oil-fired unit cannot be maintained to meet the minimum efficiency rating as set forth in N.J.A.C. 14A:3-14:30* -3.4, the responsible person shall notify the owner of the premises that the unit cannot meet the efficiency rating recommended by the Board. A copy of the notice stating the efficiency rating achieved shall be kept on file at his or her place of business. Such notices shall be made available, upon request, for inspection by officials of the Board during normal business hours; and

3. The responsible person shall furnish the owner with conservation information pertaining to fuel savings of energy efficient units. Each responsible person, upon request, shall furnish the Board with a copy of the written material it provides the owner upon failure of the unit to meet the recommended efficiency rating.

* [14A:3]**14:30*-3.7 Failure to comply

Upon the failure of a responsible person to comply with the provisions of this subchapter, the Board may seek an injunction to prevent such party from offering maintenance service pursuant to N.J.S.A. 1977 c.146, sec. 19.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Routes U.S. 9 in Ocean County and N.J. 45 in Salem County

Adopted Amendments: N.J.A.C. 16:28A-1.41 and 1.96


Adopted: January 3, 1991 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: January 24, 1991 as R.1991 d.77, without change.


Effective Date: February 19, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.41 Route U.S. 9

(a) (No change.)

(b) The rate of speed designated for State highway Route U.S. 9, (excluding Garden State Parkway Authority sections) described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic.

1.-10. (No change.)

11. 45 miles per hour in Eagleswood Township, Ocean County to Route 72, Stafford Township (milepost 70.40); thence

i. 35 miles per hour school speed zone within the Eagleswood Township Elementary School zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours; thence

12.-32. (No change.)

16:28A-1.96 Route 45

(a) The rate of speed designated for the certain parts of State highway Route 45 described in this subsection shall be established and adopted as the maximum legal rate of speed:

i. For both directions of traffic:

i.i.-iii. (No change.)

iv. Zone four: 50 mph in Mannington Township, Salem County extending into Pilesgrove Township to Route U.S. 40 (milepost 8.8 thence

(1) 35 mph school speed zone within the Mannington Township School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours; thence

v.-xix. (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Routes N.J. 72 in Ocean County and U.S. 206 in Burlington County

Adopted Amendments: N.J.A.C. 16:28A-1.39 and 1.57


Adopted: January 3, 1991 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: January 24, 1991 as R.1991 d.77, without change.


Effective Date: February 19, 1991.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.39 Route 72 and (Service Road, Old Route 72)

(a) The certain parts of State highway Route 72 and (Service Road, Old Route 72) described in the subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. No stopping or standing in Stafford Township, Ocean County:

i. Along both sides:

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

3. For the entire length within the corporate limits of the Township of Stafford, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking areas.

ii. Along the northerly (westbound) side:

(1) (No change.)

16:28A-1.57 Route U.S. 206

(a) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as "no stopping or standing" zones.

1. (No change.)

2. No stopping or standing in Southampton Township, Burlington County:

i. Along both sides:

(1) From the junction of Route 70, at the traffic circle, to a point 1,200 feet north of, and a point 1,200 feet south of, the circle.

(2) Beginning 500 feet south of the southerly curb line of Retreat Road to a point 500 feet north of the northerly curb line of Vincetown-Buddtown Road.

(3) Beginning 200 feet south of the southerly curb line of Route N.J. 38 to a point 400 feet north of the northerly curb line of Route N.J. 38.

3. (No change.)

ii. Recodify existing 7.-26. as 4.-23. (No change in text.)

(b)-(c) (No change.)
A member who appeals the suspension or termination of his or her employment is awarded back pay for all or a portion of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay awarded, if the amount of the back pay is sufficient to deduct the value of the normal pension contributions due, such contribution shall be paid by the member. The amount of the pension contribution will be determined by the provisions of the award. The member's employment and is awarded back pay for all or a portion of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay awarded, if the member's employment is awarded back pay for all or a portion of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay awarded, if the member receives full back pay, including normal salary increases, then the contribution will be based upon the salaries that the member would have earned for the reinstated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salaries that the employee would have earned for the reinstated, suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salaries that the employee would have earned for the reinstated, suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salaries that the employee would have earned for the reinstated, suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salaries that the employee would have earned for the reinstated, suspended or terminated period.

(c) It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.

No comments received.

Full text of the adoption follows.

17:2-6.6 Retirement credit

(a) (No change.)

(b) A member who appeals the suspension or termination of his or her employment and is awarded back pay for all or a portion of his or her employment and is awarded back pay for all or a portion of his or her employment for the period of suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay awarded, if the member receives full back pay, including normal salary increases, then the contribution will be based upon the salaries that the member would have earned for the reinstated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salaries that the employee would have earned for the reinstated, suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salaries that the employee would have earned for the reinstated, suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salaries that the employee would have earned for the reinstated, suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salaries that the employee would have earned for the reinstated, suspended or terminated period.
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1992. The Director of the Division of Taxation for that payment.

COMMENT: Secondly, in conjunction with the safe haven proposal, the commenter proposes that special consideration be given to groups of affiliated companies. Since premium writings may shift year to year among a group of affiliated insurers, in considering the penalty, the commenter stated that overpayment by one affiliated company could be allowed as an offset against underpayment of another affiliated company.

RESPONSE: The Division responded that the enabling legislation does not contain any provisions which would allow the netting of over and underpayments within an affiliated group and that since the rules are constrained by statutory language, the Division is not able to adopt the change proposed. For tax purposes each taxpayer is treated as an individual entity.

COMMENT: A third commenter objected to the adoption of rules because it claimed that the surtax is illegally and unconstitutionally imposed. It alleged a number of legal and constitutional defects in the surtax.

RESPONSE: The Division responded that the matters raised were for a court rather than an agency to decide and that without a final court order the Division was unable to recognize the validity of the objection.

COMMENT: Secondly, the commenter stated that the proposal should not be promulgated because the Social Impact statement was inaccurate. The statement provided that the law is intended to reduce insurance premiums, but the commenter claimed that since the Attorney General has avowed that the cost of the surtax may be included in the rate base, this would lead to rate increases.

RESPONSE: The Division responded that a social impact statement is an estimation of the agency making the statement, and the Division based its impact statement on the legislative intention and still believes the legislative intention is correct. Since there is as yet no final outcome to the litigation to which the commenter referred, the Division is constrained to adhere at this time to its expectation of the overall impact of the Fair Automobile Insurance Reform Act of 1990 and to adopt the rule in this light.

Summary of Changes Upon Adoption:
The rules as adopted contain one stylistic change and two clarifying changes not detrimental to the public. The clarification was believed helpful as the result of a comment from the public. Upon its own initiative subsequent to its response to the second commenter cited above, the Division codified N.J.A.C. 18:21-1.5c) to 18:21-1.6 in order to highlight more clearly the applicable rule for subsequent periods.

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

CHAPTER 21 INSURANCE TAXES

SUBCHAPTER 1. PRIVATE PASSENGER AUTOMOBILE INSURANCE PREMIUM SURTAX

18:21-1.1 Insurance premium surtax
(a) Taxpayers under N.J.S.A. 54:18A-1 et seq. shall pay a surtax on all taxable private passenger automobile insurance premiums collected in New Jersey during calendar years 1990, 1991, 1992. (b) Taxable private passenger automobile insurance premiums do not include premiums collected by the New Jersey Automobile Full Insurance Underwriting Association, N.J.S.A. 17:30E-4 and premiums collected by the Market Transition Facility created pursuant to N.J.S.A. 17:33B-11.

18:21-1.2 Installment payments
(a) Installment payments in 1990 shall be made as follows:
1. On or before June 1, 1990, taxpayers shall make an installment payment of the surtax and file a report prescribed by the Division of Taxation for that purpose. The payment shall be equal to one-half of the surtax estimated to be due for taxable premiums collected in New Jersey in 1990 calculated at a rate prescribed by the Director of the Division of Taxation for that payment.

2. On or before September 1, 1990, taxpayers shall make an installment payment of the surtax and file a report *[prepared] *prescribed* by the Division of Taxation for that purpose. The payment shall be equal to one-half of the surtax estimated to be due for taxable premiums collected in New Jersey in 1990 calculated at a rate prescribed by the Director of the Division of Taxation for that payment.

(b) Installment payments in 1991 shall be made as follows:
1. On or before March 1, 1991, taxpayers shall make a payment of surtax at a rate set by the Director in an amount of one-half of the surtax due and payable based on the taxpayer’s business done during the preceding calendar year. Payment shall be shown on an accompanying taxpayer’s annual return for the preceding tax year or installment report, if any shall have been prescribed by the Director.

2. On or before June 1, 1991, taxpayers shall make a payment of surtax at a rate set by the Director in an amount of one-half of the surtax due and payable based on the taxpayer’s business done during the preceding calendar year. Payment shall be shown on and accompany an installment report prescribed by the Director.

(c) Installment payments in 1992 shall be made as follows:
1. On or before March 1, 1992, taxpayers shall make a payment of surtax at a rate set by the Director in an amount of one-half of the surtax due and payable based on the taxpayer’s business done during the preceding calendar year. Payment shall be shown on and accompany the installment report prescribed by the Director.

18:21-1.3 Annual returns filed
A tax return showing the surtax due shall be filed on or before March 1, 1991 showing the surtax due for 1990, March 1, 1992 showing the surtax due for 1991, and March 1, 1993 showing the surtax due for 1992.

18:21-1.4 Tax rate
The initial surtax rate for the installment payment due June 1, 1990 shall be five (5) percent. Thereafter, adjustments to the rate of the surtax may be made by the Director pursuant to N.J.S.A. 17:33B-50.

18:21-1.5 Penalty *and interest* for underpayment of installment payments due June 1, 1990 and September 1, 1990 *[and thereafter] *

(a) The amount of an underpayment *for installment payments due June 1, 1990 and September 1, 1990* shall be the excess of the amount of the installment payment which would be required to be paid if the installment payment were equal to 45 percent of the surtax which would be shown on the return for the year if the surtax rate at the time of the payment were imposed for the entire year or, if no return was filed, 45 percent of the surtax for that year over the amount,

if any, of the installment payment paid on or before the last date prescribed for payment.

(b) Interest and penalty on *such* underpayments are calculated pursuant to the terms of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., including without limitation thereto N.J.S.A. 54:49-3 and 4.

*(c) For subsequent installment payments, reports, and annual returns and payments, the penalty and interest provisions in the State Tax Uniform Procedure Law shall apply.]*

*18:21-1.6 Penalty and interest—general provision; subsequent years
For installment payments, reports, and annual returns and payments due subsequent to those payments referred to in N.J.A.C. 18:21-1.5, the penalty and interest provisions in the State Tax Uniform Procedure Law shall apply.*
Amendment: N.J.A.C. 18:22-1.3

Adopted: January 22, 1991 by Benjamin J. Redmond, Acting Director, Division of Taxation.

Filed: January 23, 1991 as R.1991 d.70, without change.

Effective Date: February 19, 1991.
Expiration Date: February 24, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: The Division received several letters from public utilities and professional societies such as the New Jersey Society of CPA's and the New Jersey Utilities Association. The correspondents argued that the proposal misinterpreted the legislative intent of the statute by expanding the definition of public property for purposes of the calculation of the franchise tax paid by the State's utility industry to include areas such as access roads and cul-de-sacs.

RESPONSE: The Division responded that its interpretation was supported by the broad wording of the statute and the judicial interpretation in the case of Cedar Glen Lakes Water Co. v. Taxation Div. Director, 7 N.J. Tax 233 (1985), which held that an area could be considered "public" if the public had unrestricted access to it.

COMMENT: Several correspondents recommended the inclusion of an effective date in the rule to prevent retroactive application of the rule.

RESPONSE: The Division responded that to include an effective date in the rule itself was unnecessary.

COMMENT: The Division received a letter suggesting that the proposed change would represent a "taking" of property in violation of the Fifth Amendment to the U.S. Constitution.

RESPONSE: The Division replied that the proposal defined "public place" to clarify when utility lines are in public areas for purposes of calculating the tax on public utilities and therefore the proposal would not be seen as a "taking" in the sense contemplated by the Fifth Amendment.

COMMENT: Some correspondents argued either that the Division lacked authority to adopt the proposal or that the proposal was procedurally defective.

RESPONSE: The Division responded that the amendment was proposed in compliance with the procedures under the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and Rules for Agency Rulemaking, N.J.A.C. 1:30, as interpreted by the Office of Administrative Law, that the proposal came within the guidelines for agency rulemaking authority expressed by the New Jersey Superior Court in Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313 (1984), and that the proposal fell within the Division's authority under N.J.S.A. 54:50-1.

COMMENT: A couple of correspondents suggested that the proposal discriminated against investor-owned utilities as opposed to government-owned systems.

RESPONSE: The Division's response pointed out that the statute itself only applied to public utilities, so that any rule promulgated under the statute would be by definition only applicable to such systems.

Full text of the adoption follows.

18:22-1.3 Definitions

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

"Public street, highway, road or other public place" means any street, highway, road or other public place which is open and used by the public, even though the same has not been formally accepted as a public street, highway, road or other public place, and includes without limitation dead end streets, cul-de-sacs, alleys, water or riparian ways, and non-restricted roadways, such as extended residential, commercial or recreational facility driveways, or dead end streets, cul-de-sacs or alleys which are connected to public roadways and are for access to or the use of supermarkets, shopping malls, planned communities (such as apartment complexes and condominium developments), commercial enterprises, and recreation facilities (such as marinas, golf clubs, drag strips, etc.) and the connecting roads within or around the above facilities whether these roadways shall be located on public or on private property. The term "public street, highway, road or other public place" shall not include restricted residential communities that control, by way of a permanently manned gate, access to or through said community.

DIVISION OF TAXATION

Luxury Tax

Adopted New Rules: N.J.A.C. 18:25

Adopted: January 16, 1991 by Benjamin J. Redmond, Acting Director, Division of Taxation.


Effective Date: February 19, 1991.
Expiration Date: February 19, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Because this chapter expired on January 6, 1991, pursuant to Executive Order No. 66(1978), the rules herein are adopted as new rules in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the rules proposed for readoption, adopted herein as new rules, can be found in the New Jersey Administrative Code at N.J.A.C. 18:25.

Full text of the amendments to the adopted new rules follows.

18:25-1.2 Definitions

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

"Vendor" means any person selling or hiring property or services from another person, the receipts from which are taxable.
"Retail sale" or "sale at retail" means and includes:
1. Any sale in the ordinary course of business for consumption of whiskey, beer or other alcoholic beverages by the drink in restaurants, cafes, bars, hotels and other similar establishments;
2. Any cover charge, minimum charge, entertainment, or other similar charge made to any patron of any restaurant, cafe, bar, hotel or other similar establishment;
3. The hiring, with or without service, of any room in a hotel, inn, rooming or boarding house;
4. The hiring of any rolling chair, beach chair or cabana; and
5. The granting or sale of any ticket, license or permit for admission to any theatre, moving picture exhibition or show, pier, exhibition, or place of amusement, except charges for admission to boxing, wrestling, kick boxing or combative sports events, matches, or exhibitions, which charges are taxed pursuant to section 20 of P.L. 1985, c.83 (N.J.S.A. 5:2A-20).

"Purchaser" means any person purchasing or hiring property or services to another person upon the receipts from which a tax is imposed.

18:25-1.4 Imposition of luxury tax

A luxury tax is imposed by Atlantic City upon retail sales, or sales at retail within the territorial limits of the City of Atlantic City.

18:25-1.5 Tax rates

(a) Luxury tax is imposed at a rate of nine percent except for sales of alcoholic beverages which are taxed at a rate of three percent.
(b) The combined rate for sales subject to both the Atlantic City luxury tax and New Jersey sales and use tax is 13 percent (luxury tax at nine percent and sales tax at four percent).
(c) Sales subject only to New Jersey sales and use tax are taxable at a rate of seven percent.
(d) Sales of alcoholic beverages by the drink in Atlantic City are taxable at the combined rate of 10 percent (luxury tax at three percent and sales tax at seven percent). Sales of package goods are subject only to New Jersey sales and use tax at the rate of seven percent.

18:25-2.3 Tax rates for room and apartment rentals
Luxury tax shall be imposed on the rental of a room or rooms and apartments at a rate of nine percent.

HUMAN SERVICES
(a)
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Legal Assistance for Medicare Patients (LAMP)
Extension of Eligible Services
Adopted Amendment: N.J.A.C. 10:13-2.2
Proposed: August 6, 1990 at 22 N.J.R. 2216(a).
Adopted: January 25, 1991 by Alan J. Gibbs, Commissioner, Division of Human Services.
Filed: January 25, 1991 as R.1991 d.86, without change.
Effective Date: February 19, 1991.
Expiration Date: July 18, 1993.
Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:13-2.2 Eligible services
(a)-(b) (No change.)
(c) In the third contract year, LAMP program legal services will expand to cover all Medicare services, including, but not limited to, acute care hospital services, out-patient services, physician services, durable medical equipment, and some ambulance transportation services while continuing home health care, skilled nursing facility and rehabilitation hospital appeals.
(d) (No change.)

(b)
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Home Care Services Manual
General Provisions, Covered Services, Waivered Programs, Home Care Expansion Program (HCEP), HCPCS Procedure Coding System
Adopted Repeal and New Rules: N.J.A.C. 10:60
Filed: January 17, 1991, as R.1991 d.65, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 30:4D-6b(2), 7, 7a, b and c; 30:4D-12, 30:4E; 42 CFR 440.70, 170.
Effective Date: February 19, 1991.
Operative Date: March 1, 1991.
Expiration Date: February 19, 1996.

Summary of Public Comments and Agency Responses:

Comments have been received from four sources, of which two are managed care agencies and two are commenters.

Comments noted two reimbursement issues. The first reimbursement related concern evoked a change in the Home Care Manual. This was a request for publication of the reimbursement methodology for home health services in the general Medicaid portion of the manual. Although eligibility and reimbursement provisions for the Community Care Program for the Elderly and Disabled (C.C.P.E.D.), the AIDS Community Care Alternatives Program (A.C.C.A.P.), and the other Waivered programs had been clearly set forth, the reimbursement methodology for the basic home health program had not been similarly described. Accordingly, language is being added at N.J.A.C. 10:60-2.1(e) to reflect current reimbursement methodology, as based on the existing Title XIX State Plan.

This methodology represents long-standing Medicaid policy which has been approved by the Federal Department of Health and Human Services as part of New Jersey's Title XIX (Medicaid) State Plan. The commenter requested publication of this methodology. This is a substantive change not requiring additional public notice and comment because the text does not enlarge or curtail the impact on providers governed by this reimbursement methodology.

The commenters' second concern about reimbursement pertained to the actual supervisory visit by registered professional nurses for personal care assistant services. The commenters requested that the Division establish a separate fee or payment for the nurse-supervisory visit that is required every 60 days. The agency's response is that supervisory visits are included in the home health agency's overall rate. There is no plan to change the reimbursement methodology for personal care assistant services at this time. It should be noted that nurse supervision is a federal requirement for personal care assistant services pursuant to 42 CFR 440.170(b).

Among other comments expressed by commenter was the frequency of nursing supervision visits for home health services which was redefined from 60 days to two months to conform to Federal Medicare regulations.

Several commenters raised clarification of professional roles and responsibilities. In response, the Division is adding language to specify more clearly the Division requirements that agencies and staff must be qualified. In addition, certain responsibilities are defined as either nursing or homemaker/aide duties, and summarized below. No new requirements are added; for example, homemaker agencies are accredited by either the Commission on Accreditation for Home Care, Inc., or by the National Home Caring Council. Language reinforcing this requirement was added upon request by the industry at adoption. There is no new burden upon providers, because it has been Division policy to require accreditation.

Summary of Changes Between Proposal and Adoption

Two commenters requested that the word "accredited" be added to "homemaker agency" to reinforce that this is a requirement for participation in the N.J. Medicaid Program. Accordingly, in N.J.A.C. 10:60-1-1(a), "accredited" is being added. An additional concern relating to the requirements lies in the requirement that a copy of the aide's certificate be in the personal file. N.J.A.C. 10:60-1-2 has been modified to permit "other documentation acceptable to the Division" to be retained in the personal file.

In respect to definition of services, a commenter noted that the manual lacks a clear statement of eligibility: a citation to the definition of eligibility has been added at N.J.A.C. 10:60-1-1(b), "see N.J.A.C. 10:60-1 for definition of Medicaid recipient." In connection with acute home health care, a commenter requested that the eligible period be described as "two months" rather than "60 days"; the manual has been changed to reflect this request at N.J.A.C. 10:60-1.2. (Reference is made to the definition of "level of care, Acute home health care.") The third concern relating to the definition of services was a commenter's request that the section of subchapter 5 describing the HCPCS procedure codes related to the ACCAP Program be clarified; expanded narratives which explain the types of providers qualified to render these services have been added to N.J.A.C. 10:60-5 for clarification purposes. The limitations for procedure codes Z1830 to Z1835 pertain specifically to services provided by narcotic and drug abuse treatment centers. The claim processing system does not accept these procedure codes unless they are billed by narcotic and drug treatment centers. This additional language does not enlarge or curtail the burden on either the recipient or the provider. There are other HCPCS codes that are used by independent clinics and/or individual practitioners when they treat Medicaid recipients.

In addition, procedure codes Z1850, Z1852, Z1853 apply to a specific situation in which a Medicaid recipient is treated in a specialized foster
The recipients are children diagnosed as having AIDS (Acquired Immune Deficiency Syndrome), or are HIV-positive. The regimen for those children with these diagnoses and the foster caregivers who render this care are specific to the set of HCPCS procedure codes, which are related to reimbursement for specialized foster care services. These services are currently being provided by home health agencies and the additional language merely indicates current policy, which allows only the specialized foster home to bill for these services. There is no enlargement of entitlement to either services to the recipients or payment to the providers involved.

A third area of commenter's concern lies in the area of regulating staff, with several points for clarification required. Staff in specific settings and the nurse home health aide and home health aide are both cited as examples. The additional language recognizes the need to clarify the professional role of the health aide and home health aide. The comments also request clarification as to who is being supervised. Another commenter asked that certain services be specified as professional nurse responsibilities. The list of the four suggested services has been inserted into N.J.A.C. 10:60-2.1(d)iii. Accordingly, the insertion of "homemaker-home health aide" clarifies that it is the aide who is being supervised. Another comment asked that certain services be specified as professional nurse responsibilities. The list of the four suggested services has been inserted into N.J.A.C. 10:60-2.1(d)iii. 

A commenter requested that certain services be specified as professional nurse responsibilities. The list of the four suggested services has been inserted into N.J.A.C. 10:60-2.1(d)iii, with subsequent subsections renumbered accordingly: these services include the care of wounds and decubitus ulcers, sternalostomy care and management, and admission of parenteral medication and care of indwelling catheters. The additional language recognizes nursing services currently being performed and does not curtail the extension of the burden on the provider. A third area of commenter's concern lies in the area of regulating staff, with specific points for clarification noted. Staff in specific settings and the nurse home health aide and home health aide are both cited as examples. The additional language recognizes the need to clarify the professional role of the health aide and home health aide. The comments also request clarification as to who is being supervised. Another commenter asked that certain services be specified as professional nurse responsibilities. The list of the four suggested services has been inserted into N.J.A.C. 10:60-2.1(d)iii.
2. Home health services are provided or arranged by participating home health agencies based on the plan of care. All component services include instruction of the recipient, the family, and/or interested persons toward the recipient's ultimate degree of self-care and independence, supportive care and maintenance. Supplementary home health care may be necessary from a variety of other available community services in order to maintain the recipient in the home environment. The Division of Medical Assistance and Health Services, under the “waiver” program. Case management is defined as the process as conducted by the Medicaid District Office staff for Medicaid recipients other than those under the “waiver” program. Case management is defined as the process of on-going monitoring by the Medicaid district office staff, of the delivery and quality of services as well as the recipient/caregiver’s satisfaction with the services. Case management ensures timely and appropriate provider responses to changes in care needs and assures delivery of coordinated services which promote maximum restoration and prevent unnecessary deterioration.

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"Dietitian" means a person who is a graduate of an accredited college or university with courses meeting the academic standards of the American Dietetic Association, plus a dietetic internship or dietetic traineeship or master’s degree plus six months experience. A registered dietitian is one who has met current requirements for registration.

"Discharge planning" means that component part of a total individualized plan of care formulated by all members of the agency’s health care team, together with the recipient and/or his or her family or interested person which anticipates the health care needs of the recipient in order to provide for continuity of care after the services of the home care agency have terminated. Such planning aims to provide humane and psychological preparation to enable the recipient to adjust to his changing needs and circumstances.

"Health services delivery plan (HSDP)” means an initial plan of care prepared by the Division's Regional Staff Nurse (RSN) during the preadmission screening (PAS) assessment process. The HSDP shall reflect individual problems and required care needs. The HSDP is to be forwarded to the authorized care setting and is to be attached to the recipient’s medical record upon admission to a nursing facility or when the recipient receives services from home care agencies. The HSDP may be updated as required to reflect changes in the recipient’s condition.

"Homemaker-home health aide" means a person who: 1. Successfully [completed]* completes a training program in personal care services and is certified by the New Jersey State Department of Law and Public Safety, Board of Nursing, as a homemaker home health aide. A copy of the certificate (or other documentation) issued by the New Jersey Department of Law and Public Safety, Board of Nursing for other documentation acceptable to the Division* is retained in the personnel file. 2. Successfully completes a minimum of 12 hours in-service education per year offered by the agency; and 3. Is supervised by a registered professional nurse of a Medicaid approved home health provider agency.

"Hospice agency" means a Medicare certified hospice approved by the Department of Human Services, Division of Medical Assistance and Health Services to provide hospice services under the AIDS Community Care Alternatives Program. (N.J.A.C. 10:60-3.1) "Hospital service" means service provided by a Medicaid approved hospice agency to recipients enrolled in the AIDS Community Care Alternatives Program (ACCAP) who are certified by an attending physician as terminally ill, with a life expectancy of up to six months. Services are available on a daily 24-hour basis as needed within a individualized plan of care. Levels of care” means two levels of home health care service: acute and chronic, provided by a certified, licensed home health agency as needed, to Medicaid recipients, upon request of the attending physician.

1. "Acute home health care" is a concentrated and/or complex professional and non-professional service on a continuing basis when there is anticipated change in condition and services required. Acute home health care services may be provided for periods up to *6 days*, *two months*. 2. "Chronic home health care" is either a long or short-term uncomplicated*, professional and non-professional care*, when there is no anticipated change in condition and services required. Chronic home health care services may be provided for periods of up to six months.

"Licensed practical nurse” means a person who is licensed by the State of New Jersey as a practical nurse, pursuant to N.J.S.A. 45:11-27 et seq., having completed formal accredited nursing education programs.

"Medicaid district office” means one of the Division’s county based offices located throughout the State which for purposes of this manual, administers a home care quality assurance program through its case management staff via a post-payment review. "Nutritionist” means a person who has graduated from an accredited college or university, with a major in foods or nutrition or the equivalent course work for a major in the subject area, and two years of full-time professional experience in nutrition. Successful completion of a dietetic internship of traineeship in hospital or community nutrition approved by the American Dietetic Association, completion of a master’s degree in the subject area may be substitute for the two years of full-time experience.

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"Occupational therapist" means a person, who is registered by the American Occupational Therapy Association, or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association and engaged in a supplemental clinical experience required before registration by the American Occupational Therapy Association. If treatment and/or services are provided in a state other than New Jersey, the occupational therapist shall meet the practice requirements of that state cluding licensure, if applicable, and shall also meet all applicable Federal requirements.

"Performance standards" for the purpose of this manual means criteria established by this Division in order to measure the recipient/caregiver's satisfaction with the quality, quantity and appropriateness of the services delivered.

"Personal care assistant" means a person who:
1. Successfully completed personal care services training and is certified by the New Jersey State Department of Law and Public Safety, Board of Nursing, as a homemaker-home health aide. A copy of the certificate or other documentation issued by the New Jersey Department of Law and Public Safety, Board of Nursing is retained in the personnel file;
2. Successfully completes a minimum of 12 hours in-service education per year offered by the agency; and
3. Is supervised by a registered professional nurse of a Medicaid approved homemaker/personal care assistant provider agency.

"Personal care assistant services" means health related tasks performed by a qualified individual in a recipient's home, under the supervision of a registered professional nurse, as certified by a physician in accordance with a "recipient's" written plan of care.

"Physical therapist" means a person who is a graduate of a program of physical therapy approved by both the Council on Medical Education of the American Medical Association and the American Physical Therapy Association or its equivalent; and
1. If practicing in the State of New Jersey, is licensed by the State of New Jersey; or
2. If treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable. The practitioner shall also meet all applicable Federal requirements.

"Plan of care" means the individualized and documented program of health care services provided by all members of the home health care team, in cooperation with the recipient/caregiver's interest and the plan for discharge are also essential components of the treatment plan. The plan shall be reviewed periodically and revised appropriately according to the observed changes in the recipient's condition.

"Preadmission screening (PAS)" means that process by which all eligible Medicaid recipients and individuals who may become Medicaid eligible within six months following admission to a Medicaid certified nursing facility, who are seeking admission to a Medicaid certified nursing facility receive permission screening by the Medicaid District Office to determine appropriate placement prior to admission to a nursing facility pursuant to N.J.S.A. 39:4D-17.10 P.L. 1988, c.97.

"Prior authorization" means the process of approval by the MDO prior to the provision of services. In the context of the home care manual, prior authorization may be applied in situations of continued non-compliance with program requirements.

"Private duty nursing" means individual and continuous nursing care, as different from part-time or intermittent care, provided by licensed nurses in the home to recipients under Model Waiver III and the AIDS Community Care Alternatives Program. The private duty nursing agency shall have been in operation and actively engaged in home care services in New Jersey for a period of not less than one year prior to application.

"Public health nurse" means a person licensed as a registered professional nurse, who has completed a baccalaureate degree program approved by the National League for Nursing for public health preparation, post-baccalaureate study which includes content approved by the National League for Nursing for public health nursing preparation.

"Quality assurance", for the purpose of this manual, means a system by which the Medicaid District Office staff shall conduct post-payment reviews to determine the recipient/caregiver's satisfaction with the quality, quantity and appropriateness of home care services provided to Medicaid recipients.

"Registered professional nurse" means a person who is licensed by the State of New Jersey as a registered professional nurse, pursuant to N.J.S.A. 45:11-26 et seq.

"Social worker" means a person who has a master's degree from a graduate school of social work accredited by the Council on Social Work Education, and has one year of post-masters social work experience in a health care setting.

"Speech-language pathologist" means a person who has a certificate of clinical competence from the American Speech-Language-Hearing Association; has completed the equivalent education requirements and work experience necessary for the certificate, or has completed the academic program and is acquiring supervised work experience to qualify for the certificate; and
1. If practicing in the State of New Jersey, is licensed by the State of New Jersey; or
2. If treatment and/or services are provided in a state other than New Jersey, meets the requirements of that state, including licensure, if applicable. The practitioner shall also meet all applicable Federal requirements.

SUBCHAPTER 2. COVERED HOME SERVICES (HOME HEALTH CARE SERVICES AND PERSONAL CARE ASSISTANT SERVICES)

10:60-2.1 Home health care services
(a) Home health care services covered by the New Jersey Medicaid Program are limited to those services provided directly by a home health agency approved to participate in the Medicaid Program or through arrangement of that agency for other services.
(b) Covered home health care services are those provided according to medical, nursing and other health care related needs as documented in the individual plan of care on the basis of medical necessity and on the goals to be achieved and/or maintained.
(c) Home health care services shall be directed toward rehabilitation and/or restoration of the recipient to the optimal level of physical and/or mental functioning, self-care and independence, or directed toward maintaining the present level of functioning and preventing further deterioration, or directed toward providing supportive care in declining health situations.
(d) The types of home health agency services covered include professional nursing by a public health nurse, registered professional nurse, or licensed practical nurse, homemaker-home health aide services; physical, occupational or speech-language pathology services; medical social services; nutritional services; certain medical supplies; durable medical equipment; and personal care assistant services. Currently, private duty nursing services are not a covered service under the New Jersey Medicaid Program except in Model Waiver III and AIDS Community Care Alternatives Program (ACCAP).
members of the family, if any, to carry their share of responsibility for the care of the recipient as per the written established professional plan of care.

i. Household duties are covered only when combined with personal care and other health services provided by the home health agency. Household duties include such services as the care of the home, personal hygiene, shopping, meal planning and preparation. In contrast, personal care services can include assisting the recipient with grooming, bathing, toileting, eating, dressing, and ambulation. The determining factor for the provision of household duties shall be the degree of functional disability of the recipient as well as the need for physician prescribed personal care and other health services, and not solely the recipient's medical diagnosis.

ii. The registered professional nurse, in accordance with the physician's plan of care, prepares written instructions for the homemaker-home health aide to include the amount and kind of supervision needed of the homemaker-home health aide, the specific needs of the recipient and the resources of the recipient, the family, and other interested persons. Supervision of the homemaker-home health aide in the home shall be provided by the registered professional nurse or appropriate professional staff member at a minimum of one visit every two weeks when in conjunction with skilled nursing, physical or occupational therapy or speech-language pathology services. In all other situations, supervision shall be provided at the frequency of one visit every 30 days. Supervision may be provided up to one visit every 60 days or two months with written justification in the agency's records.

iii. The registered professional nurse, and other professional staff members, shall make visits to the recipient's residence to observe, supervise and assist, when the homemaker-home health aide is present or when the aide is absent, to assess relationships and determine whether goals are being met.

2. Medical equipment is an item, article or apparatus which is used to serve a medical purpose, is not useful to a person in the absence of disease, illness or injury and is capable of withstanding repeated use (durable). When durable medical equipment is essential in enabling the home health agency to carry out the plan of care for a recipient, a request for authorization for the equipment must be made by an approved medical supplier. The authorization, which is requested of the Medicaid District Office, requires a personally signed, legible prescription from the attending physician. Durable medical equipment either rented or owned by the home health agency cannot be transferred to the New Jersey Medicaid Program (see Medical Supplier Manual, N.J.A.C. 10:59-1.5 and 1.7).

3. When the agency provides or arranges for medical social services, the services shall be provided by a social worker, or by a social worker assistant under the supervision of a social worker. These shall include, but not be limited to, the following:

i. Identifying the significant social and psychological factors related to the health problems of the recipient and reporting any changes to the home health agency;

ii. Participating in the development of the plan of care, including discharge planning, with other members of the home health agency;

iii. Counseling the recipient and family/interested persons in understanding and accepting the recipient's health care needs, especially the emotional implications of the illness;

iv. Coordinating the utilization of appropriate supportive community resources, including the provision of information and referral services; and

v. Preparing psychosocial histories, clinical (and progress) notes.

4. Medical supplies, other than drugs and biologicals, including, but not limited to, gauze, cotton bandages, surgical dressing, surgical gloves, ostomy supplies, and rubbing alcohol, are normally supplied by the home health agency to enable the agency to carry out the plan of care established by the attending physician and agency staff.

i. When a recipient requires an unusual or an excessive amount of medical supplies provided by an approved medical supplier shall be accompanied by a personally signed, legible prescription from the attending physician.

5. The home health agency shall provide comprehensive nursing services under the direction of a public health nurse supervisor as defined by the New Jersey State Department of Health. These services shall include, but not be limited to, the following:

i. Participating in the development of the plan of care with the health care team members, which includes discharge planning;

ii. Identifying the nursing needs of the recipient through an initial assessment and periodic reassessment;

iii. Planning for management of the plan of care particularly related to the coordination of other needed health care services;

iv. Skilled observing and monitoring of the recipient's response to care and treatment;

v. Teaching, supervising and consulting with the recipient or family/interested persons involved with his or her care in methods of meeting the nursing care needs in the home and community setting.

vi. Providing direct nursing care services and procedures including but not limited to:

   (1) Wound care/decubitus care and management;

   (2) Entero-stomal care and management;

   (3) Parenteral medication administration;

   (4) Indwelling catheter care.

   [vii.]*viii.* Implementing restorative nursing care measures involving all body systems including, but not limited to:

   (1) Maintaining good body alignment with proper positioning - bedfast/Chairfast recipients;

   (2) Supervising and/or assisting with range of motion exercise;

   (3) Developing the recipient's independence in all activities of daily living by teaching self-care, including ambulation within the limits of the treatment plan; and

   (4) Evaluating nutritional needs including hydration and skin integrity; observing for obesity and malnutrition.

   [viii.]*ix.* Teaching and assisting the recipient with practice of the use of prosthetic and orthotic devices and durable medical equipment as ordered;

   [ix.]*x.* Providing the recipient and the family or interested persons support in dealing with the mental, emotional, behavioral and social aspects of illness in the home;

   [x.]*xi.* Preparing nursing documentation including nursing assessment, nursing history, clinical nursing records and nursing progress notes; and

   [xi.]*xii.* Supervising and teaching other nursing service personnel.

6. When the agency provides or arranges for dietary services, these services shall be provided by a registered dietitian or nutritionist. These services shall include, but are not limited to, the following:

i. Determining the priority of nutritional care needs and developing long and short-term goals to meet those needs;

ii. Evaluating the recipient's home situation, particularly with physical areas available for food storage and preparation;

iii. Evaluating the role of the family/interested persons in relation to the recipient's diet control requirements;

iv. Evaluating the recipient's nutritional needs as related to medical and socioeconomic status of the home and family resources;

v. Developing a dietary plan to meet the goals and implement the plan of care;

vi. Instructing the recipient, other home health agency personnel and family/interested persons in dietary and nutritional therapy; and

vii. Preparing clinical and dietary progress notes.

7. Personal care assistant services are described in N.J.A.C. 10:60-2.2.

8. Special therapies include physical and occupational therapy and speech-language pathology services. Special therapists/pathologists shall review the initial plan of care and any change in the plan of care with the attending physician and the professional nursing staff of the home health agency. The attending physician shall give an evaluation of the progress of therapies provided as well as the recipient's reaction to treatment and any change in the recipient's medical condition.

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condition. The attending physician shall approve of any changes in the plan of care and delivery of therapy services.

i. The attending physician shall prescribe in writing the specific methods to be used by the therapist and the frequency of therapy services. "Physical therapy as needed," or a similarly worded blanket order by the attending physician is not acceptable.

ii. Special therapists shall provide instruction to the home health agency staff, the recipient and family and/or interested persons in follow-up supportive procedures to be carried out between the intermittent services of the therapists to produce the optimal and desired results.

1. When the agency provides or arranges for physical therapy services, they shall be provided by a licensed physical therapist. The duties of the physical therapist shall include, but not be limited to, the following:

   (A) Evaluating and identifying the recipient’s physical therapy needs;

   (B) Developing long and short-term goals to meet the individualized needs of the recipient and a treatment plan to meet these goals. Physical therapy orders shall be related to the active treatment program designed by the attending physician to assist the recipient in his or her maximum level of function which has been lost or reduced by reason of illness or injury;

   (C) Observing and reporting to the attending physician the recipient’s reaction to treatment as well as any changes in the recipient’s condition; and

   (D) Documenting clinical progress notes reflecting restorative procedures needed by the recipient, care provided, and the recipient’s response to therapy, along with the notification and approval received from the physician;

   (E) Occupational therapy services shall include, but not be limited to, activities of daily living, use of adaptive equipment, and home-making task oriented therapeutic activities.

2. The basis of reimbursement for home health services is as follows:

   i. For New Jersey approved home health agencies, the New Jersey Medicaid Program follows the Medicare principles of reimbursement which are based upon the lowest of 100 percent of reasonable covered costs, the published costs limits, or covered charges.

   ii. Interim reimbursement is on the basis of 100 percent or less (if reasonable allowable cost is anticipated to be less) of covered charges.

   iii. Retroactive settlement and final reimbursement are based on Medicare reimbursable cost principles.

   2. For out-of-State approved home health agencies, final reimbursement is on the basis of 80 percent of covered reasonable charges. There is no cost filing required and no retroactive settlement is made.

10:60-2.2 Personal care assistant services

(a) Personal care assistant services shall be provided by a certified, licensed home health agency or by a proprietary or voluntary non-profit accredited homemaker agency.

(b) Personal care assistant services are health related task performed by a qualified individual in a recipient’s home, under the supervision of a registered professional nurse, as certified by a physician in accordance with a written plan of care. These services are available from a home health agency or a homemaker agency.

1. The purpose of personal care is to accommodate long-term chronic or maintenance health care, as opposed to short-term skilled care required for some acute illnesses.

2. Personal care assistant services shall be reimbursable when provided to Medicaid eligible recipients in their place of residence, including:

   i. A private home;

   ii. A rooming house;

   iii. A boarding home;

   iv. A nursing facility.

3. "Medicaid* reimbursement shall not be made for personal care assistant services provided to Medicaid eligible recipients in the following:

   i. Residential health care facility;

   ii. A Class C boarding home;

   iii. A hospital; or

   iv. A nursing facility.

4. Personal care assistant services provided by a family member are not covered services and are not reimbursable by the New Jersey Medicaid Program.

(c) Personal care assistant services are described as follows:

   i. Activities of daily living are performed by a personal care assistant, and include, but are not limited to:

   a. Care of the teeth and mouth;

   b. Grooming: care of hair, including shampooing, shaving, and the ordinary care of nails;

   c. Bathing in bed, in the tub or shower;

   d. Using the toilet or bed pan;

   e. Changing bed linens with the recipient in bed;

   f. Ambulation indoors and outdoors, when appropriate;
vii. Helping recipients in moving from bed to chair or wheelchair, in and out of tub or shower;

viii. Eating and preparing meals, including special therapeutic diets for the recipient;

ix. Dressing;

x. Relearning household skills; and

xi. Accompanying the recipients to clinics, physician office visits, and/or other trips made for the purpose of obtaining medical diagnosis treatment or otherwise serve a therapeutic purpose.

2. Household duties that are essential to the recipient’s health and comfort, performed by a personal care assistant, include, but are not limited to:

i. Care of the recipient’s room and areas used by the recipient, including sweeping, vacuuming, dusting;

ii. Care of kitchen, including maintaining general cleanliness of refrigerator, stove, sink and floor, dishwashing;

iii. Care of bathroom, including maintaining cleanliness of toilet, tub, shower and floor;

iv. Care of recipient’s personal laundry and bed linen (which may include necessary ironing and mending);

v. Necessary bed-making and changing of bed linen;

vi. Re-arranging of furniture to enable the recipient to move about more easily in his or her room;

vii. Listing food and household supplies needed for the health and maintenance of the recipient;

viii. Shopping for above supplies, conveniently storing and arranging supplies, and doing other essential errands; and

ix. Planning, preparing and serving meals.

3. Health related activities, performed by a personal care assistant, are limited to:

i. Helping and monitoring recipient with prescribed exercises which the recipient and the personal care assistant have been taught by appropriate personnel;

ii. Rubbing the recipient’s back if not contraindicated by physician;

iii. Assisting with medications that can be self-administered;

iv. Assisting recipient with use of special equipment such as walker, braces, crutches, wheelchair, etc., after thorough demonstration by a registered professional nurse or physical therapist, with return demonstration until a registered professional nurse or physical therapist is satisfied that recipient can use equipment safely;

v. Assisting recipient with simple procedures as an extension of physical or occupational therapy, or speech-language pathology services; and

vi. Taking oral and rectal temperature, radial pulse and respiration.

(d) Duties of the registered professional nurse are as follows:

1. The registered professional nurse, in accordance with the physician’s certification of need for care, performs an assessment and prepares a plan of care for the personal care assistant to implement. The assessment and plan of care shall be completed at the start of service. However, in no case shall the nursing assessment and plan of care be done more than 48 hours after the start of service. The physician’s certification of need for care, performs an assessment and prepares a plan of care for the personal care assistant to implement. At this time, appropriate revisions to the plan of care must be readily available, as required, to representatives of the Division of Medical Assistance and Health Services or its agents.

2. The assessment and plan of care shall be re-evaluated at least every two months. The certifications shall be kept in the home health agency file for appropriate review.

3. For reimbursement purposes only, a weekend means a Saturday or Sunday; a holiday means an observed agency holiday which is also recognized as a Federal or state holiday.

4. A new provider shall be issued a Medicaid Provider ID Number by the fiscal agent. Those providers already enrolled as a provider of homemaker services in the Community Care Program for the Elderly and Disabled (see N.J.A.C. 10:60-3) shall use the same provider number issued for the Community Care Program when completing the Health Insurance Claim Form, 1500 N.J. (Appendix E), incorporated herein by reference even though the actual payment may be different. A provider shall not charge the New Jersey Medicaid Program in excess of current charges for other payors.

1060-2.3 Additional requirements for provision of covered service

(a) This section outlines requirements governing the provision of home care services, as set forth in (b), (c) and (d) below.

(b) Requirements for provision of home health care services as follows:

1. To qualify for payment of home health care benefits by the New Jersey Medicaid Program, the recipient’s need for services shall be certified, in writing, by the attending physician who must be licensed to the home health agency at least once every 60 days* for months*. The certifications shall be kept in the home health agency file for appropriate review.

2. A plan of care shall be developed by the attending physician in cooperation with agency personnel. It shall include, but not limited to, medical, nursing, and social care information. The plan shall be re-evaluated at least every 60 days* two months* an revised as necessary. The following shall be part of the plan of care:

i. The recipient’s major and minor impairments and diagnoses;

ii. A summary of case history, including medical, nursing, an social data;

iii. The period covered by the plan;

iv. The number and nature of service visits to be provided by the home health agency;

v. Additional health related services supplied by other provider;

vi. A copy of physician’s orders and their up-date;

vii. Medications and treatments, and personnel involved;

viii. Equipment and supplies required;

ix. Goals, long and short-term;

x. Preventive, restorative, maintenance techniques to be provided, including the amount, frequency and duration;

(cite 23 N.J.R. 426) New Jersey Register, Tuesday, February 19, 1991
xi. The recipient's, family's, and interested person's involvement (or example, teaching); and

xii. Discharge planning in all areas of care (coordinated with short and long-term goals);

(1) As a significant part of the plan of care, a recipient's potential or improvement shall be periodically reviewed and appropriately revised. These revisions shall reflect changes in the medical, nursing, social and emotional needs of the recipient, with attention to the economic factors when considering alternative methods of meeting these needs.

(2) Discharge planning shall take the recipient's preferences into account when changing the intensity of care in his or her residence, ranging services with other community agencies, and transferring or from home health providers. Discharge planning also provides for the transfer of information about the recipient by the referring home health agency to the new providers and/or home health agencies.

3. The following relate to medical care:

i. Home health care services shall be performed pursuant to a physician's orders and in accordance with a plan of care.

ii. The attending physician shall review and approve any changes to the medical plan of care being recommended by agency personnel.

iii. The physician's orders shall be revised as needed appropriate to the recipient's condition, but shall be renewed in writing at least very *[60 days]* *two months*.

iv. The nurse or assistant shall immediately record and sign verbal orders and obtain the physician's counter signature, in conformance with written agency policy.

4. The following relate to nursing care:

i. The home health agency professional nursing staff shall evaluate the recipient's needs, make a nursing diagnosis, provide nursing care, and coordinate other therapeutic services to implement the approved medical and nursing plan of care.

ii. There shall be an assessment of the recipient's acceptance of is or her illness and recipient's receptivity to home health services.

iii. A determination shall be made of the recipient's psychosocial needs in relation to the utilization of other community resources.

iv. A plan describing the recipient's psychosocial needs shall be made by the social worker *shall* be reviewed and any referrals required to meet the needs of the recipient *shall* be developed and implemented.

5. *Federal* The following requirements for clinical records and reports for home health care services shall be met and include:

i. Clinical records containing pertinent past and current information according to accepted professional standards shall be maintained by the home health agency for each recipient receiving home health care services. The clinical record shall include at least the following:

   (1) A plan of care as described in (b)2 above;

   (2) Appropriate identifying information; and

   (3) The name, address and telephone number of recipient's physician.

ii. Clinical notes by nurses, social workers, and special therapists shall be written, signed and dated on the day each service is provided.

iii. *[Progress]* *Clinical* notes to evaluate a recipient's response to service on a regular, periodic basis shall be written, signed and dated by each discipline providing services.

iv. Summary reports of pertinent factors from the clinical *[and progress]* notes of the nurses, social workers, and special therapists providing services shall be submitted to the attending physician at least every *[60 days]* *two months*.

v. Transfer of the recipient to alternative health care shall include transfer of appropriate information from the recipient's record.

(c) Prerequisites for provision of personal care assistant services are as follows:

1. Personal care assistant services shall be prescribed by the attending physician in accordance with a written plan of care (see (b)2 above); and

2. Personal care assistant services shall be provided under the supervision of a registered professional nurse.

(d) The relationship of the provider with the Medicaid District Office (MDO) shall be as follows:

1. Preadmission screening (PAS) is required for all Medicaid-eligible individuals and other individuals applying for nursing facility (NF) services. MDO professional staff conduct PAS assessments on individuals in hospitals and community settings to evaluate need for nursing facility services and to determine the appropriate setting for the delivery of services. Individuals in hospitals or community settings referred for nursing facility *placement* who have been determined not to require nursing facility *placement* or who select alternatives to nursing facility care will be referred for home health services. A health services delivery plan (HSDP) shall be completed by the MDO staff at the conclusion of the PAS assessment and shall be a component of the referral package to the home care provider. The HSDP shall be forwarded to the authorized care setting and shall be attached to the recipient's medical record upon admission to a nursing facility or when the recipient receives services from home care agencies. The HSDP may be updated as required to reflect changes in the recipient's condition. The HSDP provides data base history which reflects current or potential health problems and required services. The discharge planning unit or social service department of the hospital shall provide home care agencies with HSDPs for individuals who have been assessed in a hospital setting. These HSDPs shall provide HSDPs for individuals who have been assessed in a community setting during the PAS process.

i. For the many individuals in the community setting referred for home care services outside the PAS process, an HSDP shall not be provided.

2. An initial visit to evaluate the need for home health services or personal care assistant services shall be made by the provider prior to the submission of notification to the MDO using the HCFA 485 (Appendix D) incorporated herein by reference or the FD-139 form (Appendix C) incorporated herein by reference.

3. Subsequent to an initial evaluation of need for home health and/or personal care assistant services, the provider shall initiate the services in accordance with its plan of care.

4. The HCFA 485 shall replace the FD-139 for Medicare/Medicaid providers. The provider shall notify the MDO at the time of initiating the services by submitting a copy of the HCFA 485 which shall be signed by the agency nurse and need not be countersigned by the physician. The signature of the physician prescribing the services, however, shall be kept on file in the agency. Providers utilizing the HCFA 485 shall include the HSP (Medicaid) Case Number when completing the form. For the non-Medicare certified agency, the provider shall submit to the MDO an FD-139 which shall be signed by the agency nurse and need not be countersigned by the physician. The signature of the physician prescribing the services shall be kept on file in the agency.

5. The HCFA 485 and the FD-139 shall be submitted to the MDO upon initiation of services and once every 12 months on a continuing basis. Providers shall notify the MDO when services have been terminated.

6. On a random selection basis, MDO staff shall conduct post-payment quality assurance reviews. At the specific request of the MDO, the provider shall submit a plan of care and other documentation for those Medicaid recipients selected for a quality assurance review.

7. Upon completing the post-payment quality assurance review, the MDO shall forward a performance report to the provider based on compliance with the standards described in N.J.A.C. 10:60-2.4. i. Standards are applied to services as provided by the agency.

(c) Service limitations are as follows:

1. When the cost of home care is equal to or in excess of the cost of institutional care over a protracted period (that is, six months or more), the MDO staff may opt to limit or deny the provision of home care services on a prospective basis.

2. Personal care assistant services are limited to a maximum of 25 hours per week.
HUMAN SERVICES

10:60-2.4 Standards of performance for post service review
(a) Professional staff from the MDO shall conduct a post-payment quality assurance review of Medicaid recipients for whom home care services have been provided. The review shall principally involve contact with the Medicaid recipient, and focus on the following three major categories:
1. The quality and appropriateness of services;
2. Comparative analysis between claim payments to the plan of care; and
3. The recipient/caregiver satisfaction with the services.
(b) Standards of performance are as follows:
1. Skilled nursing services and visits shall be based on a comprehensive assessment performed by a registered professional nurse to identify care needs and required services and shall be provided as designated by the plan of care.
   i. Home visits for nursing services shall be provided to the recipient, as ordered by the physician and as designated by the standards of nursing practice.
   ii. The nurse shall make home visits as appropriate and as scheduled in the plan of care. Supervision of home health aide services is an integral component of these visits.
   iii. Services shall be within the scope of practice of personnel assigned.
   iv. Appropriate referrals for required services shall be instituted on a timely basis.
   v. Nursing progress notes and plans of care shall reflect the significant changes in condition which require changes in the scope and timeliness of service delivery.
2. Homemaker-home health aide services and personal care assistants shall be provided by the agency in accordance with the plan of care.
   i. The aide shall arrive and leave each day as scheduled by the agency.
   ii. The same aides shall be assigned on a regular basis with an intent of assuring continuity of care for the recipient unless there are unusual documented circumstances, such as a difficult recipient/caregiver relationship, difficult location, or personnel reasons of aide or recipient/caregiver.
   iii. Services shall be within the scope of practice of personnel assigned.
   iv. Appropriate training and orientation shall be provided by licensed personnel to assure the delivery of required services.
   v. The aide provides appropriate services as reflected in the plan of care and identified on the assignment sheet.
   vi. Home care services shall be provided to the recipient to maintain the recipient's health or to facilitate treatment of an illness or injury.
3. Physical therapy, occupational therapy or speech-language pathology services shall be provided as an integral part of a comprehensive medical program. These rehabilitative services shall be provided through home visits for the purpose of attaining maximum reduction of physical or mental disability and restoration of the individual to the best functional level.
   i. The services shall be provided with the expectation, based on the assessment made by the physician of the recipient's rehabilitation potential, that the condition of the individual shall improve materially in a reasonable and generally predictable period of time, or the services are necessary towards the establishment of a safe and effective maintenance program.
   ii. The complexity of rehabilitative services is such that it can only be performed safely and effectively by a therapist. The services shall be consistent with the nature and severity of the illness or injury. The amount and frequency of these services shall be reasonable and necessary, and the duration of each visit shall be a minimum of 30 minutes.
   iii. The services shall be specific and effective treatment for the recipient's condition and shall be provided in accordance with accepted standards of medical practice.
   iv. For physical therapy standards, see N.J.A.C. *10:60-2.1(d)(E)* in this manual.

4. Social services and visits of social service professionals are necessary to resolve social or emotional problems that are or many be an impediment to the effective treatment of the individual's medical condition or rate of recovery.
   i. Medical social services shall be provided as ordered by the physician and furnished by the social worker.
   ii. The plan of care indicates the appropriate action taken to obtain the available community resources to assist in resolving the recipient's problems or to provide counseling services which are reasonable and necessary to treat the underlying social or emotional problems which are impeding the recipient's recovery.
   iii. The services shall be responsive to the problem and the frequency of the services shall be for a prescribed length of time.
5. Nutritional services and visits of a dietitian or nutritionist shall be provided as needed to resolve nutritional problems which are may be an impediment to the effective treatment of the recipient's medical condition or rate of recovery.
   i. Nutritional services shall be provided as ordered by the physician and furnished by a dietitian or nutritionist in accordance with accepted standards of professional practice.
   ii. The plan of care shall indicate the nutritional care needs and the goals to meet those needs.
   iii. Services shall be provided to the recipient and/or the family interested others involved with the recipient's nutritional care.
   iv. The services shall be specific and for a prescribed period of time.
   v. The progress notes and care plan shall reflect significant changes or problems which require changes in the scope and timeliness of service delivery visits.
6. The services shall be provided to the satisfaction of the recipient/caregiver.
   i. There shall be evidence that the recipient/caregiver has participated in the development of the plan of care.
   ii. Identified problems shall be resolved between the agency and the recipient/caregiver when possible.
   iii. The agency shall make appropriate referrals for unmet recipient needs.
   iv. Recipient/caregiver shall be promptly informed of changes in aides and/or schedules.
   v. Recipients/caregivers shall be aware of the agency name, telephone number, and contact person in the event of a problem.
7. The home health agency shall be aware of the recipient's need and shall make the appropriate arrangements for securing medical equipment, appliances and supplies.
   i. The agency shall assist the recipient in obtaining equipment, supplies.
   ii. The agency shall monitor equipment, appliances and supplies to assure that all items are serviceable and used safely and effectively.
   iii. The agency shall be responsible for contacting the provider for problems relating to the utilization of equipment, appliances and supplies.
8. Documentation of services as requested by the Division of Medical Assistance and Health Services shall be timely, accurate complete and legible.
   i. There shall be a current aide assignment sheet for each recipient available either in the home or at the agency, dated and signed by the nurse. The assignment shall be based on a nursing assessment of the recipient's needs and shall list the aide's duties as required for the plan or care.
   ii. The agency shall document significant changes in health and/or social status, including recent hospitalization, in the progress note and make appropriate changes in the plan of care as needed.
   iii. Initial evaluations and progress notes shall be provided to the MDO upon request for all nursing services.
   iv. Initial evaluations, progress notes and goals shall be provided to the MDO upon request for physical, occupational and speech language therapies and social services.

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10:60-2.5 On-site monitoring visits
(a) For a homemaker agency and a private duty nursing agency on-site monitoring visits shall be made periodically by Division sta...
the agency to review compliance with personnel, recordkeeping and service delivery requirements. (Appendix A, Home Care Agency Review form, FD-342, incorporated herein by reference). The results of these monitoring visits shall be reported to the agency, the Medicaid Division Office, and when indicated, a plan of correction shall be required. Continued non-compliance with requirements shall result in such sanctions as curtailment of accepting new recipients for services, suspension or rescission of the agency's provider contract.

(b) For a hospice agency, on-site monitoring visits shall be made periodically by Division staff to the agency to review compliance with personnel, recordkeeping and service delivery requirements (Appendix B, Hospice Agency Review Summary, FD 351 form, incorporated herein by reference). The results of these monitoring visits shall be reported to the agency with a copy to the Medicaid Division Office, if indicated, a plan of correction will be required. Continued non-compliance with requirements shall result in such sanctions as revocation of accepting new recipients for services, suspension or scission of the agency's provider contract.

60-2.6 Provisions for fair hearings

Providers and recipients can request for fair hearings as set forth N.J.A.C. 10:49-1.16.

UBCHAPTE~ 3. HOME AND COMMUNITY-BASED SERVICE PROGRAMS

60-3.1 Community Care Program for the Elderly and Disabled (CCPED)

(a) The Federal Omnibus Budget Reconciliation Act of 1981 (Sec. 2176, P.L. 97-35) encouraged the development of community-based services such as the Community Care Program for Elderly and Disabled (CCPED) as an alternative to institutional care for older persons and persons with disabilities who are financially eligible for Medicaid services. The Medicaid services are paid for by the New Jersey Department of Human Services and approved by the United States Department of Health and Human Services. The waiver is renewable every five years and serves a limited number of recipients Statewide who must meet the medical and financial eligibility requirements.

(b) The Community Care Program for Elderly and Disabled (CCPED) is a waivered program, administered by the Division of Federical Assistance and Health Services, initiated to help eligible recipients remain living in the community rather than in a nursing facility.

1. The program allows for the allocation of community care slots which are assigned Statewide in accordance with the needs of the population and the resources available to meet those needs. Each county has a designated case management site such as a county eldercare agency, Office on Aging, home health agency or homemaker agency.

60-3.2 Eligibility requirements for CCPED

(a) Financial eligibility for CCPED is determined by the county eldercare agency/board of social services which serves the county where the individual resides. The standards used for income eligibility are set forth in N.J.A.C. 10:71-5(c)(4), Table B, entitled "Variations in Living Arrangements." Both the Supplemental Security Income (SSI) community standard and the Medicaid institutional standard are used in this table. The actual amounts, recomputed periodically, are subject to change each year. Recipients financially eligible for Medicaid services under the community eligibility standards are not covered under CCPED. CPED also does not serve recipients who are eligible under the Federically Needed Program.

(b) Program eligibility criteria are as follows:

1. An applicant 65 years or older shall be eligible for Medicare benefits or have other medical insurance which includes physician services and hospitalization.

2. An applicant under 65 shall be determined disabled by the Social Security Administration (SSA) and be eligible for Medicare benefits or be determined disabled by the Division of Medical Assistance and Health Services, Disability Review Section, and have other medical insurance which includes physician coverage and hospitalization.

3. An applicant shall be ineligible in the community for Supplemental Security Income (SSI), or the applicant's total income, excluding deemed income, shall exceed the appropriate SSI community standard up to the Medicaid institutional standard. Parental and spousal income are not considered in the determination of eligibility.

4. An applicant's own resources shall not exceed the Medicaid Only limits. Resources of a parent are not deemed. While the spouse's resources are considered, up to one-half of the total resources are protected for the use of the spouse.

5. An applicant shall be in need of the type of care provided in an institutional setting and meet, at a minimum, the New Jersey's Medicaid Program's nursing facility's level of care criteria.

6. In order for an applicant to be enrolled in the program, a waiver slot shall be available.

(c) The total cost of services for the recipient in the community reimbursed by Medicaid shall not exceed the established cost limitation for institutional care for that recipient.

(d) A Medicaid Eligibility Identification (MEI) card shall be distributed to the recipient eligible for CCPED. Approved services are listed on the card as exhibited in N.J.A.C. 10:49, Appendix A.

(e) Retroactive eligibility is not available to CCPED recipients; no service received prior to the date of enrollment shall be considered for reimbursement.

60-3.3 Services available under CCPED

(a) Services provided under CCPED complement the services provided under the Medicare Program or other physician and hospital benefit coverage for non-Medicare eligible individuals. A modified package of seven Medicaid covered services is available.

(b) Services provided under CCPED include the following:

1. Case management: A process in which a social worker or professional nurse is responsible for planning, locating, coordinating, and monitoring a group of services designed to meet the individual health needs of the recipient being served. The case manager is the pivotal person in establishing a service package.

2. Home health care: Provided by a licensed home health agency, which may include skilled nursing care; homemaker/home health aide services; physical and occupational therapy; speech-language pathology services; medical social services and medical supplies. Medical supplies are limited to a maximum of $50.00 per month. Covered home care services are provided according to medical, nursing, and other health-related needs, as documented in the recipient's plan of care.

3. Homemaker services: Personal care, household tasks, and activities of daily living, provided to a recipient in the home by either a home health agency or a homemaker agency.

4. Medical day care: A program of medically supervised, health and health related services provided in an ambulatory care setting to recipients who are non-residents.

5. Social adult day care: A comprehensive social and health related outpatient program for the frail, moderately handicapped, slightly confused recipient who needs care during the day.

6. Medical transportation: Non-emergency transporting of a recipient by an approved, suitable vehicle to obtain health services. Transportation may be provided by invalid coach or by lower modes of service that are arranged/provided by the county welfare agency/board of social services.

7. Respite care: A temporary service offered on an intermittent basis to recipients being cared for at home. The purpose of this service is to relieve the informal caregivers, allowing for a leave of absence in order to reduce stress or to meet a family crisis. Respite care can be provided in a recipient's home by a home health agency, homemaker agency, or in a nursing facility for limited periods of time. Nursing home respite care is limited to 30 days per calendar year.
10:60-3.7 Model Waiver Programs

(a) The Home and Community-Based Services Waivers for Blind or Disabled Children and Adults (Model Waivers) are renewable Federal waiver programs funded under Title XIX (Medicaid). The waivers, prepared by the Division of Medical Assistance and Health Services in response to the Omnibus Budget Reconciliation Act of 1981, Section 176, Public Law 97-35, encourage the development of community-based services. The purpose of these programs is to help eligible recipients remain in the community, or return to the community, rather than be cared for in a nursing facility or hospital setting.

(b) New Jersey has three approved, Federally renewable Model Waivers: Model Waiver I, Model Waiver II and Model Waiver III. Each program serves a limited number of recipients statewide who meet the medical and financial eligibility requirements.

(c) The Division of Medical Assistance and Health Services administers the overall programs. Additionally, it has the responsibility for assessing a recipient’s need for care and for determining which recipient will be served by the program.

10:60-3.8 Eligibility requirements for Model Waivers

(a) Program eligibility criteria for Model Waivers are as follows:

1. Recipients shall be in need of institutional care and meet, at a minimum, the nursing facility level of care criteria. Model Waiver III requires the need for private duty nursing services.

2. For all Model Waivers, a recipient’s total income shall exceed the SSI community standard up to the institutional cap or be eligible in the community because of SSI deeming rules. Model Waiver III, however, may also serve recipients who are eligible for Medicaid in the community.

3. Recipients shall be blind or disabled children and adults. A recipient who has not been determined disabled by the Social Security Administration (SSA) must be determined disabled by the Division of Medical Assistance and Health Services, Disability Review Section, using the same SSA criteria.

4. Recipients who are financially Medicaid eligible under the community eligibility standards are not eligible for Model Waiver I or II. Model Waiver III, however, may serve these recipients, except for those recipients served under the Medically Needy Program.

5. There is no deeming of spousal income or parental income resources in the determination of eligibility. While the spouse’s resources are considered in the determination of eligibility, up to one half of the total resources are protected for the use of the spouse.

6. A recipient’s resources cannot exceed the resource limit established for recipients eligible under the Medicaid Only Program. Financial eligibility is established by the county welfare agency board of social services located in the recipient’s county of residence.

7. In order for an applicant to be enrolled in the program, a waiver slot must be available.

(b) Retroactive eligibility is not available to waiver recipients for those Medicaid services provided only by virtue of enrollment in the waiver programs.

(c) A Medicaid Eligibility Identification (MEI) card (FD-73/172) shall be issued to the Model Waiver recipient by the county welfare agency/board of social services for the recipient applying for Model Waiver I or II and also for the recipient applying for Model Waive III who is not categorically eligible for Medicaid in the community. The county welfare agency/board of social services may issue temporary MEI card.

1. A Model Waiver III recipient who is categorically eligible for Medicaid shall continue to receive a MEI Card in the same manner as before his or her participation. The Medicaid District Office may issue a temporary MEI Card.

10:60-3.9 Services included under Model Waiver programs

(a) Except for nursing facility services, all approved services under the New Jersey Medicaid Program as described in N.J.A.C. 10:4 are available under the Model Waiver programs from approved Medicaid providers.

(b) Additional waiver services are as follows:

1. Case management: A process in which a professional nurse or social worker is responsible for planning, locating, coordinating, an
monitoring a group of services designed to meet the individual health needs of the recipient being served. The case manager shall be the pivotal person in establishing a service package.

i. Special child health service units under contract to the New Jersey Department of Health shall provide case management to children up to the age of 21.

ii. Recipients 21 years of age or older shall be referred for case management services to those sites which provide case management services for New Jersey Medicaid's Community Care Program for the Elderly and Disabled.

iii. Case management shall not be provided when a recipient is in an inpatient hospital setting and the stay extends a full calendar month.

2. Private-duty nursing: A waived service provided under Model Waiver III only and not under Model Waiver I or II. Private-duty nursing shall be provided in the community only, not in an inpatient hospital setting. The recipient shall have a live-in primary caregiver (adult relative or significant other adult) who accepts 24-hour responsibility for the health and welfare of the recipient. A maximum of 16 hours of private-duty nursing may be provided in any 24-hour period.

i. An individual clinical record shall be maintained for each recipient receiving private-duty nursing service. The record shall address the physical, emotional, nutritional, environmental and social needs according to accepted professional standards.

ii. Clinical records maintained at the agency shall contain at a minimum the following:

1. A referral source;
2. A diagnosis*
3. A physician's treatment plan and renewal of treatment plan every 90 days;
4. Interim physician orders as necessary for medications and/or treatment;
5. An initial nursing assessment by a registered nurse within 48 hours of initiation of services;
6. A six-month nursing reassessment;
7. A nursing care plan; and
8. Signed and dated progress notes describing recipient's condition.

iii. Direct supervision of the private-duty nurse shall be provided by a registered nurse at a minimum of one visit every 30 days at the recipient's home during the private-duty nurse's assigned time. Additional supervisory visits shall be made as the situation warrants.

iv. Clinical records maintained in the recipient's home by the private-duty nurse shall contain at a minimum the following:

1. A diagnosis*
2. A physician treatment plan and interim orders;
3. A copy of the initial nursing assessment and six-month reassessment;
4. A nursing care plan;
5. Signed and dated current nurse's notes describing the recipient's condition and documentation of all care rendered; and
6. A record of medication administered.

v. Personnel files shall be maintained for all private-duty registered nurses and licensed practical nurses and shall contain at a minimum the following:

1. A completed application for employment;
2. Evidence of a personal interview;
3. Evidence of a current license to practice nursing;
4. Satisfactory employment references;
5. Evidence of a physical examination; and

vi. On-site monitoring visits shall be made periodically by Division staff to the private-duty nursing agency to ensure compliance with personnel, recordkeeping and service delivery requirements.

(c) The items and services provided to covered recipients shall be limited in duration or amount depending upon the cost of the service plan under the Model Waiver. Any limitation imposed shall be consistent with the medical necessity of the recipient's condition, as determined by the attending physician or other practitioner, in accordance with standards generally recognized by health professionals and promulgated through the New Jersey Medicaid Program.

10:60-3.10 Basis for reimbursement for Model Waiver services

(a) A home health agency provider of private-duty nursing services and personal care assistant services shall be reimbursed by the New Jersey Medicaid Program on a fee-for-service basis for services provided. Providers shall be precluded from receiving additional reimbursement for the cost of these services above the fee established by the Medicaid Program.

1. All costs associated with the provision of private-duty nursing and personal care assistant services shall be included in the routine Medicare/Medicaid cost-reporting mechanism.

(b) The Health Insurance Claim Form, 1500 N.J., is used when billing for case management, private-duty nursing services and personal care assistant services.

1. The provider at all times shall reflect its standard charges on the Health Insurance Claim Form, 1500 N.J., even though the actual payment may be different.

(c) Home health services are billed on the UB-82 HCFA-1450 form (Appendix F, incorporated herein by reference).

(d) See N.J.A.C. 10:60-5 for codes to be used when submitting claims for the Model Waiver Program, I, II or III.

10:60-3.11 Procedures used as financial controls

(a) Total program costs shall be restricted by limits placed on the maximum number of recipients served Statewide in each of the three programs.

(b) A case manager shall be responsible for the development of the service plan with each recipient/family and with input from the provider agencies and the Medicaid professional staff. The case manager shall be responsible for monitoring the cost of the service package.

(c) The cost of Medicaid services provided shall not exceed the cost of institutionalization for the recipient.

10:60-3.12 AIDS [community care alternatives program (ACCAP)]* *Community Care Alternatives Program (ACCAP)*

(a) The AIDS [community care alternatives program (ACCAP)]* *Community Care Alternatives Program (ACCAP)* is a renewable Federal waiver program which offers home and community-based services to recipients with Acquired Immune Deficiency Syndrome (AIDS) or with AIDS-Related Complex (ARC) and children up to the age of five who are HIV positive.

(b) The waiver, prepared by the Division of Medical Assistance and Health Services in response to the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) and the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509), encourages the development of community-based services. The purpose of the program is to help eligible recipients to remain in, or to return to, the community rather than be cared for in a nursing facility or hospital setting.

(c) The program is Statewide with slots allocated to each county based upon the estimated number of AIDS/ARC recipients to be served.

(d) The Division of Medical Assistance and Health Services administers the overall program. Additionally, it has the responsibility for assessing a recipient's need for care and for determining which recipients will be served by the program.

10:60-3.13 Application process for ACCAP

(a) Individuals who are not currently Medicaid eligible or recipients currently eligible for Medicaid through the Aid to Families with Dependent Children (AFDC) and who wish to apply for ACCAP shall make application to the county welfare agency/board of social services located in the county where the individual resides.

(b) Supplemental Security Income (SSI) recipients who wish to apply for ACCAP shall make application to the appropriate Medicaid District Office serving their county of residence.

(c) Applications for children under the supervision of the Division of Youth and Family Services (DYFS) shall be initiated by DYFS.

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 431)
10:60-3.14 Eligibility criteria
(a) Recipients eligible for ACCAP shall be:
1. Diagnosed as having AIDS or ARC, or be a child up to the age of five who is HIV positive;
2. In need of institutional care and meet, at a minimum, the nursing facility level of care criteria established by the New Jersey Medicaid Program (N.J.A.C. 10:60-1.3);
3. Categorically needy, that is, recipients who are Medicaid eligible in the community, except for those served under the Medically Needy Program; or
4. Optionally categorically needy, that is, recipients who have incomes which exceed the SSI community standard up to the institutional level of care in the community, except for those served under the Medically Needy Program.

(b) Total program costs in ACCAP are limited by the number of community care slots used each year and by costs per recipient. The cost of each recipient's service package shall be no more than the cost of institutional care for that recipient, determined at a projected weighted cost of hospital care by the Division of Medical Assistance and Health Services.

10:60-3.15 ACCAP services
(a) All Medicaid services, except for nursing facility services, are available under ACCAP in accord with an individualized plan of care. Additionally, the following services are available to the eligible recipient:
1. Case management: a process in which a public health nurse or social worker (MSW) in a community agency is responsible for planning, locating, coordinating and monitoring a group of services designed to meet the individual needs of the recipient being served.
   i. Case management units under contract to the New Jersey State Department of Health shall provide case management services to children up to the age of 21.
   ii. Recipients 21 years of age or older shall be referred to case management sites which provide case management services for New Jersey Medicaid's ACCAP.
   iii. Case management shall not be provided when a recipient is in an inpatient hospital setting and the stay extends a full calendar month or beyond.
2. Private-duty nursing (PDN): *[care]* *Care* provided by a registered professional nurse or licensed practical nurse. PDN is continuous rather than part-time or intermittent *[care]*. A nurse shall be employed by a licensed home health agency, voluntary nonprofit homemakers/home health aide agency, private employment agency and temporary-help service agency approved by Medicaid to provide PDN services. PDN services shall be provided up to 16 hours per day, per person, but only when there is a live-in primary adult caregiver who accepts 24-hour per day responsibility for the health and welfare of the individual (see *N.J.A.C. 10:60-2.2(e)*).
3. Certain narcotic and drug abuse treatments at home: The program allows drug treatment centers, approved as Medicaid providers, to provide methadone treatment, individual psychotherapy and family therapy at home.
4. Personal care assistant service: These are health-related tasks performed in the recipient's home by a certified individual who is under the supervision of a registered professional nurse. These services shall be prescribed by a physician and shall be provided in accord with a written plan of care. Personal care assistant service under ACCAP may exceed the regular program limitation of 25 hours per recipient, per week. Only Medicaid-approved personal care assistant providers shall provide personal care assistant service under ACCAP.

5. Medical day care: This allows for health, social and supportive services on an outpatient basis, several days a week, in an approved medical day care center. Reimbursement is made at a negotiated rate.
6. Specialized group foster care home for children: This allows for an array of health care services provided in a residential health care program for children from birth to six years of age. All children served by the home are under the supervision of the Division of Youth and Family Services (DYFS).
7. Hospice care: This provides optimum comfort measures (including pain control), support and dignity to recipients certified by an attending physician as terminally ill, with a life expectancy of up to six months. Family and/or other caregivers are also given support and direction while caring for the dying recipient. Services shall be provided by a Medicaid approved, Medicare certified hospice agency and available to a recipient on a daily, 24-hour basis. Hospice care shall be approved by the attending physician and shall be prior authorized by the Medicaid district office, using the FD-139 form (for recordkeeping requirements, see N.J.A.C. 10:60-2.3(b)(5)). Reimbursement shall be at an established fee paid on a per diem basis.

10:60-3.16 Basis for reimbursement for ACCAP services
(a) A fee-for-service reimbursement methodology shall be utilized for ACCAP *waiver* services.
(b) The Health Insurance Claim Form, 1500 N.J., is used when requesting reimbursement for services provided. Home health services are billed using the UB-82 HCFA-1450 form.
(c) See N.J.A.C. 10:60-5 for codes used when submitting claims for ACCAP.

SUBCHAPTER 4. HOME CARE EXPANSION PROGRAM
10:60-4.1 Scope and authority
(a) The Home Care Expansion Act (P.L. 1988, c.92) was signed into law August 4, 1988 and its program, the Home Care Expansion Program (HCEP), became effective May 1, 1989. The intent of the program is to offer home care services to elderly and disabled persons in New Jersey who are in need of long-term home care services and whose income or resources exceed the financial requirements for Medicaid or the Division of Medical Assistance and Health Services' Home and Community-Based Waiver Programs. It is anticipated that the provision of home care services shall delay or avoid institutionalization.
(b) The Home Care Expansion Program (HCEP) is administered by the Division of Medical Assistance and Health Services and is available state-wide. Program slots are limited based upon the available annual appropriation and are allocated to each county. Each county has designated home and community-based programs case management sites which is utilized for HCEP.

10:60-4.2 Eligibility requirements for HCEP
(a) Financial eligibility shall be determined by the Division's Bureau of Pharmaceutical Assistance to the Aged and Disabled (PAAD) initially and on an annual basis using existing PAAD processes and policies where applicable.
(b) To qualify for services, an applicant shall meet the following criteria:
1. Be a resident of New Jersey for at least 30 days;
2. Have an annual income of less than $18,000 if single, or if married, less than $21,000 in combination with that of a spouse;
3. Have resources less than $15,000, as an individual or in combination with a spouse.
   i. Real property is not considered an available resource for purposes of determining eligibility for HCEP. However, if real property is sold, then the proceeds of the sale would be considered as a countable resource.
   ii. The Home Care Expansion Program only considers liquid resources. Examples of liquid resources are cash or any item which can

(CITE 23 N.J.R. 432) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991


**ADDITIONS**

- **Human Services**

  1. Voluntary assignment or transfer is defined as a gift, trade, sale, or other transfer of real or personal property by an applicant (and/or spouse), for less than adequate consideration, will cause the applicant to be automatically deemed ineligible for HCEP benefits. The period of ineligibility shall extend for up to 10 months from the date of such assignment or transfer unless there is a preponderance of evidence, submitted by the applicant, proves that the action was carried out for reason(s) other than to cause the applicant to become or remain eligible for HCEP benefits.

  2. Program cost is controlled by the number of beneficiaries and per beneficiary costs.

  3. Non-payment of cost-share for two consecutive months shall result in termination from the program. Partial payment will be allowed for one month; cost-share shall be paid in full (current and arrears) within 60 days of the date of the initial bill.

**TERTIARY USE**

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 433)
4. His or her cost-share payments are not paid in full for two consecutive months.

(b) A beneficiary found ineligible because of an increase in annual income or resources is liable for repayment of all monies paid for HCEP services from the beginning of the calendar year, not only for those payments made after income or resources were increased. Program eligibility is based upon annual income and resources.

(c) A beneficiary terminated from HCEP shall be billed by the Bureau of Pharmaceutical Assistance to the Aged and Disabled for services rendered during a period if ineligibility.

(d) The Director of the Division may, in his or her discretion, take all necessary action to recover the cost of benefits incorrectly paid on behalf of the beneficiary. The Director may waive the Division's right to recover, when appropriate.

(e) A beneficiary who is terminated from HCEP participation may exercise his or her right to appeal the decision by submitting a request for a fair hearing in accordance with N.J.A.C. 10:49-5.3. Such request shall be submitted within 20 days from the date of the letter of termination.

1. If a hearing is granted in a situation where the beneficiary is assessed as no longer in need of home care services or cost-share has not been paid in full for two consecutive months, and the beneficiary is receiving services under HCEP, payment for these services can continue until a final decision is made. However, if the beneficiary chooses to continue to receive services and the termination is upheld at the fair hearing, the beneficiary will be billed for any service received after five days from the date of the Office of Home Care Programs' letter of termination.

2. If a hearing is granted in a situation where the beneficiary's income or resources are above program requirements, payment for the services will cease at the point that the ineligibility determination is made.

(f) A previously terminated beneficiary may be eligible for HCEP if:

1. His or her income and resources meet program requirements;
2. Home care services are needed to avoid institutionalization; and
3. His or her cost-share payments and any other monies owed to HCEP are paid.

**SUBCHAPTER 5. HCFA COMMON PROCEDURE CODING SYSTEM (HCPCS)**

10:60-5.1 Introduction

(a) The New Jersey Medicaid Program adopted the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). The HCPCS codes as listed in this Subchapter are relevant to certain Medicaid Home care services.

(b) These codes are used when requesting reimbursement for certain Home Care services and when a Health Insurance Claim Form, 1500 N.J., is required.

10:60-5.2 HCPCS CODES

(a) PERSONAL CARE ASSISTANT SERVICES FOR MEDICAID AND MODEL WAIVERS

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<tr>
<th>HCPCS CODE</th>
<th>DESCRIPTION</th>
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<tr>
<td>Z1600</td>
<td>Personal Care Assistant Service (Individual/hourly/weekday)</td>
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<td>Z1605</td>
<td>Personal Care Assistant Service (Group/hourly/weekday)</td>
</tr>
<tr>
<td>Z1610</td>
<td>Initial Nursing Assessment Visit</td>
</tr>
<tr>
<td>Z1611</td>
<td>Personal Care Assistant Service (Individual/1/2 hour/weekday)</td>
</tr>
<tr>
<td>Z1612</td>
<td>Personal Care Assistant Service (Group/1/2 hour/weekday)</td>
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<tr>
<td>Z1613</td>
<td>Nursing Reassessment Visit</td>
</tr>
<tr>
<td>Z1614</td>
<td>Personal Care Assistant Service (Individual/hourly/weekend/holiday)</td>
</tr>
<tr>
<td>Z1615</td>
<td>Personal Care Assistant Service (Individual/1/2 hour/weekend/holiday)</td>
</tr>
<tr>
<td>Z1616</td>
<td>Personal Care Assistant Service (Group/hourly/weekend/holiday)</td>
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(b) COMMUNITY CARE PROGRAM FOR THE ELDERLY AND DISABLED (CCPED) AND HOME CARE EXPANSION PROGRAM (HCEP)

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<tr>
<td>Z1240</td>
<td>Case Management, per recipient, per month</td>
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*The following codes are to be used by licensed Home Health Agencies or Homemakers Agencies only*

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<th>HCPCS CODE</th>
<th>DESCRIPTION</th>
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<td>Z1200</td>
<td>Homemaker, hourly, weekday</td>
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<td>Z1205</td>
<td>Initial Evaluation, R.N.</td>
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<td>Z1290</td>
<td>Nursing Reassessment Visit</td>
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<tr>
<td>Z1295</td>
<td>Homemaker, hourly, weekend, holiday</td>
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<tr>
<td>Z1210</td>
<td>Respite Care, 8-hour day</td>
</tr>
<tr>
<td>Z1215</td>
<td>Respite Care, 8-hour night</td>
</tr>
<tr>
<td>Z1220</td>
<td>Respite Care Day—over 8 hours, up to 12 hours</td>
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<tr>
<td>Z1225</td>
<td>Respite Care Night—over 8 hours, up to 12 hours</td>
</tr>
<tr>
<td>Z1230</td>
<td>Respite Care over 12 hours, up to 24 hours</td>
</tr>
<tr>
<td>Z1235</td>
<td>Respite Care, Nursing Facility, daily</td>
</tr>
<tr>
<td>Z1235</td>
<td>Social Adult Day Care, daily</td>
</tr>
<tr>
<td>90050</td>
<td>Medical Day Care, daily</td>
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In addition to the above, the following are appropriate to HCEP only *and used only by HCEP case managers*.

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<tr>
<td>Z1202</td>
<td>Initial Comprehensive Needs Assessment <em>(HCEP only)</em></td>
</tr>
<tr>
<td>Z1203</td>
<td>Collection of Disability Information <em>(HCEP only)</em></td>
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(c) HCPCS CODES FOR MODEL WAIVERS AND AIDS COMMUNITY CARE ALTERNATIVES PROGRAM

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<th>DESCRIPTION</th>
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<tr>
<td>Z1700</td>
<td>Case Management, per recipient/per month <em>(Model Waiver)</em></td>
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**MODEL WAIVER III and AIDS COMMUNITY CARE ALTERNATIVES PROGRAM**

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<td>PDN-LPN, Per Hour/Weekday</td>
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<td>PDN-RN, Per Hour/Weekend/Evening/Holiday</td>
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<td>Z1725</td>
<td>PDN-LPN, Per Hour/Weekend/Evening/Holiday</td>
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<td>Z1745</td>
<td>PDN-LPN Specialty, Per Hour/Weekend/Evening/Holiday</td>
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(d) HCPCS FOR AIDS COMMUNITY CARE ALTERNATIVES PROGRAM

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<td>Z1800</td>
<td>Case Management, Per Recipient/Week</td>
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<td>Z1801</td>
<td>Case Management, Initial Month <em>(one time only, per recipient)</em></td>
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<tr>
<td>Z1810</td>
<td>Hospice,_daily</td>
</tr>
<tr>
<td>Z1820</td>
<td>Personal Care Assistant Service, Per Hour/Weekday/Individual</td>
</tr>
</tbody>
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(CITE 23 N.J.R. 434) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
Personal Care Assistant Service, Per 1/2 Hour/Weekday/Individual
Personal Care Assistant Service, Per Hour/Weekend/Holiday/Individual
Personal Care Assistant Service, Per 1/2 Hour/Weekend/Holiday/Individual
Personal Care Assistant Service, Per Hour/Weekday/Group
Personal Care Assistant Service, Per 1/2 Hour/Weekday/Group
Personal Care Assistant Service, Per Hour/Weekend/Holiday/Group
Personal Care Assistant Service, Per 1/2 Hour/Weekend/Holiday/Group
Initial Nursing Assessment Visit
Nursing Reassessment Visit
Methadone Treatment at Home *provided only by narcotic and drug treatment centers*
Urinalysis for Drug Addiction at Home *provided only by narcotic and drug treatment centers*
Psychotherapy, Full Session at Home *provided only by narcotic and drug treatment centers*
Psychotherapy, Half Session at Home *provided only by narcotic and drug treatment centers*
Family Therapy at Home *provided only by narcotic and drug treatment centers*
Family Conference at Home *provided only by narcotic and drug treatment centers*
Intensive Supervision for Children with AIDS in Foster Care Homes, per recipient, per month *provided only by DYFS*
Specialized Group Foster Home Care for Children, daily
Intensive Supervision for Children with ARC in Foster Care Homes, per recipient, per month *provided only by DYFS*
Intensive Supervision for HIV-positive Children in Foster Care Homes, per recipient, per month *provided only by DYFS*
Medical Day Care, daily

SUBCHAPTER 6. BILLING PROCEDURES FOR HOME CARE SERVICES *(HOME HEALTH CARE SERVICES AND PERSONAL CARE ASSISTANT SERVICES)*

10:60-6.1 Home care services billing procedures
(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.
(b) For all Home Health Care Services provided by a certified licensed home health agency *except under CCPED and HCEP*, [A]* **“Home Health Claim”, form (MC-3C3), must be submitted to the appropriate Fiscal Agent, either Blue Cross and Blue Shield of New Jersey, Inc., or The Prudential Insurance Company of America.
(c) For all *(Personal Care Assistant Services)* *case management, Personal Care Assistant Services, CCPED and HCEP services, private duty nursing and hospice care services* provided by a home health and homemaker agency, an “Independent Outpatient Health Facility” form, MC-14, must be submitted to The Prudential Insurance Company of America. *(When private duty nursing and hospice care services are provided by other than a home health and homemaker agency, the MC-14 shall also be used.)*
(d) Medicare/Medicaid coverage:
1. When the patient is covered under both Medicare and Medicaid, a HCFA-1487 Medicare form, *(Home Health Agency Report and Billing, Hospital and Medical Insurance Benefits—Social Security Act)*, should be completed (Exhibit III). Item 14 (Block E) of the HCFA-1487 form must be checked and the HSP (Medicaid) Case Number and Person Number must be indicated. *(Prior authorization is not required.)*
2. Since Personal Care Assistant Services is not a Medicare covered service, item 14 on the FD-139 should not be completed.*
3. **For Home Health Care Services: If service is not covered under the Medicare Program or when Medicare benefits are exhausted, a Medicaid Home Health Claim form (MC-3C3) must be completed. *(Prior authorization is required before providing services to a Medicaid recipient.)*
4. **When only part of a particular service provided on the same day is covered by Medicare, a separate Medicaid Home Health Claim form (MC-3C3) must be submitted *(with a copy of the approved FD-139 attached)* for the non-covered portion of the service. *(Prior authorization is required.)*
(e) See Appendix G, incorporated herein by reference, for a copy of the “Home Health Claim” form (MC-3C3) and the instructions for the proper completion of the form.
(f) See Appendix H, incorporated herein by reference, for a copy of the “Independent Outpatient Health Facility” form (MC-14), and the instructions for the proper completion of the form.
(g) For reimbursement, submit the Fiscal Agent copy of the “Independent Outpatient Health Facility” form, MC-14, to:
The Prudential Insurance Company of America
P.O. Box 1900
Millville, New Jersey 08332

1. Refer any questions regarding claim preparation to the Medicaid Claim Division II (609) 293-2175 or the toll-free number 1-800-582-7052.
10:60-6.2 Timeliness of claim submission and claim inquiry
For timeliness of claim submission and claim inquiry, see N.J.A.C. 10:49-1.12.
10:60-6.3 Submitting corrected claims
To correct a previously submitted claim, the Home Health Agency and Personal Care Assistant Services provider should reproduce a legible copy of the submitted claim. Corrections should be made in red in the appropriate items. The corrected claim should be marked DEBIT-ADJ in the upper right hand margin. If all charges and visits reported on the previously submitted claims are to be deleted, mark it CANCEL ONLY. A corrected claim should be submitted if the charges change by more than $1.00.
10:60-6.4 Toll free telephone service
Refer any questions pertaining to Individual Medicaid Practitioner (IMP) Numbers to 1-800-582-7052. This toll free service is available from 8:00 A.M. to 4:00 P.M. Monday through Friday, except holidays.
10:60-6.5 Assessment of interest on overpayments *(Home Health Agency Services Only)*
(a) When a Home Health Agency files a cost report and the report indicates that there has been an overpayment, full refund should be remitted with the report. In situations where this is not done, or where the Fiscal Agent, Blue Cross or Prudential, discovers an overpayment during desk review, field audit, or final settlement, the Fiscal Agent will, within seven days of discovery, contact the provider and attempt to recoup the overpayment by obtaining a refund in a lump sum.
(b) If the provider is unable to make a lump sum refund, the Fiscal Agent will, within 30 days after the date it notifies the provider that an overpayment exists, work out a repayment agreement by a series of setoffs against interim payments or by a combination of set-offs and cash repayments or through cash repayments only.
(c) The type of arrangement to be worked out with the provider is left to the discretion of the Fiscal Agent. The Fiscal Agent shall, as a matter of policy, attempt to recoup the overpayment as quickly as possible. The period of recovery shall not exceed 12 months unless a longer period of repayment is approved by the Director, Division of Medical Assistance and Health Services.
(d) Effective 30 days after the adopting of this regulation, all repayment agreements, including those in existence at the time of adoption, shall be in writing, signed by a duly authorized officer of NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 435)
HUMAN SERVICES

the provider organization and an appropriate representative of the Fiscal Agent.

e) If a repayment arrangement cannot be concluded within 30 days of notification by the Fiscal Agent, the Fiscal Agent shall make recovery through deductions from interim payments. In this instance, full recovery shall be made within 120 days from the date of initial contact.

(f) Recovery of the overpayments shall be made without regard to disputes in whole or in part of the Fiscal Agent's determination of the overpayment or pending appeals with the Provider Reimbursement Review Board (PRRB). As appeals are adjudicated, appropriate adjustments will be recognized and payments made.

(g) In all instances where full repayment cannot be made within 30 days of the Fiscal Agent's initial contact, interest shall be charged on the outstanding balance on the fifteenth of every month. The amount of interest shall be at the maximum legal rate on the date of the repayment agreement or thirty days after the date of initial contact, whichever is sooner.

(h) Where the discovery of an overpayment is prevented or burdened by errors contained within the cost report, either inadvertently or willfully, interest shall be charged as of the fifteenth of the first month (after) the cost filing was originally due.

(i) When cost filings are submitted more than 120 days after the close of the Home Health Agency's fiscal year and an overpayment is determined, interest shall be charged beginning on the fifteenth of the first month (after) the cost filing was originally due.

ADOPTIONS

10:60-6.6 Automated Data Exchange

(a) Any approved provider may request approval to submit claim for reimbursement via an approved method of Automated Data Exchange. All costs of rental/purchase of a terminal, installation maintenance, and usage of telephone lines are the responsibility of the provider.

(b) Requests for approval must be submitted to the appropriate contractor:

   The Prudential Insurance Company
   P.O. Box 471
   Millville, New Jersey 08332

   or

   Blue Cross of New Jersey
   33 Washington Street
   Newark, New Jersey 07102

(c) Any provider approved for an Automated Data Exchange claim submission system must comply with all regulations and restrictions set forth by the New Jersey Medicaid Program.

(d) A random billing sample will be audited after a three-month period. The review to compare data received via the Automated Data Exchange against the medical records will consist primarily of statement of charges, nature of services rendered, employment or accident related, other coverage, patient/provider signature, and verification that charges and procedure codes match services performed.

   1. Subsequent audits will be scheduled at six-month intervals if the error rate is acceptable.

(CITE 23 N.J.R. 436) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
APPENDIX A

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

HOME CARE AGENCY REVIEW SUMMARY

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<th>Administrator/Director</th>
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<th>Nursing Supervisor(s)</th>
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<th>4. Initial Assessment</th>
<th>4. Certification or License</th>
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<td>YES/NO/M/A</td>
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<tr>
<th>5. Reassessment</th>
<th>5. Probationary Evaluation</th>
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<tbody>
<tr>
<td>YES/NO/M/A</td>
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<tr>
<th>6. Plans of Care</th>
<th>6. Annual Evaluation</th>
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<tr>
<td>YES/NO/M/A</td>
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<tr>
<th>7. Progress Notes</th>
<th>7. Attendance at Inservice</th>
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<td>YES/NO/M/A</td>
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<tr>
<th>8. Medication Administration Record</th>
<th>8. Physical Exam</th>
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<td>YES/NO/M/A</td>
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<tr>
<th>10. Signature on Service Report</th>
<th>10. Signature on Plan of Care</th>
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<tr>
<td>YES/NO/M/A</td>
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| 11. | 11. |

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<tr>
<td>YES/NO/M/A</td>
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FD-342 (2/90)
**Hospice Agency Review Summary**

Agency: ___________________________ Date: ________________
Address: __________________________ Phone: _______________
Administrator/Director: _______________________________________
Expiration Date of Agency License: ____________________________

<table>
<thead>
<tr>
<th>Written agreement for provision of all services</th>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
<td>Qualifications available of all personnel providing services</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Continuing Inservice Education for all personnel</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Ongoing quality assurance</td>
<td>Yes</td>
<td>No</td>
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</table>

<table>
<thead>
<tr>
<th>No. Client Records Reviewed</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
<th>No. Personnel Records Reviewed</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

1. Referral Source _____ _____ N/A 1. Application _____ _____
2. Diagnosis _____ _____ 2. Evidence of Interview _____ _____
3. Physician Order _____ _____ 3. References _____ _____
   a. Renewal Order _____ _____ 4. License _____ _____
4. Initial Assessment _____ _____ 5. Qualification Available _____ _____
5. Reassessment _____ _____ 6. Physical exam _____ _____
6. Plan of Care _____ _____ 7. Performance Evaluation _____ _____
7. Progress Notes _____ _____
8. Hospice Consent _____ _____
   a. Revocation Consent _____ _____
9. Appropriate Referral _____ _____

FD-351(6/90)
Form HCFA-485 is reproduced from the Medicare Intermediary Manual, § 3902.6, Exhibit I.

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
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<tbody>
<tr>
<td>1. Patient's Name and Address</td>
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<tr>
<td>2. SOC Date</td>
<td></td>
</tr>
<tr>
<td>3. Certification Period</td>
<td>From To</td>
</tr>
<tr>
<td>4. Medical Record No</td>
<td></td>
</tr>
<tr>
<td>5. Provider No</td>
<td></td>
</tr>
<tr>
<td>6. Date of Birth</td>
<td></td>
</tr>
<tr>
<td>7. Sex</td>
<td>M F</td>
</tr>
<tr>
<td>8. ICD-9-CM Principal Diagnosis</td>
<td>Date</td>
</tr>
<tr>
<td>9. ICD-9-CM Surgical Procedure</td>
<td>Date</td>
</tr>
<tr>
<td>10. ICD-9-CM Other Pertinent Diagnoses</td>
<td>Date</td>
</tr>
<tr>
<td>11. DME and Supplies</td>
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</tr>
<tr>
<td>12. Safety Measures</td>
<td></td>
</tr>
<tr>
<td>13. Nutritional Req</td>
<td></td>
</tr>
<tr>
<td>14. Activities Permitted</td>
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</tr>
<tr>
<td>15. Allergies</td>
<td></td>
</tr>
<tr>
<td>16. Functional Limitations</td>
<td></td>
</tr>
<tr>
<td>17. Medical Status</td>
<td></td>
</tr>
<tr>
<td>18. Prognosis</td>
<td></td>
</tr>
<tr>
<td>19. Order</td>
<td></td>
</tr>
<tr>
<td>20. Discharge Plans</td>
<td></td>
</tr>
<tr>
<td>21. Orders for Discipline and Treatments (Specify Amount/Frequency/Duration)</td>
<td></td>
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</table>

Form HCFA-485 (G5) (G7)
RECOMMENDATIONS TO AGENCY:

PROJECTED REVISIT: ____________________________

AGENCY STAFF PRESENT: ____________________________

OFFICE OF HOME CARE STAFF SIGNATURES

__________________________

__________________________

__________________________
# Health Insurance Claim Form

**Read Instructions Before Completing This Form**

<table>
<thead>
<tr>
<th>Patient &amp; Insured (Subscriber) Information</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Patient's Name (First name, middle initial, last name)</td>
<td></td>
</tr>
<tr>
<td>Patient's Date of Birth</td>
<td></td>
</tr>
<tr>
<td>Insured's Name (First name, middle initial, last name)</td>
<td></td>
</tr>
<tr>
<td>Patient's Address (Street, city, state, ZIP code)</td>
<td></td>
</tr>
<tr>
<td>Patient's Sex</td>
<td>Male</td>
</tr>
<tr>
<td>Patient's Relationship to Insured</td>
<td>Self</td>
</tr>
<tr>
<td>Patient's Medicare/Champus No. (Include any letters)</td>
<td></td>
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<tr>
<td>Other Health Insurance Coverage</td>
<td>Yes</td>
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**Physician or Supplier Information**

<table>
<thead>
<tr>
<th>Date of Service</th>
<th>Place of Service</th>
<th>T.O.S.</th>
<th>Procedures Code (Explain Unusual Services or Circumstances)</th>
<th>Diagnosis Code</th>
<th>Date Charge Units</th>
<th>G. Charges</th>
<th>Date of Payment Planning</th>
<th>Leave Blank</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>Diagnosis or Nature of Illness or Injury, Relate Diagnosis to Procedure in Column E by Reference Numbers 1, 2, 3, Etc. or DX Code</th>
<th></th>
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<tbody>
<tr>
<td>1.</td>
<td></td>
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<tr>
<td>2.</td>
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<tr>
<td>3.</td>
<td></td>
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<tr>
<td>4.</td>
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<table>
<thead>
<tr>
<th>Date of Service</th>
<th>Place of Service</th>
<th>T.O.S.</th>
<th>Diagnosis Code</th>
<th>Leave Blank</th>
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</table>

<table>
<thead>
<tr>
<th>Signature of Physician or Supplier</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(I certify that the statements on the reverse apply to this bill and are made a part hereof.)</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Accept Assignment</th>
<th></th>
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<tbody>
<tr>
<td>Yes</td>
<td>No</td>
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</table>

<table>
<thead>
<tr>
<th>Total Charge</th>
<th>Amount Paid</th>
<th>Balance Due</th>
</tr>
</thead>
</table>

**Other Health Insurance Coverage**

- Medicare
- Medicaid
- CHAMPUS
- Other

**Other Information**

- Patient's Name
- Patient's Date of Birth
- Insured's Name
- Patient's Address
- Patient's Sex
- Patient's Relationship to Insured
- Patient's Medicare/Champus No.
- Other Health Insurance Coverage
- Insured's Group No.
- Insured's Address
- Patient's Sex
- Patient's Condition Related To
- Insured's Address
- Insured's Group No.
- Insured's Address

**Medical Services or Supplies Furnished for Each Date Given**

- Procedure Code
- Date of Service
- Date of Payment Planning

**Provider Information**

- Provider's Name
- Address
- ZIP Code
- Provider's Social Security Number
- Provider's Medicare/Champus No.

**Remarks**

- Telephone Number

---

**Appendix E**

**OMB No. 0938-0008**

**New Jersey Register, Tuesday, February 19, 1991**
HEALTH INSURANCE CLAIM FORM

MEDICARE AND CHAMPUS PAYMENTS: A patient’s signature requests that payment be made and authorizes release of medical information necessary to pay the claim. If item 9 is completed, the patient’s signature authorizes releasing of the information to the insurer or agency shown. In Medicare assigned or CHAMPUS participation cases, the physician agrees to accept the charge determination of the Medicare carrier or CHAMPUS fiscal intermediary as the full charge, and the patient is responsible only for the deductible, coinsurance, and non-covered services. Coinsurance and deductible are based upon the charge determination of the Medicare carrier or CHAMPUS fiscal intermediary if this is less than the charge submitted. CHAMPUS is not a health insurance program and renders payment for health benefits provided through membership and affiliation with the Uniformed Services. Information on the patient’s sponsor should be provided in items 3, 6, 7, 8, 9, and 11.

MEDICAID PAYMENTS: Authorization to Release Information, and Payment Request. I certify that the service(s) covered by this claim has been received, and request that payment for these services be made on my behalf. I authorize any holder of medical or other information about me to release to the State Agency or its authorized Agents any information needed for this or a related claim.

SIGNATURE OF PHYSICIAN OR SUPPLIER (MEDICARE AND CHAMPUS)

I certify that the services shown on this form were medically indicated and necessary for the health of the patient and were personally rendered by me or were rendered incident to my professional service by my employee under immediate personal supervision, except as otherwise expressly permitted by Medicare or CHAMPUS regulations.

For services to be considered as ‘incident’ to a physician’s professional service, 1) they must be rendered under the physician’s immediate personal supervision by his/her employee, 2) they must be an integral, although incidental part of a covered physician’s service, 3) they must be of kinds commonly furnished in the physician’s offices, and 4) the services of non-physicians must be included on the physician’s bills.

For CHAMPUS claims, I further certify that neither I nor any employee who rendered the services are employees or members of the Uniformed Services (refer to 5 USC 5536).

No Part B Medicare benefits may be paid unless this form is received as required by existing law and regulations (20 CFR 422.510).

NOTICE: Anyone who misrepresents or falsifies essential information to receive payment from Federal funds requested by this form may upon conviction be subject to fine and imprisonment under applicable Federal laws.

NOTICE TO PATIENT ABOUT THE COLLECTION AND USE OF MEDICARE AND CHAMPUS INFORMATION

We are authorized by HCFA and CHAMPUS to ask you for information needed in the administration of the Medicare and CHAMPUS programs. Authority to collect information is in section 205(a), 1872 and 1875 of the Social Security Act as amended and 44 USC 3101, 41 CFR 101 et seq. and 10 USC 1079 and 1086.

The information we obtain to complete Medicare and CHAMPUS claims is used to identify you and to determine your eligibility. It is also used to decide if the services and supplies you received are covered by Medicare or CHAMPUS and to insure that proper payment is made.

The information may also be given to other providers of services, carriers, intermediaries, medical review boards, and other organizations or federal agencies as necessary to administer the Medicare and CHAMPUS programs.

MEDICAID PAYMENTS (PROVIDER CERTIFICATION)

I hereby agree to keep such records as are necessary to disclose fully the extent of services provided to individuals under the State’s Title XIX plan and to furnish information regarding any payments claimed for providing such services as the State Agency may request.

SIGNATURE OF PHYSICIAN (OR SUPPLIER): I certify that the services covered by this claim were personally rendered by me or under my direct personal supervision (as defined by Program regulations); that the foregoing information is true, accurate and complete; and that the services covered by this claim and the amount charged therefore are in accordance with the regulations of the Medicaid Program; and that no part of the net amount payable under this claim has been paid; and that payment of such amount will be accepted as payment in full without additional charge to the patient or to others on his behalf, with the exception of authorized deductibles and coinsurance. I also certify that services have been furnished in full compliance with the non-discrimination requirements of Title VI of the Federal Civil Rights Act and Section 504 of the Rehabilitation Act of 1973.

I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statements, or documents, or concealment of a material fact, may be prosecuted under applicable Federal or State laws, or both.
### Place of Service Codes:

- (IH) - Inpatient Hospital
- (OH) - Outpatient Hospital
- (O) - Doctor's Office
- (H) - Patient's Home
- (DCF) - Day Care Facility (PSY)
- (NCF) - Night Care Facility (PSY)
- (NH) - Nursing Home
- (SNF) - Skilled Nursing Facility
- (A) - Ambulance
- (OL) - Other Locations
- (IL) - Independent Laboratory
- (OMS) - Other Medical/Surgical Facility
- (RTC) - Residential Treatment Center
- (STF) - Specialized Treatment Facility
- (KC) - Independent Kidney Care Treatment Center
- (ER) - Emergency Room
- (BH) - Boarding Home

### Type of Service Codes:

- 1 - Medical Care
- 2 - Surgery
- 3 - Consultation
- 4 - Diagnostic X-Ray
- 5 - Diagnostic Laboratory
- 6 - Radiation Therapy
- 7 - Anesthesia
- 8 - Assistance at Surgery
- 9 - Other Medical Service
- 0 - Blood or Packed Red Cells
- A - Used DME
- M - Alternate Payment for Maintenance Dialysis
- Y - Second Opinion on Elective Surgery
- Z - Third Opinion on Elective Surgery

(CITE 23 N.J.R. 444) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
<table>
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<th>29</th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>PATIENT'S LAST NAME</strong></td>
<td><strong>FIRST NAME</strong></td>
<td><strong>INITIAL</strong></td>
<td><strong>DATE OF BIRTH</strong></td>
<td><strong>SEX</strong></td>
<td><strong>RACE</strong></td>
<td><strong>PATIENT'S ADDRESS</strong></td>
<td><strong>CITY</strong></td>
<td><strong>STATE</strong></td>
<td><strong>ZIP</strong></td>
<td><strong>SOCIAL SECURITY NO.</strong></td>
<td><strong>MEDICARE NO.</strong></td>
<td><strong>MEDICAID NO.</strong></td>
<td><strong>GROUP NO.</strong></td>
<td><strong>EMPLOYER NAME</strong></td>
<td><strong>EMPLOYER LOCATION</strong></td>
<td><strong>GROUP NAME</strong></td>
<td><strong>INSURANCE GROUP NO.</strong></td>
<td><strong>INSURANCE PLAN CODE</strong></td>
<td><strong>INSURANCE PLAN NAME</strong></td>
<td><strong>INSURANCE PLAN NCP maj 1</strong></td>
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<td><strong>PAYMENT DUE PERIOD</strong></td>
<td><strong>FROM</strong></td>
<td><strong>THROUGH</strong></td>
<td><strong>TOTAL DAYS</strong></td>
<td><strong>TOTAL AMOUNT DUE</strong></td>
<td><strong>COVERAGE PERIOD</strong></td>
<td><strong>FROM</strong></td>
<td><strong>THROUGH</strong></td>
<td><strong>TOTAL DAYS</strong></td>
<td><strong>TOTAL AMOUNT DUE</strong></td>
<td><strong>COVERAGE PERIOD</strong></td>
<td><strong>FROM</strong></td>
<td><strong>THROUGH</strong></td>
<td><strong>TOTAL DAYS</strong></td>
<td><strong>TOTAL AMOUNT DUE</strong></td>
<td><strong>COVERAGE PERIOD</strong></td>
<td><strong>FROM</strong></td>
<td><strong>THROUGH</strong></td>
<td><strong>TOTAL DAYS</strong></td>
<td><strong>TOTAL AMOUNT DUE</strong></td>
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<td><strong>DESCRIPTION</strong></td>
<td><strong>CPT-4 CODE</strong></td>
<td><strong>DIAGNOSIS CODE</strong></td>
<td><strong>PROCEDURE CODE</strong></td>
<td><strong>DURATION</strong></td>
<td><strong>VALUE</strong></td>
<td><strong>DURATION</strong></td>
<td><strong>VALUE</strong></td>
<td><strong>DURATION</strong></td>
<td><strong>VALUE</strong></td>
<td><strong>DURATION</strong></td>
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</table>

**DUE FROM PATIENT**:

| **INSURER'S NAME** | **EIN** | **Payer No.** | **CERT. OF BENIN.** | **INSURANCE GROUP NO.** | **GROUP NAME** | **EMPLOYER NAME** | **EMPLOYER LOCATION** | **GROUP NAME** | **INSURANCE GROUP NO.** | **INSURANCE PLAN CODE** | **INSURANCE PLAN NAME** | **INSURANCE PLAN NCP maj 1** | **INSURANCE PLAN NCP maj 2** |

**TREATMENT AUTH:**

<table>
<thead>
<tr>
<th><strong>PATIENT</strong></th>
<th><strong>DUR.</strong></th>
<th><strong>AMOUNT</strong></th>
<th><strong>CODE</strong></th>
<th><strong>DATE</strong></th>
<th><strong>AMOUNT</strong></th>
<th><strong>CODE</strong></th>
<th><strong>DATE</strong></th>
<th><strong>AMOUNT</strong></th>
<th><strong>CODE</strong></th>
<th><strong>DATE</strong></th>
<th><strong>AMOUNT</strong></th>
</tr>
</thead>
</table>

**REMARKS**:

| **REMARKS** | **FROM** | **THROUGH** | **AMOUNT** | **DATE** | **AMOUNT** | **DATE** | **AMOUNT** | **DATE** | **AMOUNT** | **DATE** | **AMOUNT** |

UB-82 HCFA-1450 PAYER COPY
UNIFORM BILL NOTICE: ANYONE WHO MISREPRESENTS OR FALSIFIES ESSENTIAL INFORMATION REQUESTED BY THIS FORM MAY UPON CONVICTION BE SUBJECT TO FINE AND IMPRISONMENT UNDER FEDERAL AND/OR STATE LAW.

Certifications relevant to the Bill and Information Shown on the Face Hereof:

Signatures on the face hereof incorporate the following certifications or verifications where pertinent to this Bill:

1. If third party benefits are indicated as being assigned or in participation status, on the face thereof; appropriate assignments by the insured-beneficiary and signature of patient or parent or legal guardian covering authorization to release information are on file. Determinations as to the release of medical and financial information should be guided by the particular terms of the release forms that were executed by the patient or the patient's legal representative. The hospital agrees to save harmless, indemnify and defend any insurer who makes payment in reliance upon this certification, from and against any claim to the insurance proceeds when in fact no valid assignment of benefits to the hospital was made.

2. If patient occupied a private room or required private nursing for medical necessity, any required certifications are on file.

3. Physician's certifications and re-certifications, if required by contract or Federal regulations, are on file.

4. For Christian Science Sanitoriums verifications and if necessary re-verifications of the patient's need for sanitorium services are on file.

5. Signature of patient or his representative on certifications, authorization to release information, and payment request, as required by Federal law and regulations (42 USC 1935f, 42 CFR 405.1663, 10 USC 1071 through 1086, 32 CFR 199) and, if required by other contract regulations, is on file.

6. This claim, to the best of my knowledge, is correct and complete and is in conformance with the Civil Rights Act of 1964 as amended. Records adequately disclosing services will be maintained and necessary information will be furnished to such governmental agencies as required by applicable law.

7. For Medicare purposes:

If the patient has indicated that other health insurance or state medical assistance agency will pay part of his medical expenses and he wants information about his claim released to them upon their request, necessary authorization is on file.

8. For Medicaid purposes:

This is to certify that the foregoing information is true, accurate, and complete.

I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statements, or documents, or concealment of a material fact, may be prosecuted under applicable Federal or State laws.

9. For CHAMPUS purposes:

This is to certify that:

(a) the foregoing information is true, accurate, and complete.

(b) the patient has represented that by a reported residential address greater than 40 miles distance he or she does not live within 40 miles of a military or U.S. Public Health Service medical facility, or if the patient resides within 40 miles of such a facility, a copy of a Non-Availability Statement (DD Form 1251) is on file, or the physician has certified to a medical emergency in any instance where a copy of a Non-Availability Statement is not on file;

(c) the patient or sponsor has responded directly to the provider's request to identify all health insurance coverages, and that all such coverages are identified on the face of the claim except those that are exclusively supplemental payments to CHAMPUS-determined benefits;

(d) the amount billed to CHAMPUS has been billed after all such coverages have been billed and paid, excluding Medicaid, and the amount billed to CHAMPUS is that remaining claimed against CHAMPUS benefits;

(e) the beneficiary's cost share has not been waived by consent or failure to exercise generally accepted billing and collection efforts; and,

(f) any hospital-based physician under contract, the cost of whose services are allocated in the charges included in this bill, is not an employee or member of the Uniformed Services. For purposes of this certification, an employee of the Uniformed Services is an employee, appointed in civil service (refer to USC 2105), including part-time or intermittent but excluding contract surgeons or other personnel employed by the Uniformed Services through personal service contracts. Similarly, member of the Uniformed Services does not apply to reserve members of the Uniformed Services not on active duty.

ESTIMATED CONTRACT BENEFITS
APPENDIX G

Instructions for the completion of the MC-3C3.

Item 1: Patient's Last Name: Copy the patient's last name and first name, exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form.

Item 2: Case Last Name: Copy the case last name and first name, exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form.

Item 3: Sex: Indicate patient's sex by entering "X" in the appropriate block.

Item 4: Birthdate: Use six digits to enter the patient's birthdate for example, May 6, 1977 is written 05/06/77). If only the year is known, enter the year. If birthdate is unavailable, submit claim without birthdate.

Item 5: Start Care Date: Use six digits to indicate the date when approved home health care was initiated (for example, 02/01/81).

Item 6: Claim Form Date: Use six digits to indicate the date of the first service for which you are billing on this claim (for example, 02/20/81).

Item 7: Claim Thru Date: Use six digits to indicate the date of the last service for which you are billing on this claim (for example, 13/25/81).

Item 8: Visits: Enter the number of visits being billed.

Item 9: Provider Name and Address: This information is usually preprinted. If not preprinted, write in provider name and address.

Item 10: Medical Record No: Enter the patient's Medical Record Number.

Items 11 and 12: HSP (Medicaid) Case No. and Patient Persons No.: Copy the patient's HSP (Medicaid) Case Number and Person Number exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form. The complete number consists of a ten-digit case number and a two-digit individualized person number.

Item 13: Provider No.: This information is usually preprinted. If the information is not preprinted enter your agency's six-digit provider number.

Item 14: Patient's Address: Enter the patient's address.

Item 15: Telephone No.: Enter patient's telephone number.

Item 16: Referring Physician's Individual Medicaid Practitioner Number: If the patient was referred by a physician from another setting, you must indicate the nine-digit Individual Medicaid Practitioner (IMP) Number of the referring practitioner.

Item 17: Referring Physician's Name: If the patient was referred by a physician from another setting, enter referring practitioner's name.


Item 19: Attending Physician's Individual Medicaid Practitioner Number: Enter the nine-digit Individual Medicaid Practitioner (IMP) Number of the attending physician. If the attending physician is a "non-participating" physician (in the Medicaid Program), the Home Health Agency must write "NON PAR" in the space indicated. This item must be completed on all claim forms.

Item 20: Attending Physician's Name: Enter attending physician's name.

Item 20a: Physician Case Manager: Enter the Physician Case Manager's name and nine-digit IMP Number if the recipient is enrolled in the Medicaid Personal Physician Plan (MP Plan).

If an IMP Number of a physician is not known, the Home Health Agency may call the physician and obtain the number or it may call the Fiscal Agent's toll free number for this information (see N.J.A.C. 10:60-3.3).

This item must be completed on all claim forms if the recipient is enrolled in the MP Plan.

Item 21: Prior Authorization Number: Prior authorization is required for services following the initial visit. A claim for the initial evaluation visit must be submitted to the appropriate Fiscal Agent on the Home Health Claim form (MC-3C3), with the comment in the "Remarks" section "initial visit only". If a prior authorization number is designated by the Medicaid District Office, indicate it on the FD-139 form. Attach FD-139 to claim when submitting for payment.

Item 22: Type of Service: Enter date of each service opposite the code which appropriately describes the service. Use only two dates per line item if the services were not given on consecutive days; if the services were provided on consecutive days, for example: 10/8; 10/9; 10/10; more than two, but not more than five, dates per line item can be submitted for reimbursement:

02 . . . Skilled Nursing Code Care 10/7; 10/9
03 . . . Homemaker—Home Health Aide
10 . . . Physical Therapy
11 . . . Speech-Language Therapy
12 . . . Occupational Therapy

Item 23: Was this service performed as a result of an EPSDT Program Referral? Complete this item for patients under 21 years of age. Ask the patient and/or referring physician or clinic whether the illness requiring services was detected during an EPSDT screening. Indicate if this patient is such a referral by checking the appropriate block.

Item 24: Check for Family Planning: Check the box, if services indicated on the claim are ascribable to "Family Planning". These should include Home Health visits related to contraception or subsequent to family planning related surgical procedures.

Item 25: Third Party Liability Action: Indicate the source of Third Party Payment, by entering the appropriate digit in the block. Do not leave blank: if none, enter "0".

Item 26: Patient Status: Indicate the patient's status by entering the appropriate digit in the block. If patient is on home care extend beyond this billing period, enter "1", still patient.

Item 27: Discharge Date: Using six digits, enter the date of the last visit under the plan of treatment, or the date of admission to the hospital, skilled nursing facility or intermediate care facility.

Item 28: Discharge or Current Diagnosis: Using standard medical terminology, enter all the diagnoses which relate to the condition requiring the current services. The primary diagnosis is the illness or condition which was the primary reason for the services. Other diagnoses should be shown under secondary.

Enter the primary and secondary diagnosis codes as obtained from the International Classification of Diseases, ICD-9-CM. If the code contains less than five digits add trailing zeros to the code. For example, Meningitis code 320 is written 32000.

Item 29: Statement of Charges: Enter the number of visits and charges for the period covered by the claim in the appropriate column.

Use type of service charges line 27 and 28 to list additional services. Enter the total charges on line 98.

Item 30: Other Coverage—Remaining Charges: Reserved solely for other insurance coverage.

Items 29 and 30: Cannot be completed on the same claim form. If the patient is covered under Medicare (See N.J.A.C. 10:60-3.1(c)). If the patient does not have Medicare coverage, enter charges not covered by other insurance on line 32 of item 30.

The amount received from the other insurer must be entered on the bottom line, "Third Party Payment Amount".

Item 31: Claim Related to Employment: Check as appropriate. If patient's illness or injury is work-related, enter name and address of employer.

Indicate whether injury resulted from an automobile accident. If the injury or illness is related to an auto accident, enter the auto insurance carrier and policy number in item 32 below.

Item 32: Other Insurance or Liability Coverage: Check appropriate block to indicate whether the patient has other health insurance, liability coverage, or No Fault Auto Coverage.

If yes, you must attach a copy of the denial notice or a copy of the explanation of payment from the carrier.

Enter the name of the carrier and policy number under which other health insurance benefits are available.

Item 33: Provider Certification: Read the Provider Certification carefully.
An authorized representative of the Home Health Agency must sign the MC-3C3 before the claim can be considered for payment. Indicate the billing date which is the date the claim is mailed. The billing date cannot be earlier than the “Claim Thru Date”, item 11.

**APPENDIX H**

Instructions for the completion of the MC-14:

Item 1: Patient’s Name: Enter patient’s name exactly as it appears on the Medicaid Eligibility Identification Card/Validation Form.

Item 2: Patient’s Address and Telephone Number: Enter patient’s address and telephone number exactly as they appear on the Medicaid Eligibility Identification Card/Validation Form.

Item 3: HSP (Medicaid) Case No.: Enter HSP (Medicaid) Case Number exactly as it appears on the Medicaid Eligibility Identification Card/Validation Form.

Item 4: Patient Person No.: Enter the Patient Person Number exactly as it appears on the Medicaid Eligibility Identification Card/Validation Form.

Item 5: Age: Enter patient’s age.

Item 6: Sex: Check appropriate box.

Item 7: Other Health Insurance or Liability Coverage: Check the appropriate block to indicate whether the patient has other health insurance, liability coverage or No Fault Auto Coverage. If you are aware that the other coverage will not cover the services provided, please indicate so on the claim form. If yes, attach a copy of the decline notice or a copy of the explanation of payment from the Carrier.

Item 8: Was this service performed as a result of an EPSDT Program Referral: Leave Blank.

Item 9: Provider Service Information: If not preprinted, write in the provider’s name, address, provider number and the telephone number.

Item 10: Was Patient’s Illness or Injury connected with employment: Check as appropriate. If patient’s illness or injury is work related, enter the name and address of employer. Indicate whether injury resulted from an automobile accident.

Two commenters questioned the requirement for professional dietitian assessment/consultation upon the admission of a recipient, and monthly thereafter. The Division intends to retain the language in the proposed rules as it is important that the nutritional status and dietary needs of each recipient be evaluated by a qualified dietitian upon admission and subsequently when a dietary problem is identified (see N.J.A.C. 10:65-1.4(a2)).

A commenter observed that, because both the Department of Health and the Division of Medical Assistance and Health Services conduct on site reviews of facilities, the elimination of duplication of inspection would constitute a cost saving measure. The Division’s response is that the New Jersey Department of Health is responsible for insuring the medical day care centers meet the standards for licensure of Adult Day Care Facilities, N.J.A.C. 8:43F. These standards include, but are not limited to, evaluating the physical plant, staffing ratios and qualifications, fire plans, disaster plans, etc. On the other hand, the Medicaid staff (within the Division of Medical Assistance and Health Services) ensures: (1) the appropriate use of Medicaid services required within the Medical Day Care, that (2) there is documentation establishing that services were provided adequately and effectively and that (3) recipients and caregivers are satisfied with the manner in which services are delivered. Prior authorization has been eliminated to remove regulatory barriers to medical day care. However, at least until experience indicates otherwise, it is prudent to monitor programs to assure that the health and safety of Medicaid recipients are protected and that Medicaid benefits are being used appropriately and efficiently. A future review of the need for continued direct inspections and/or increased use of alternative approaches will be conducted by the Division.

**Summary of Changes Between Proposal and Adoption**

As noted above, the Division is making no changes to the proposed rules in response to public comments.

The following technical changes have been made to correct minor errors in the proposal as printed.
In proposed N.J.A.C. 10:65-1.1, the word “medicaid” has been changed to “Medicaid.” In proposed N.J.A.C. 10:65-1.2, the spelling of “Division’s” has been corrected. In proposed N.J.A.C. 10:65-1.4, technical changes have been made to correct typographical errors, tense of a verb, pluralization, upper case, or lower case, and to insert the word “to.” In proposed N.J.A.C. 10:65-1.5, the word “State” has been inserted i.e., “New Jersey Board,” and a prepositional phrase, “For staff-recipient ties,” has been removed. In proposed N.J.A.C. 10:65-1.7, “caregiver’s” has been changed to “caregivers.” In proposed N.J.A.C. 10:65-1.8, the phrases “For Medicare/Medicaid average,” and “For third party liability,” have been deleted. In proposed N.J.A.C. 10:65-2, the section heading, “Relevant HCPCS codes” has been changed to “HCPCS Codes.” In proposed N.J.A.C. 10:65-2.2, explanatory language has been added to the procedure code “Z1816.”

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

CHAPTER 65

MEDICAL DAY CARE SERVICES MANUAL

UBCHAPTER I. GENERAL PROVISIONS

0:65-1.1 Purpose and scope

The Medical Day Care Program is concerned with the fulfillment of the health needs of Medicaid recipients and/or those who are served under the Division’s Home Care Expansion Program and who could benefit from a health services alternative to total institutionalization. Medical day care is a program of medically supervised, health related services provided in an ambulatory setting to persons who are non-residents of the facility, who do not require services 24 hours a day on an in-patient basis, and who can be served in the facility (RHCF) setting except as follows:

1. Do not require medical day care based on the resident’s level of functioning or their physical and/or mental impairment, need health maintenance and restorative services supportive to their community living.
2. Cannot be met totally in any other ambulatory care setting, such as a hospital or nursing facility, except under special circumstances;
3. Cannot be met in any other ambulatory care setting, such as a hospital or nursing facility, except under special circumstances;
4. Are such that current health status would deteriorate without the direct services and health monitoring available at the center; and
5. Cannot be met by the resident of a residential health care facility (RHCF) setting except as follows:

i. If a resident of an RHCF was in medical day care prior to admission to the RHCF, medical day care services can continue for a limited period to allow for the adjustment into the RHCF;
ii. If a resident of an RHCF requires medical day care to encourage transition into a less structured residential setting such as a boarding home or an independent living arrangement, medical day care can be provided for a limited period;
iii. If a resident of an RHCF has been recently discharged from an acute care facility (general hospital, psychiatric hospital), medical day care services can be available for the purpose of “short term” (as determined by the Division) clinical monitoring; or
iv. If a resident of an RHCF shows evidence of an unstable clinical status which requires a short term structured therapeutic environment, medical day care services are available for a limited period.

v. Since individuals who reside in residential health care facilities are not eligible for CCPEH or HCEP, medical day care services are not available to these residents.

Prior authorization means the approval process by the Medicaid District Office prior to the provision of services. In the context of medical day care, prior authorization shall only be used as outlined in N.J.A.C. 10:65-1.3(c)(1) or upon Division discretion with new medical day care centers.

“Volunteer” means a person who gives his or her time and services regularly without remuneration.

0:65-1.3 Program participation

(a) A medical day care center operated by a public or private agency or organization, either proprietary or non-profit, or a subdivision of such an agency or organization, shall meet the following requirements in order to participate in the New Jersey Medicaid Program and the Home Care Expansion Program:

1. Licensure and approval by the New Jersey State Department of Health in accordance with its Manual for Standards for Licensure of Adult Day Health Care Facilities, N.J.A.C. 8:43F-2, which possesses a valid and current provider agreement from the New Jersey Division of Medical Assistance and Health Services and which provides services as described in this manual at N.J.A.C. 10:65-1.4.

“Medical day care recipient” means a person who is a Medicaid recipient, or a recipient who is served under the Division’s Home Care Expansion Program, and who is eligible for services and is diagnosed as having an identifiable medical condition, lacks sufficient social support which impacts negatively on this condition and whose assessed physical and psychosocial needs:

1. Do not require services 24 hours a day on an in-patient basis in a hospital or nursing facility, except under special circumstances;
2. Cannot be met totally in any other ambulatory care setting, such as a physician’s office, hospital out-patient department or in a partial care/partial hospitalization program;
3. Require and can be met satisfactorily by a seven-hour, including portal-to-portal travel time, day-long active medical day care program not to exceed five days per week, provided by licensed and non-licensed personnel;
4. Are such that current health status would deteriorate without the direct services and health monitoring available at the center; and
5. Cannot be met by the resident of a residential health care facility (RHCF) setting except as follows:

i. If a resident of an RHCF was in medical day care prior to admission to the RHCF, medical day care services can continue for a limited period to allow for the adjustment into the RHCF;
ii. If a resident of an RHCF requires medical day care to encourage transition into a less structured residential setting such as a boarding home or an independent living arrangement, medical day care can be provided for a limited period;
iii. If a resident of an RHCF has been recently discharged from an acute care facility (general hospital, psychiatric hospital), medical day care services can be available for the purpose of “short term” (as determined by the Division) clinical monitoring; or
iv. If a resident of an RHCF shows evidence of an unstable clinical status which requires a short term structured therapeutic environment, medical day care services are available for a limited period.

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“Volunteer” means a person who gives his or her time and services regularly without remuneration.
corporated herein by reference) on each recipient who attends medical day care for five or more days during the quarter;
4. Preparation of a cost study, annually detailing expenditures of the medical day care center. Medical day care center costs shall be segregated from other operational costs. (Division reimbursement rates may be based on cost study information or on a percentage of per diem rates.
   i. All direct and indirect costs associated with hospital affiliated medical day care centers shall be reported separately by the hospital on New Jersey State Department of Health cost findings for payment purposes and shall not be considered an allowable cost under the Diagnosis Related Group (DRG) program.
   (b) The Division shall conduct an on-going evaluation of the center’s Day Care Program by on-site visits to the medical day care center. A Medical Day Care On-Report MCNH-89 (Appendix D, incorporated herein by reference) shall be completed by Division staff and a copy shall be forwarded to the center.
   (c) Division staff may request a plan of correction if the center is evaluated as providing sub-standard services and/or inadequate documentation of these services. The plan of correction shall address deficiencies noted by Division staff, and shall be submitted to the Division by the center by the requested date.
   1. If a follow-up on-site visit reveals that the plan of correction is not being implemented, a ban on new admissions to the center or other such action as the Division deems necessary may be considered. For example, prior authorization of services may be imposed. Continued non-compliance with the Division’s standards may result in the termination of the provider agreement, with a 30-day notice of termination sent to the facility by the Division. Providers wishing to request hearings under this section are referred to N.J.A.C. 10:49-1.16 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
   (d) Caregivers of medical day care recipients may be contacted by Division staff to determine appropriateness of care and satisfaction with services provided.

10:65-1.4 Required services
(a) At a minimum, the following services shall be provided by the center for participation in the Medical Day Care Program.
   1. Consultative services as follows:
      i. If the Division staff identifies that the recipient has significant, unresolved or recurring problems, the center shall be required to arrange for and/or provide appropriate consultation in any service area, as identified by the Division, until problems are corrected.
   2. Dietary services as follows:
      i. The nutritional status and dietary needs of each recipient shall be evaluated by a qualified diettian upon admission to the program. Those recipients on a physician-ordered special diet, or those identified as having specific nutritional needs, shall have an evaluation of their nutritional status every 90 days. Results of the assessment and evaluation shall be documented in each recipient’s record.
      (1) The center shall provide each recipient with a minimum of one meal per day, as well as nutritionally appropriate snacks. The food served each day shall supply at least one-third of each recipient’s daily nutritional requirement as recommended by the Nutrition Board of the National Institute of Health.
      (2) All food served shall be stored and prepared in accordance with acceptable professional standards and be of appropriate temperatures.
      (3) Recipients shall receive assistance to eat when necessary. Adaptive feeding devices shall be available to those who need them.
      ii. Special diets and supplemental feedings shall be available as ordered by the recipient’s physician. These dietary requirements shall be included in the participant’s individualized multidisciplinary plan of care.
      iii. Ongoing communication shall be established between the center’s staff and the diettian.
      iv. Dietary and nutritional counseling and education shall be provided for each recipient and those involved with their care. Documentation of this education shall include the content of the program and a list of recipients.
   3. Medical services as follows:
      i. The center’s administrator/director, with the medical director of the center, shall establish written medical and administrative policies governing the provision of medical services to the recipients. The medical director shall be responsible for, but not be limited to, the following:
         (1) Developing and amending these medical policies as needed;
         (2) Supervising the provision of medical services;
         (3) Advising the center director regarding medical and related problems;
      (4) Establishing procedures for medical matters, such as medical supervision, storage of medication, emergency coverage, emergency records, use of consultants, patient review, rehabilitative services, medication and discharge planning. Procedures shall be located in the center director’s office and at the nurses’ station, readily available to staff.
      (5) Establishing relationships with appropriate personnel in other institutions, such as general or special hospitals, rehabilitative centers, home health agencies, clinics, laboratories, and related community resources. This would include, but not be limited to, arrangements for emergency room services unavailable within the center; an
      (6) Providing staff with training and consultation on medical related topics.
   ii. The medical day care center shall provide:
      (1) A medical evaluation of all recipients, provided or arranged for by the medical director as needed, but at least every six months.
      (Note: Physician services for the Community Care Program for the Elderly and Disabled/Home Care Expansion program recipients at not reimbursed by the New Jersey Medicaid Program.)
      (A) Any medical services required (including podiatry services, se
      N.J.A.C. 10:57-11.1) shall be coordinated by the recipient’s attending
      (B) If the recipient has no attending physician, the medical director shall assist the recipient to secure one.
      (C) In the event that an attending physician cannot be obtained to regularly care for the recipient, the recipient may choose the medical director as his or her attending physician, provided the medical director becomes the recipient’s attending physician with the responsibilities attendant to such a role over a 24-hour period on a continuing basis.
      (D) It is only in this new role as attending physician that the medical director can bill the New Jersey Medicaid Program on the Health Insurance Claim Form, 1500-NJ, (Appendix G, incorporated herein by reference) for services provided to the Medical recipient.
      (E) The medical director shall not bill the New Jersey Medicaid Program separately for any service performed for any Medicaid recipient in a medical day care center while serving solely in his or her capacity as medical director.
      (2) An individual medical record on each recipient.
      (3) Medical orders for treatment of recipients which shall include medication, diet, activities permitted, and therapies, such as physical therapy, occupational therapy, and speech-language pathology services.
   4. Nursing services as follows:
      i. A registered professional nurse shall be available on the premises of the medical day care center at all times when the center is operating. Additional registered professional nurses shall be present in centers where the daily attendance exceeds 60 participants. The registered professional nurse is responsible for the supervision of ancillary nursing staff.
      ii. The registered professional nurse shall be responsible for, but not be limited to, the following:
         (1) Interviewing the recipient and caregivers in order to evaluate the recipient’s health status and health care needs;
         (2) Maintaining the standards of nursing practice including, but not limited to: monitoring of identified medical conditions, administration and supervision of prescribed medications and treatments coordination of rehabilitative services; development of a restorative nursing plan; monitoring of clinical behavior and nutritional status assisting with the maintenance or re-development of the activities of daily living skills; communicating findings to the attending physician.

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3. Managing medical emergencies (see N.J.A.C. 10:65-1.4(a)(3)(4);
4. Documenting the nursing services provided, including the initial assessment and evaluation of the recipient’s health care needs, development of the nursing component in the individualized plan of care, evaluation of the recipient’s progress in reaching established goals and defining the effectiveness of the nursing component in the individualized plan of care;
5. Overseeing the development of the initial individualized multidisciplinary plan of care;
6. Alerting others involved with the recipient’s care about changes in status and the need to change the individualized multidisciplinary plan of care;
7. Developing community medical referral resources and maintaining ongoing communication with those providers;
8. Linking the recipient to necessary health care services outside the program;
9. Coordinating the services provided by other staff to meet the mutually identified health care and psychosocial needs of each recipient;
10. Providing inservice training to center staff about the recipient’s health care needs;
11. Developing and implementing a quality assurance program in conjunction with the multidisciplinary team;
12. Providing health education for a recipient’s family or primary caregiver; and
13. Serving as an advocate to assist the recipient/caregiver to solve problems.

iii. The center’s nursing staff shall assure that nursing services provided to recipients are coordinated with health services currently received at home, as well as with existing community health agencies and services available to recipients in time of need.

5. Personal care services as follows:
   i. To assure quality personal care, the center staff shall make daily checks to assure that recipients are maintaining personal hygiene, receiving medications as prescribed (which includes assuring the renewal of prescriptions as necessary and the disposition of outdated or discontinued drugs), and participating in appropriate social and recreational activities.
   ii. Personal care services shall include education in and assistance with activities of daily living (for example, walking, eating, toileting, grooming) and supervision of personal hygiene.

6. Pharmaceutical services as follows:
   i. The center shall have a pharmacist who shall be responsible for the following:
      (1) Establishing written policies and procedures to assure the safe use, storage, integrity, administration, control and accountability of all drugs stored or administered in the facility;
      (2) Reviewing the records of all recipients at least every 90 days to assure that the medication records are accurate, up-to-date and that these records indicate that medications are administered or self-administered in accordance with physician’s orders;
      (3) Reviewing records at least every 90 days to assure drug regimen, laboratory tests, special dietary requirements, and foods used or administered concomitantly with other medications to the same recipients, are monitored for potential adverse reactions, allergies, drug interaction, contraindications, rationality, drug evaluation, and test modification; and that all irregularities or recommended changes are documented on the recipient’s record and reported to the medical director or attending physician;
      (4) Providing and documenting inservices and consultation with staff and recipients of the center as required to assure compliance with pharmaceutical compliance and utilization; and
      (5) Devoting a minimum of four hours a month to carry out these responsibilities; maintaining a written record of activities, findings and recommendations.

7. Therapeutic activities as follows:
   i. The center staff, under the direction of the activities coordinator, shall provide a planned program of social, physical, spiritual, psychological and cognitive activities. These activities shall reflect and be adapted to the needs, interests and capabilities of the recipients.
      (1) The center may involve volunteers in the implementation of the therapeutic activities program.
      (2) The current monthly schedule of activities shall be posted at a location convenient to recipients, staff and families.
      (3) Therapeutic activities shall include, but not be limited to:
         (A) Discussion groups (reality orientation, reminiscence); and
         (B) Arts and crafts;
         (C) Specialty groups;
         (D) Exercise groups;
         (E) Educational programs;
         (F) Participant council;
         (G) Specialty groups;
         (H) Excursions or outings;
         (I) Community service projects; and
         (J) Individualized programs.
      (4) The activities program shall be coordinated with occupational and physical therapy programs so that a total plan of care is provided to each recipient.
      (5) The recipients and their families, when possible, shall be involved in the planning and implementation of the activities program.
      (6) The activity staff shall:
         (A) Participate in all recipient conferences;
         (B) Participate in professional organizations and seminars;
         (C) Document assessments, treatment plans, evaluations and clinical notes; and
         (D) Develop and implement a quality assurance program.

10. Transportation services as follows:
   i. The center shall provide transportation for recipients to and from their homes as well as to and from services provided indirectly by the center. No recipient’s total daily commutation time shall exceed two hours.
HUMAN SERVICES

10:65-1.5 Staff

(a) The center shall have adequate staff capability to provide services and supervision to the recipients at all times. The composition of the staff shall depend in part on the needs of the recipients and on the number of recipients the program is serving. At a minimum, the center shall have a medical day care center administrator/director, a registered professional nurse, a social worker, an activities coordinator and a medical director. If the freestanding facility has no medical director, a licensed physician shall be appointed to serve in this capacity. Staff position requirements are as follows:

1. The activities coordinator shall meet the requirements of the New Jersey State Department of Health, N.J.A.C. 8:43F-1.13, for a patient activities director.
   i. An activities consultant shall possess:
      (1) A master’s degree in any one of the following: recreation therapy, creative arts therapy, occupational therapy, health care administration, human services, or a related field and two years of experience in patient activities in a health care setting; or
      (2) A bachelor’s degree from a college or university, approved by a state department of education with a major in recreation therapy, creative arts therapy, occupational therapy or a related field and two years of paid full-time experience in a clinical, residential, or community-based therapeutic recreation program, and three years experience as a consultant in a health care setting.

2. The administrator/director shall be responsible for the overall conduct and management of all program activities and staff on a full-time basis. The administrator/director shall:
   i. Be a qualified health professional, such as a nursing home administrator, physician, social worker, licensed nurse, licensed physical therapist, occupational therapist, or speech-language pathologist;
   ii. Be experienced in the care of the elderly and disabled and knowledgeable regarding their physical, social and medical health needs; and
   iii. Meet the minimum staff requirements defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.4).

3. A dietitian shall be responsible for the direction, provision and supervision of the total health care program provided to the recipients. The medical director shall be licensed as a physician to practice medicine in the State of New Jersey (see N.J.A.C. 8:43F-1.11 and 1.16).

4. The medical director shall provide the medical consultation and supervision of the total health care program provided to the recipients. The medical director shall be licensed as a physician to practice medicine in the State of New Jersey (see N.J.A.C. 8:43F-1.7).

5. The registered professional nurse shall be licensed by the New Jersey *State* Board of Nursing pursuant to N.J.S.A. 45:11-26 et seq. and shall have at least one year full-time or full-time equivalent experience in nursing supervision and/or nursing administration in a licensed health care facility, as defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.8).

6. A pharmaceutical consultant shall be licensed by the New Jersey State Board of Pharmacy with a current license to practice in the State of New Jersey in accordance with N.J.A.C. 8:43F-1.14 and certified by the Joint Board for Certification of Consultant Pharmacists.

7. A social worker shall possess a bachelor’s or master’s degree from a college or university approved by a state department of education with a major in one of the following: social work, psychology, sociology, or counseling as defined by the New Jersey State Department of Health (see N.J.A.C. 8:43F-1.18). For those persons without a master’s degree in social work, at least one year of full-time or full-time equivalent social work experience in a licensed health care facility is required.

8. A social work consultant shall possess a master’s degree in social work from a graduate school of social work accredited by the Council on Social Work Education and at least one year of full-time social work experience in a health care facility.

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ADOPITION:

(b) *For staff-recipient ratio, adequate* *[Adequate]* staff is defined as a ratio of one regular full-time, or full-time equivalent, staff person to nine recipients, calculated on the basis of the daily census. The ratio shall include the center administrator/director and all other personnel (except the medical director) who are involved in direct patient care, excluding volunteers.

1. Without compromising the above required staff-recipient ratio of one to nine, various staff positions could conceivably combine to accommodate within one position, that is the center administrator/director may be a social worker or activities coordinator, performing duties and functions of the director/social worker or director/activities coordinator. New programs for start-up purposes, or programs with less than 10 recipients, may have no fewer than two full-time staff persons. The registered nurse shall occupy one of the two positions. In programs of 36 or more recipients, the director may not serve a dual function.

10:65-1.6 Recipient review, evaluation and identification

(a) Each recipient in the Medical Day Care Program shall be seen by his or her attending physician as needed but at least every six months. A record of the physician’s visits, findings, and recommen.

dations shall be documented on the recipient’s chart.

(b) Every 90 days the recipient’s individualized plan of care shall be updated by the medical day care center staff to reflect the needs of the recipient for medical day care. This plan shall become part of the recipient’s permanent record at the center.

(c) Medical Day Center staff shall verify that the recipient is covered person on the first visit and at least monthly thereafter. This is done by viewing the Medicaid eligibility identification card (see N.J.A.C. 10:49-5.4).

10:65-1.7 Records

(a) As a minimum, the recipient’s chart shall contain the following information:

   1. An application for admission form;
   2. A home visit assessment;
   3. A medical history, record of physical examination, and medication record as recorded initially by the attending physician and updated every six months thereafter, citing general medical condition, disabilities and limitations. Also included shall be any consultations reports of laboratory studies, and progress notes from therapies.
   4. A nursing assessment/history, which shall be completed after the first five days of attendance or within a period of one month (whichever is less), and daily nursing observations for the first five days of attendance. A nursing summary and evaluation shall follow every 90 days thereafter, providing appropriate input into the Individualized Multidisciplinary Plan of Care;
   5. A social worker consultant shall possess a master’s degree in social work from a graduate school of social work accredited by the Council on Social Work Education and at least one year of full-time social work experience in a health care facility.

   i. This requirement does not preclude the completion, by the nurse, of clinical documentation as often as necessary to assure consistent follow-up to care needs.
   6. A social assessment history, which shall be completed after the first five days of attendance or within a period of a month (whichever is less), and social summary and evaluation notes every 90 days;
   7. Physical therapy, occupational therapy, speech-language pathology services and dietary progress notes as indicated;
   8. A dietary assessment, which shall be completed within the first five days of attendance or within a period of one month (whichever is less). When the recipient’s nutritional status requires dietary intervention, there shall be ongoing monitoring and 90-day summary and evaluation notes;
   9. A multidisciplinary individualized plan of care, which shall be completed after the first five days of attendance or within a period of one month (whichever is less) and updated every 90 days, with input from each discipline.
   10. Clinical notes, which shall be required from each discipline.

These notes shall be event-triggered and shall be written, signed and dated, when significant physical, emotional, mental, behavioral or social changes occur to the recipient, when problems arise and/or
Disaster Program (HCEP). In a nursing facility, the medical day care caregivers' plan responses to these interventions, including

1. The multidisciplinary individualized plan of care shall:
   a. Be signed by all center staff preparing or revising the plan;
   b. Be updated at least every 90 days by each discipline;
   c. Identify psychosocial, medical and nursing needs and problems of the recipient and/or caregiver(s). Each discipline shall attend the multidisciplinary care conference held on each recipient and assess the specific area of expertise; and
   d. In addition to the problem/need identification, include goals specifically related to each problem/need and interventions that the specific discipline shall utilize to achieve the goals. Short-term goals shall be measurable, observable and include a target date not to exceed 90 days. Long-term goals shall also be measurable, observable and include a target date not to exceed one year.

2. Be a comprehensive review of the recipient's overall adjustment to the center which includes the following:
   a. Attendance record;
   b. Physical, emotional, mental, behavioral and social functioning;
   c. Significant changes in the home setting;
   d. Services provided;
   e. Referrals made; and
   f. Contacts with the caregivers*;

3. Be an appraisal of the effectiveness of the intervention identified in the care plans. Each discipline shall assess the recipient's and caregiver's responses to these interventions, including responses to physician ordered treatments; for example, dressing changes, medications, etc. If the goals were not achieved, barriers shall be cited.

1:65-1.8 Basis of payment
(a) The center participating in the Medical Day Care Program shall agree to accept the reimbursement rate established by the Division as the total reimbursement for services provided to the Medicaid recipient and to the beneficiary enrolled in the Home Care Expansion Program (HCEP). In a nursing facility, the medical day care per diem rate is 45 percent of that nursing facility's per diem rate. In freestanding centers, the medical day care per diem rate is based on an average of the rates paid to nursing facility medical day care providers or a percentage of nursing facility rates in effect as of January 1 and July 1 of each year. For hospital-affiliated centers, the medical day care rate is a negotiated per diem rate which shall not exceed the maximum medical day care per diem rate paid to nursing facility-based providers. The reimbursement rates set for any Medicaid recipient in medical day care centers may not exceed charges for non-Medicaid participants. The per diem reimbursement shall cover the cost of all services listed in N.J.A.C. 10:65-1.4 with the following exceptions:

1. Exception: Retroactive to October 1, 1990, a one-time adjustment shall be made to Medical Day Care providers for those medical day care services paid at the rate of 43 percent of the NF rate. This adjustment shall be calculated to pay the difference between 43 percent and 45 percent of the NF rate multiplied by the days of service paid at the 43 percent of the NF rate.

2. Physical therapy and speech-language pathology services shall not be included in the per diem rate and when provided by the center. These services must be billed separately on the Health Insurance Claim Form, 1500 N.J.

(b) The Division shall not reimburse for medical day care services and partial care/partial hospitalization program services provided to a recipient on the same day.

(c) For Medicare/Medicaid coverage, the* only services that are considered for payment under Medicare are physical therapy and speech-language pathology services since medical day care service is not a covered Medicare service. When the medical day care recipient is covered under both programs, only the Medicare Form UB-82/HCFA—1450 shall be completed showing the Health Services Program Case and Person Number *[Medicaid Case Number]*.

(d) *For third party liability, some* insurance companies currently offer medical day care as a benefit. The center shall review the recipient's and family's insurance plans before submitting Medicaid claims to assure that insurance companies are billed before submitting to the Fiscal Agent.

10:65-1.9 Disaster plan
The facility disaster plan shall be posted at the nurses' station and other conspicuous locations throughout the medical day care center.

SUBCHAPTER 2. HCPCS CODES
10:65-2.1 Introduction
(a) The New Jersey Medicaid Program adopted the Health Care Financing Administration's (HCFA) Common Procedure Coding System (HCPCS). THE HCPCS codes as listed in this subchapter are relevant to certain Medicaid and HCEP medical day care services.

(b) These codes are used when requesting reimbursement for certain Medical Day Care Services and when a Health Insurance Claim Form, 1500 N.J., (Appendix G) is required.

10:65-2.2 HCPCS Codes
(a) HCPCS Codes for medical day care services are as follows:

<table>
<thead>
<tr>
<th>HCPCS</th>
<th>Description</th>
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<tbody>
<tr>
<td>Z0300</td>
<td>Initial visit, speech-language pathology services</td>
</tr>
<tr>
<td>Z0310</td>
<td>Initial comprehensive speech-language pathology evaluation</td>
</tr>
<tr>
<td>Z0270</td>
<td>Initial visit, physical therapy</td>
</tr>
<tr>
<td>92507</td>
<td>Speech-language pathology services</td>
</tr>
<tr>
<td>97799</td>
<td>Physical therapy</td>
</tr>
<tr>
<td>90050</td>
<td>Medical day care visit</td>
</tr>
<tr>
<td>Z1816</td>
<td>Medical day care visit <em>for the AIDS Community Care Alternatives Program</em> (ACCAP)</td>
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</tbody>
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HUMAN SERVICES

APPENDIX A

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
CN-712
TRENTON, NEW JERSEY 08625

MEDICAID PROVIDER APPLICATION

1. Legal and/or Trade Name of Organization

2. Type of Business or Facility

3. Address

4. SSA and/or Employer ID Number

5. Telephone Number

6. Length of Time at Above Address

7. Billing Address, If Different

8. Name of Administrator, Chief Executive Officer, Director or Other Official

9. List the specific service(s) for which you are requesting approval for reimbursement under the Medicaid Program

10. Do you operate from more than one location? [ ] Yes [ ] No

   If yes, list all other subsidiary or affiliated organization below: (Name and address)

   1. 

   2. 

   3. 

   Please attach additional sheet if necessary.

11. Please indicate your preference to receive central or local reimbursement:

   [ ] Reimbursement to each Satellite Location

   [ ] Reimbursement to Central Location

   Billing through a central location is allowable and left to the provider’s discretion. However, if the provider chooses to bill centrally, pre-addressed claims MUST be utilized since they reflect the proper address and provider number for that location.

12. Do you require a Certificate of Need under the Health Facilities Planning Act from the New Jersey Department of Health? [ ] Yes [ ] No

   If yes, have you applied for the Certificate? Attach copy of Certification of Need. If no, explain why you don’t require a Certificate.

13. If your business or facility requires a license(s), list type of license(s), license number(s), effective date of license(s), and attach a non-returnable copy.

14. CERTIFICATION, ACCREDITATION OR APPROVAL - Specify type and attach copy. For example: JCAH (Hospitals); New Jersey Department of Health (Clinics); Office of Community Services (Mental Health Clinics); State Board of Dentistry (Dental Clinics); State Board of Pharmacy (Providers offering Pharmaceutical Services); American Board for Certification in Orthotics and Prosthetics (Prosthetist and/or Orthotist). See also question 15.

15. Approved by Medicare? [ ] Yes [ ] No

   If yes, attach copy of your approval, if applicable. If no, have you applied for Medicare approval? [ ] Yes [ ] No

FD-20 C2 (Rev. 3-77) Medicaid 3026-M Ed. 8-81
1. Are you currently or have you ever been an approved provider of services under the New Jersey Medicaid (Title XIX) Program? If yes, list type of service(s) provided and current status. If you were approved at one time and no longer participate, explain the reason(s).

7. Indicate legal status of your organization: Profit Corporation [], Non-Profit Corporation [], Partnership [], Sole Proprietor [], Government [], Other[]. If other please specify:

3. Do you or does your organization have any legal or professional relationships with any other health care organization(s) or facility(ies)? [ ] Yes [ ] No If yes, list all such relationships below:

9. Does any member of your organization have a ten percent or greater financial interest in any other organization or practice of an individual providing services under the New Jersey Medicaid Program? If yes, list name of individual and/or organization.

3. Do you charge for goods and/or services? TO ALL [], TO NONE [], TO CERTAIN GROUPS ONLY[]. If you charge to all or only certain groups, please explain your arrangements and attach copy of your fee schedule.

1. List days and hours of operation.

2. List the Names, SSA Number, License Number and Degree(s) for all Professional Staff in the Organization. Include Physicians, Dentists, Psychologists, Registered Physical Therapists, Optometrists, etc. If more space is needed attach additional sheets.

<table>
<thead>
<tr>
<th>Name</th>
<th>SSA NO.</th>
<th>License No.</th>
<th>Degree, e.g., MD, DO, DDS, RPT, PhD, CPO, OD, etc.</th>
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3. FOR THE PURPOSE OF ESTABLISHING ELIGIBILITY TO RECEIVE DIRECT PAYMENT FOR SERVICES TO RECPIENTS UNDER THE NEW JERSEY MEDICAID (TITLE XIX) PROGRAM: I CERTIFY THAT THE INFORMATION FURNISHED ON THIS APPLICATION IS TRUE, ACCURATE, AND COMPLETE.

4. Signature of Provider Title Date

FOR DIVISION USE ONLY

[ ] Approve    [ ] Disapprove    [ ] Other

Initial Date

[ ] Approve    [ ] Disapprove    [ ] Other

Initial Date
STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

PARTICIPATION AGREEMENT
NEW JERSEY HEALTH SERVICES PROGRAM
MEDICAL DAY CARE PROGRAM

NAME OF FACILITY
ADDRESS
STATE LICENSE NO. MEDICAID PROVIDER NO.: NF
MDC
HMDC

This Contract, made and entered into by and between the Department of Human Services through the Division of Medical Assistance and Health Services, hereinafter designated as the Department, and the above-named facility, a provider of services, whose address is as stated above, hereinafter designated as the Facility, Witnesseth:

Whereas, various persons eligible for benefits under the New Jersey Health Services Program (Medicaid) are in need of medical day care, as more specifically set forth in Program regulations and guidelines; and,

Whereas, Section 1902(a)(27) of Title XIX of the Social Security Act requires states to enter into a written agreement with every person or institution providing services under the State Plan for Medical Assistance (Title XIX); and,

Whereas, pursuant to N.J.S.A. 30:40-1 et seq., the Department is responsible for the administration of the Medicaid Program and is authorized thereunder to take all necessary steps for the proper and efficient administration of the New Jersey Medicaid Program; and,

Whereas, to participate in the New Jersey Medicaid Program, a Medical Day Care Facility must: (1) be licensed under the laws of New Jersey as a non-residential Adult Day Health Care Center by the Department of Health; (2) be currently meeting on a continuing basis standards for licensure; (3) be administered by a qualified health professional; (4) meet on a continuing basis Federal and State standards for participation and more specifically Medical Day Care standards in Title XIX; (5) accept the terms and conditions of participation set out herein.

A. FACILITY AGREES:

1. That it will render all services which are required for participation in the Medical Day Care Program, including as a minimum: medical services, nursing services, social services, transportation, personal care services, dietary services, therapeutic activities, pharmaceutical and rehabilitative services;
2. That it will accept the Medical Day Care rate approved under the Medicaid Program as payment in full and will not make any additional charges to the participant or others on his behalf for Medicaid covered services, except for authorized physical therapy and speech-language therapy which are not included in the per diem reimbursement and must be billed separately. Medical Day Care Centers will be reimbursed in accordance with methods and procedures set forth in State regulations either on the basis of cost study information or a percentage of the nursing facility per diem rate, except for the hospital affiliated Medical Day Care Center which will be reimbursed at a negotiated per diem rate not to exceed the maximum Medical Day Care rate paid to nursing facility based providers;

3. That it will promptly initiate and terminate billing procedures, pursuant to applicable regulations, when individuals covered under this Program enter or leave the Facility or are assessed at a different level of care;

4. That it will limit billing procedures under this Program to those eligible and authorized participants and for those days on which Medical Day Care services have been received;

5. That it will make available to the appropriate State and/or Federal personnel or their agents, at all reasonable times and places in New Jersey, all necessary records, including but not limited to the following:

   a. Medical records as required by Section 1902(e)(28) of Title XIX of the Social Security Act, and any amendments thereto;

   b. Records of all treatment, drugs, and services for which vendor payments are to be made under the Title XIX Programs, including the authority for and the date of administration of such treatments, drugs, or services;

   c. Documentation in each participant's record which will enable the Department to verify that each charge is due and proper prior to payment;

   d. Financial records of the Facility, including data necessary to determine appropriate reimbursement rates;

   e. All other records as may be found necessary by the Department in compliance with any Federal or State law, rule or regulation promulgated by the United State Department of Health and Human Services or by the Department;

6. That it will comply with the disclosure requirements specified in 42CFR 455.100 through 42CFR 455.106;
7. That the maximum number of daily participants will be in accordance with the Department's regulations and the licensure standards of the Department of Health;

8. That it will cooperate fully in permitting and assisting representatives of the Department to make assessments and evaluations of services needed by and provided to participants in general, and of individual participants who are recipients of Medical Day Care services;

9. That it will secure and arrange for other health services as may be available for Medicaid patients pursuant to Program regulations;

10. That it will comply with State and Federal Medicaid laws, rules and regulations promulgated pursuant thereto;

11. That it will cooperate fully in permitting and assisting representatives of the Department in determining continuing conformity with the Federal and State standards applicable to non-residential Medical Day Care Facilities;

12. That it will notify the Department, within five working days, of any change in the status of its license to operate as issued by the Department of Health;

13. That it will notify the Department, within five working days, of any professional staff changes;

14. That it will notify the Medical Day Care participants, in writing, thirty days prior to the Facility's termination as a Medicaid Provider;

15. That it will immediately provide the Medicaid Program with written notice of any change in ownership and/or operation of the Facility, including changes in leases, officers and directors, stock ownership or sale of the Facility when:

**Corporation (Profits)**

a. There is acquisition by or transfer of ownership through purchase, contract, donation, gift, stock option, etc., of 25% or more of a corporation's outstanding stock (preferred or common).

b. There is acquisition of the physical assets of the Facility by a newly formed or existing corporation.

**Partnership**

a. There is acquisition by or transfer of ownership of 10% or more of the existing partnership's total capital interest.
b. There is acquisition of the physical assets of the Facility by a newly formed or existing partnership.

Proprietorship
a. There is purchase of the physical assets of the Facility.

Corporation (Non-Profit)
a. There is a change in the officer, trustee, directors or board members of the Facility.

16. To comply with the requirements of Title VI of the Civil Rights Acts of 1964 and Section 504 of the Rehabilitation Act of 1973 and any amendments thereto; and Section 1909 of P.L. 92-603, Section 242 (c) which makes it a crime and sets the punishment for persons who have been found guilty of making any false statement or representation of a material fact in order to receive any benefit or payment under the Medical Assistance Program. (The Department of Human Services is required by Federal regulation to make this law known and to warn against false statements in an application/agreement or in a fact used in determining the right to a benefit, or converting a benefit to the use of any person other than one for whom it was intended.)

17. That breach or violation of any one of the above provisions shall make this entire agreement subject to immediate cancellation at the Department's discretion, in keeping with the procedures adopted by the Division in accordance with the New Jersey Administrative Procedures Act.

B. DEPARTMENT AGREES:

18. That it will pay for authorized services provided by the Facility in keeping with the availability of State appropriations, on the basis of care required by the eligible individual as determined by the Department acting under the applicable regulations, but in no event will payment be made for any individual determined not to require Medical Day Care services;

19. That it will reimburse the Medical Day Care Center through the appropriate fiscal agent in accordance with methods and procedures set forth in State regulations, either on the basis of cost study information or a percentage of the nursing facility per diem rates; reimbursement for the hospital affiliated Medical Day Care Center will be at a negotiated per diem rate not to exceed the maximum Medical Day Care Center rate paid to nursing facility based providers;
20. That it will make such payments in accordance with applicable laws and regulations as promptly as is feasible after a proper claim is submitted and approved;

21. That it will give, subject to paragraph 17, the Facility 30 days' notice of any impending changes in its status as a participating Medical Day Care Facility;

22. That it will notify the Facility of any change in Title XIX rules and regulations as it relates to the Facility's program, and will work with the individual Facility with the view toward providing the best care available within the limitations of the law and available money;

23. That the Facility may terminate its participation in the Medicaid Program at the expiration of this agreement upon a minimum of 60 days' written notice to the Department.

C. DEPARTMENT AND FACILITY MUTUALLY AGREE:

24. That, in the event the Federal and/or State laws should be amended or judicially interpreted so as to render the fulfillment of this agreement on the part of either party infeasible or impossible, or if the parties to this agreement should be unable to agree upon modifying amendments which would be needed to enable substantial continuation of the Title XIX Program as a result of amendments or judicial interpretations, then, and in that event, both the Facility and the Department shall be discharged from further obligation created under the terms of this agreement, except for equitable settlement of the respective accrued interests up to the date of termination.

25. That this agreement shall be transferable and assignable upon a change in ownership and/or operation;

26. That, in the event the participating Facility is sold, the Department shall make no division of the reimbursable proceeds for services rendered to Medicaid recipients between buyer and seller, but rather will reimburse the provider of record as of the billing month for all services rendered. Said Provider shall make the necessary adjustments;

27. This agreement shall be effective on and will continue unless terminated or amended prior thereto (1) by mutual consent of the parties, (2) for cause under applicable clauses herein, or (3) because of Federal and/or State government withdrawal from Program participation.
28. To be completed by the Facility.

________________________
Facility

________________________
Address

________________________
Authorized Signature

________________________
Title

29. Division of Medical Assistance and Health Services
Department of Human Services
MEDICAL DAY CARE

OUTLINE FOR WRITTEN NARRATIVE STATEMENT ON PROPOSED MEDICAL DAY CARE CENTER

1. Describe the philosophy, goals and objectives for providing medical and ancillary health services to a non-resident population on a day care basis.

2. Describe the physical facilities to be used for the proposed Medical Day Care Center (diagram acceptable).

3. Describe the proposed Medical Day Care Program, including hours of operation; services to be provided, in-house and/or arrangement and staff who will be implementing the program.

4. Provide staff position descriptions and state qualifications of personnel selected for each position.

5. State total number of participants who will be served by Medical Day Care and give anticipated daily population.

6. Submit a projection of costs to be incurred by the Medical Day Care Program. State the period of projection and provide the basis of cost allocation if applicable.

7. Will the Medical Day Care Center be funded by other than Title XIX; i.e., Title XX and Title III?

8. Is the proposed Medical Day Care Program a new service of your facility or an expansion of an existing Day Care Program?

9. Additional comments relevant to the application for Medical Day Care under the New Jersey Medicaid Program.
MEDICAL DAY CARE UN-SITE REPORT

Name of Program ___________________________ Survey Date ___________________________

Address ___________________________________ Telephone Number _______________________

Facility Administrator ______________________ Initial Approval Date ______________________

Medical Day Care Center Director _____________ Latest Contract Renewal Date _____________

Current Total Enrollment __________ Avg. Daily Attendance ______ Medicaid Census _______

Number of Paid Staff __________________________ Number of Volunteers ______________________

Registered Nurse: Yes ( ) No ( ) Social Worker: Yes ( ) No ( )
Activity Coordinator: Yes ( ) No ( ) Medical Director: Yes ( ) No ( )

Check Each Item if Applicable:

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<tr>
<th>Service Provided</th>
<th>Yes</th>
<th>No</th>
<th>Yes</th>
<th>No</th>
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<td>11. Admission Form</td>
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<td>12. Individualized Plan or Care</td>
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<td>13. Initial Physical Exams</td>
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<td>Every 90 Days</td>
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<td>14. Medical Orders</td>
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MCNH-89 (Rev. 1/83)
Comments: Indicate deficient areas according to item number in preceding section.

Team Recommendations to Facility:

Projected Revisit: 

Facility Staff Present:

Medical Consultant

RSN/RNS

ASWS
# Medicaid Participant Profile—Medical Day Care

1. **Last Name**

2. **First Name**

3. **Participant’s Street Address or Mailing Address**

4. **City**

5. **County**

6. **Zip Code**

7. **Month / Day / Year of Birth**

8. **Sex**

9. **Martial Status**

10. **Race**

11. **HSP (Medicaid) Case No.**

12. **Social Security #**

13. **Waiver program?**
   - ☐ CCPED
   - ☐ Model Waiver
   - ☐ ACCAP
   - ☐ N/A

13a. **Level of care in waiver program?**

13b. **Attended day care before waiver?**
   - ☐ yes
   - ☐ no

13c. **If yes, how did participant pay?**

14. **Living arrangement:**

15. **Primary caregiver:**

16. **Prior status:**

16a. **If nursing home, give prior nursing home HSP# where different from current HSP#:**

17. **Primary diagnosis:**

18. **Secondary diagnosis:**

19. **Services required:**

19a. **If client is receiving therapies (service #s 1-9 or 10 above), check payment mechanism:**
   - ☐ Medicare
   - ☐ Medicaid
   - ☐ Private Insurance
   - ☐ Other

19b. **If the payor is private insurance, name carrier:**

20. **Enrollment:**

21. **Reason for attendance:**

22. **Source of referral:**

23. **Maximum number of days/week approved by Medicaid:**

---

Center provider number: 3700

County of Provider: 

Date: 

Completed by: 

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 465)
State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services
Medicaid Participant Profile -- Medical Day Care
Instructions for Participant Profile Sheet

PLEASE COMPLETE THIS FORM FOR MEDICAID PARTICIPANTS ONLY.

Please print all information, using blocks designated. Complete all applicable information. Print N/A in any blocks that are not applicable.

1. Name - Fill in last name and first name. If name is longer than blocks allowed, fill in as much as possible.

2. Participant's Street Address or Mailing Address - Indicate as much of the street or mailing address as possible.

3. City -- Indicate City of residence

4. County -- Indicate County of residence


6. Date of birth -- Indicate date of birth, giving month first, then day, then year.

7. Sex -- Indicate M for male; F for female

8. Marital Status -- Indicate marital status by using appropriate code:
   01. Married
   02. Never Married
   03. Divorced
   04. Separated
   05. Widowed

9. Race -- Indicate race by using appropriate code:
   01. American Indian
   02. Asian or Pacific Islander
   03. Black, Non-Hispanic Origin
   04. Hispanic
   05. White/Non-Hispanic
   06. Other


11. Medicaid HSP # - Indicate the Medicaid Identification # assigned to the participant.

12. Social Security # -- Indicate participant's own social security number.

13. Waiver Program Participants: Indicate if participant is in a Medicaid waiver program. Check the appropriate program, or N/A.
13a. The level of care assigned to the waiver program participant will be filled in by the Division of Medical Assistance and Health Services (Medicaid).

13b. Did participant attend Medical Day Care before acceptance into the waiver? Indicate yes or no.

13c. If participant was in medical day care before participation in a waiver program, how did the participant pay?
   01. private pay
   02. Private insurance. Please write in name of provider on blank line.
   03. United Way
   04. Social Service Block Grants (Title XX)
   05. Older Americans Act (Title III)
   06. Scholarship from center
   07. Other. Specify.

14. Living Arrangement -- Indicate the individual's living arrangement by using the appropriate code:
   01. Alone
   02. With parents or adult children
   03. With spouse
   04. With other relatives
   05. With non-relative
   06. Residential Home or Boarding Home or Rooming House or Supervised Apartments
   07. Foster Care
   08. Residential Health Care Facility
   09. Other (specify)

15. Primary Caregiver -- Indicate who the primary caregiver is:
   01. Spouse
   02. Child
   03. Sibling
   04. Other relative
   05. Friend
   06. Neighbor
   07. Parent
   08. Foster Care
   09. None
   10. Boarding home sponsor in regular boarding home, or Supervisor of supervised apartments.
   11. Residential Health Care Facility

16. Prior Status -- Indicate the location of the participant prior to enrolling in Medical Day Care
   01. In community (includes any non-residential facilities and boarding homes)
   02. In nursing home
   03. In-patient hospital
   04. In-patient rehabilitation
   05. Residential drug treatment center
   06. Residential health care facility
   07. Residential facility for mental retardation or mental illness
   08. Other, specify.
16a. The prior nursing home HSP#, where applicable, will be supplied by Medicaid.

17. **Primary Diagnosis** -- Indicate the one primary diagnosis for the participant at the point of entry into program, as stated by the attending physician. (Detailed explanations of diagnoses are attached).

- 01. Musculoskeletal System and Connective Tissue Diseases
- 02. Fractures
- 03. Other Orthopedic
- 04. Diabetes
- 05. Anemia
- 06. Other Nutritional and Metabolic Diseases
- 07. Cancer
- 08. Cardiovascular
- 09. Cerebrovascular Accidents (Stroke)
- 10. Traumatic brain injuries
- 11. Hearing Impaired
- 12. Eye disorders
- 13. Cerebral Palsy
- 14. Multiple Sclerosis
- 15. Other Neurosensory
- 16. Alzheimer's and other Organic Brain Syndrome
- 17. Mental Illness
- 18. Mental Retardation
- 19. Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Complex (ARC)
- 20. Gastrointestinal
- 21. Alcoholism and Alcoholism Related Diseases
- 22. Genitourinary
- 23. Respiratory
- 24. Skin Diseases
- 25. General physical deterioration, frailty
- 26. Other (specify) ____________________

18. **Secondary Diagnoses**: Indicate the secondary diagnoses for the participant at the point of entry into the program, as stated by the attending physician. Check as many as are required, using the same list as for number 17.
19. Services required - Indicate the services required by the participant's plan of care. Check all that apply.

01. Physical Therapy and Rehabilitation
02. Respite Care
03. Assistance Shopping
04. Personal Care
05. Supervision/administration of Medications
06. Education in ADLs/IADLs
07. Socialization
08. Requires supervision during day
09. Speech therapy
10. Occupational Therapy (including sheltered workshops)
11. Reality Orientation
12. Therapeutic nutrition/nutritional education
13. Bowel and bladder training (or assistance with toileting)
14. Health monitoring
15. Skilled Nursing (direct care)
16. Psychotherapy/counseling/support groups
17. Therapeutic recreation
18. Case management and/or resource referrals
19. Foot care/podiatry
20. Transportation to doctor/therapies
21. Translator (to Spanish, sign language, etc).
22. Other (specify)

19a. If client is receiving therapies (service #1, 9 or 10 above), check appropriate payment mechanism.

19b. If the payor is private insurance, name carrier.

20. Date of Enrollment -- Indicate first date of attendance in Medical Day Care using numbers. (This would be the effective date on the prior authorization form FD-140).

21. Reason for Attendance -- Indicate the most important reason(s) the participant attends Medical Day Care. Why does the client need the services you provide?

01. Recent deterioration of medical status
02. Loss of primary caregiver
03. Accident/Injury
04. Primary caregiver needs relief
05. Increased dependency in ADLs and IADLs
06. Caregiver employed outside home
07. Social isolation
08. Chronic physical health problems
   (includes "requires nursing daily")
09. Psychiatric problems or depression
10. Mental retardation
11. Disorientation or confusion
12. Other, specify.
22. **Source of referral.** Who contacted the center to refer the client?

01. Hospital (in or outpatient)
02. Doctor
03. Social Day Care Center or Psychiatric Day Treatment or Senior Center
04. Self
05. Family or Relative or Friends or Other client or boarding home operator or other primary caregiver
06. Nursing home
07. Home Health or Homemaker Agency
08. Social Service Agency or mental health agency or meals on wheels
09. Church or clergy
10. Medicaid District Office
11. Your center or any center staff member actively recruited
12. Other Medical Day Care Centers
13. Community Care Program for the Elderly and Disabled (CCPED)
14. Other state offices
15. Other (specify)

23. **Days in attendance:** Indicate the maximum number of days/week that were approved by the Medicaid District Office for the participant to attend, as of the participant's date of enrollment.
Diagnoses

01. Musculoskeletal System and Connective Tissue Diseases--Includes diseases such as arthritis, Rheumatoid and allied conditions, Osteomyelitis, other diseases of joints, and Lupus.

02. Fractures -- Includes all fractures, simple or compound, long or shorter term, and joint replacements.

03. Other Orthopedic -- Includes such diseases as scoliosis, dislocations, sprains, congenital deformities of the bones and organs of movement, traumatic and congenital amputations of limbs, except amputation due to diabetes.

04. Diabetes -- includes diabetes and its complications such as diabetic ulcer and amputation due to diabetes.

05. Anemia

06. Nutritional and Metabolic Diseases -- Includes diseases such as Addison's disease, Cushing's disease, hypothyroidism, malnutrition and obesity, but not anemia or diabetes.

07. Cancer -- includes malignant neoplasms of all sites

08. Cardiovascular -- includes disease of the heart and blood vessels such as cardiovascular-renal diseases, hypertension, arteriosclerotic heart disease, congestive heart failures, pacemaker use and other heart diseases.

09. Cerebrovascular Accidents (Stroke)

10. Traumatic brain injuries -- includes traumas with resulting brain injury, such as aneurism, lobotomy, gunshot wounds and car accidents, among others.

11. Hearing Impaired

12. Eye disorders -- Cataracts, Glaucoma, blindness, etc.

13. Cerebral Palsy

14. Multiple sclerosis

15. Neurosensory -- Includes diseases such as paraplegia, quadriplegia, hemiplegia, Parkinson's disease, epilepsy, ALS, neuralgia, seizure disorders, polio, spina bifida, and spinal cord injuries, among others.

16. Alzheimer's, Organic Brain Syndrome and other dementia.

17. Mental Illness -- includes all mental illness, such as schizophrenia and depression.

18. Mental retardation -- mental retardation from whatever cause, including Downs Syndrome
19. Acquired Immune Deficiency Syndrome (AIDS) or AIDS Related Complex (ARC)

20. Gastrointestinal -- includes all non-alcohol related gastrointestinal diseases, such as ulcers, hernias, gastritis, colitis, fecal impaction; and other disease of the buccal cavity, esophagus, stomach, intestines, peritoneum, liver (except alcohol related cirrhosis), gall bladder and pancreas.

21. Alcoholism and Alcoholism related diseases (such as cirrhosis)

22. Genitourinary -- Includes all genitourinary diseases, such as infections of the kidney, ureters, bladder and urethra; prostatitis, and other diseases of the prostate or male genital organs; diseases of the breast, ovaries, fallopian tubes and other female genital organs.

23. Respiratory -- Includes all respiratory diseases, such as tuberculosis, COPD, emphysema, bronchitis, and pneumonia.

24. Skin Diseases

25. General physical deterioration, frailty

26. Other (specify)
State of New Jersey
Department of Human Services
Division of Medical Assistance and Health Services

Quarterly Discharge Information
Medical Day Care

Please list each Medicaid client discharged during the quarter dated
_/_/____ - ____/____. For each client include HSP#, the date
discharged, and where discharged to, using the code number from the list
below, or specifying other where appropriate.

Name    HSP (Medicaid) Case No.  Date Discharged  Discharged to

Discharged to:
01 Nursing Home
02 Psychiatric Institute
03 Residential Health Care Facility
04 Hospital
05 Social Day Care Program
   Community:
      06 No Longer Needs
      07 Unable to attend
      08 No Longer Interested
09 Moved
10 Died
11 Other. Please specify.

************************************************************************
Center provider number 3700 County
Date:_________________ Completed by:_________________
FD-322 (6/87)
# Health Insurance Claim Form

**APPENDIX G**

**HEALTH INSURANCE CLAIM FORM**

**READ INSTRUCTIONS BEFORE COMPLETING THIS FORM**

**MEDICARE** | **MEDICAID** | **CHAMPUS** | **OTHER**
---|---|---|---

<table>
<thead>
<tr>
<th><strong>PATIENT &amp; INSURED (SUBSCRIBER) INFORMATION</strong></th>
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<tbody>
<tr>
<td>1. <strong>PATIENT'S NAME</strong> (First name, middle initial, last name)</td>
<td>2. <strong>PATIENT'S DATE OF BIRTH</strong></td>
<td>3. <strong>INSURED'S NAME</strong> (First name, middle initial, last name)</td>
<td></td>
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<tr>
<td>4. <strong>PATIENT'S ADDRESS</strong> (Street, city, state, ZIP code)</td>
<td>5. <strong>PATIENT'S SEX</strong></td>
<td>6. <strong>PATIENT'S MEDICARE/CHAMPUS NO.</strong> (Include any letters)</td>
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<tr>
<td>7. <strong>PATIENT'S RELATIONSHIP TO INSURED</strong></td>
<td>8. <strong>PATIENT'S MEDICAID ID NO.</strong></td>
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**Telephone No.**

**OTHER HEALTH INSURANCE COVERAGE:**

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<th><strong>YES</strong></th>
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<tr>
<th><strong>Enter Name of Policyholder and Plan Name and Policy Number</strong></th>
<th>10. <strong>WAS CONDITION RELATED TO PATIENT'S EMPLOYMENT?</strong></th>
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<tr>
<td><strong>YES</strong></td>
<td><strong>NO</strong></td>
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<tr>
<td><strong>AUTO</strong></td>
<td><strong>OTHER</strong></td>
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<th>**11. **</th>
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<tr>
<td><strong>PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE</strong></td>
<td><strong>PHYSICIAN OR SUPPLIER INFORMATION</strong></td>
<td><strong>PHYSICIAN'S OR SUPPLIER'S NAME, ADDRESS &amp; ZIP CODE</strong></td>
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<tr>
<td><strong>SIGNED DATE</strong></td>
<td>** date**</td>
<td><strong>SIGNED (insured or Authorized Person)</strong></td>
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<tr>
<td><strong>DATE OF ILLNESS (FIRST SYMPTOM)</strong></td>
<td>**DATE PATIENT ADEQUATELY TREATED OR PRELIMINARY **</td>
<td><strong>DATE PATIENT DIED</strong></td>
<td><strong>DATE PATIENT ADEQUATELY TREATED OR PRELIMINARY</strong></td>
<td><strong>DATE PATIENT DIED</strong></td>
<td><strong>DATE PATIENT ADEQUATELY TREATED OR PRELIMINARY</strong></td>
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<tr>
<td><strong>INJURY (ACCIDENT) OR PRELIMINARY</strong></td>
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**20. SIGNATURE OF PHYSICIAN OR SUPPLIER**

---

**21. NAME & ADDRESS OF FACILITY WHERE SERVICES RENDERED**

<table>
<thead>
<tr>
<th><strong>21a. T. D. NUMBER</strong></th>
<th><strong>22. WAS LABORATORY WORK PERFORMED OUTSIDE YOUR OFFICE?</strong></th>
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<td><strong>YES</strong></td>
<td><strong>NO</strong></td>
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**23A. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY. RELATE DIAGNOSIS TO PROCEDURE IN COLUMN BY REFERENCE NUMBERS 1, 2, 3, etc. OR DE CODE.**

**23B. WAS THIS SERVICE PERFORMED AS A RESULT OF AN EPSDT PROGRAM REFERRAL?**

**24. DATE OF SERVICE FROM TO**

**25. PROVIDER SOCIAL SECURITY I.D. NO.**

**26. ACCEPT ABNORMITY**

<table>
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<tr>
<th><strong>YES</strong></th>
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**27. TOTAL CHARGE**

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<th><strong>28. AMOUNT PAID</strong></th>
<th><strong>29. BALANCE DUE</strong></th>
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<td><strong>YES</strong></td>
<td><strong>NO</strong></td>
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</tbody>
</table>

**30. DATE**

**31. PATIENT'S ACCOUNT NO.**

**32. EMPLOYER I.D. NO.**

**33. REMARKS:**

---

**1600 N.J. ED. 11-82**

**APPROVED BY AMA COUNCIL ON MEDICAL SERVICES**

**APPROVED BY THE HEALTH CARE FINANCING ADMINISTRATION, N.J. MEDICAID, AND CHAMPUS.**
HEALTH INSURANCE CLAIM FORM

REFER TO GOVERNMENT PROGRAMS ONLY

MEDICARE AND CHAMPUS PAYMENTS: A patient's signature requests that payment be made and authorizes release of medical information necessary to pay the claim. If item 9 is completed, the patient's signature authorizes releasing of the information to the insurer or agency shown. In Medicare assigned or CHAMPUS participation cases, the physician agrees to accept the charge determination of the Medicare carrier or CHAMPUS fiscal intermediary as the full charge, and the patient is responsible only for the deductible, coinsurance, and non-covered services. Coinsurance and deductible are based upon the charge determination of the Medicare carrier or CHAMPUS fiscal intermediary if this is less than the charge submitted. CHAMPUS is not a health insurance program and renders payment for health benefits provided through membership and affiliation with the Uniformed Services. Information on the patient's sponsor should be provided in items 3, 6, 7, 8, 9, and 11.

MEDICAID PAYMENTS: Authorization to Release Information, and Payment Request. I certify that the service(s) covered by this claim has been received, and request that payment for these services be made on my behalf. I authorize any holder of medical or other information about me to release the State Agency or its authorized agents any information needed for this or a related claim.

SIGNATURE OF PHYSICIAN OR SUPPLIER (MEDICARE AND CHAMPUS)

I certify that the services shown on this form were medically indicated and necessary for the health of the patient and were personally rendered by me or were rendered incident to my professional service by my employee under immediate personal supervision, except as otherwise expressly permitted by Medicare or CHAMPUS regulations.

For services to be considered 'incident' to a physician's professional service, 1) they must be rendered under the physician's immediate personal supervision by his/her employee, 2) they must be an integral, although incidental part of a covered physician's service, 3) they must be of kinds commonly furnished in the physician's offices, and 4) the services of non-physicians must be included on the physician's bills.

For CHAMPUS claims, I further certify that neither I nor any employee who rendered the services are employees or members of the Uniformed Services (refer to 5 USC 5536).

NOTICE TO PATIENT ABOUT THE COLLECTION AND USE OF MEDICARE AND CHAMPUS INFORMATION

We are authorized by HCFA and CHAMPUS to ask you for information needed in the administration of the Medicare and CHAMPUS programs. Authority to collect information is in section 20(b)(b), 1872 and 1875 of the Social Security Act as amended and 44 USC 3101, 41 CFR 101 et seq. and 10 USC 1079 and 1086.

The information we obtain to complete Medicare and CHAMPUS claims is used to identify you and to determine your eligibility. It is also used to decide if the services and supplier you received are covered by Medicare or CHAMPUS and to insure that proper payment is made.

The information may also be given to other providers of services, carriers, intermediaries, medical review boards, and other organizations or federal agencies as necessary to administer the Medicare and CHAMPUS programs.

MEDICAID PAYMENTS (PROVIDER CERTIFICATION)

I hereby agree to keep such records as are necessary to disclose fully the extent of services provided to individuals under the State's Title XIX plan and to furnish information regarding any payments claimed for providing such services as the State Agency may request.

SIGNATURE OF PHYSICIAN (OR SUPPLIER). I certify that the services covered by this claim were personally rendered by me or under my direct personal supervision (as defined by Program regulations); that the foregoing information is true, accurate and complete; and that the services covered by this claim and the amount charged therefor are in accordance with the regulations of the Medicaid Program; and that no part of the net amount payable under this claim has been paid; and that payment of such amount will be accepted as payment in full without additional charge to the patient or to others on his behalf, with the exception of authorized deductibles and coinsurance. I also certify that services have been furnished in full compliance with the non-discrimination requirements of Title VI of the Federal Civil Rights Act and Section 504 of the Rehabilitation Act of 1973.

I understand that payment and satisfaction of this claim will be from Federal and State funds, and that any false claims, statements, or documents, or concealment of a material fact, may be prosecuted under applicable Federal or State laws, or both.
DIVISION OF YOUTH AND FAMILY SERVICES
Manual of Requirements for Children’s Group Homes

Adopted New Rules: N.J.A.C. 10:128

Proposed: September 17, 1990 at 22 N.J.R. 2916(a).
Adopted: January 16, 1991 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: January 17, 1991 as R.1991 d.66, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Effective Date: February 19, 1991.
Expiration Date: February 19, 1996.

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

Summary of Agency-Initiated Changes:
There are four substantive changes in the text upon adoption. The first change involves adding the phrase “and/or current” at N.J.A.C. 10:128-6.2(c) to indicate that the child’s current school district should be invited to participate as members of the treatment team. This was simply an error in typing as this phrase is routinely included in other areas of the text to reflect this option.
The second change involves adding the phrase “or other placing agency” at N.J.A.C. 10:128-6.2(a) to indicate that they should also be sent a copy of a child’s discharge plan. This was also an error in typing as this phrase is routinely included in other areas of the text to reflect this option.
The third change involves language being added at N.J.A.C. 10:128-10.21(a) to clarify the self-made solution for disinfecting shall not be used to disinfect sheets, blankets or other coverings.
The fourth substantive change in the text is language being added at N.J.A.C. 10:128-10.22(c) to clarify that non-disposable diapers that are laundered by a commercial laundry service do not have to be stored and laundered separately for each child.
The Division has made several typographical corrections and other technical changes, and has also corrected citations in N.J.A.C. 10:128-3.8(b), 3.8(c) and 3.8(d). The Division has eliminated part of the heading at N.J.A.C. 10:128-10.18.

Full text of the adopted new rules follows (additions to the proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. GENERAL PROVISIONS
10:128-1.1 Legal authority
(a) This manual is promulgated pursuant to N.J.S.A. 30:1-14 and 15 and N.J.S.A. 30:4C-4.

(b) Under N.J.S.A. 30:1-14 and N.J.S.A. 30:4C-4, the Department of Human Services is authorized to inspect, evaluate, and approve publicly or privately operated homes that provide board, lodging, care and treatment services for children who are placed and/or financed by the Division of Youth and Family Services or any other New Jersey State agency.

(c) Under N.J.S.A. 30:1-14, the following homes shall be subject to inspection, evaluation, and approval by the Department of Human Services, Division of Youth and Family Services:
1. New Jersey-based children’s group homes, as defined in this manual, except homes that are licensed, approved or regulated pursuant to State law by the Division of Developmental Disabilities or the Division of Mental Health and Hospitals, both of the Department of Human Services, by the State Department of Health, by the State Department of Education, by the State Department of Corrections or by any other New Jersey State agency; and
2. Out-of-State children’s group homes, as defined in this manual, that serve children under the supervision of the Division of Youth and Family Services. As a condition of approval by the Department, such group homes shall be licensed, certified, or otherwise approved to operate in the state where the home is located.

(d) In order to be approved, a children’s group home shall demonstrate to the satisfaction of the Department of Human Services or its duly authorized agent that it complies with all applicable provisions of this manual.

(e) Responsibility for ensuring that these homes comply with the provisions of the statutes cited in (a) above and of this manual is delegated by the Department of Human Services to the Division of Youth and Family Services, Bureau of Licensing. The Division is authorized to visit and inspect such homes, as described in N.J.A.C. 10:128-1.2(a) and (b), to determine the extent of their compliance with such provisions.

(f) Under N.J.S.A. 30:1-15, the Department of Human Services is also authorized to visit and inspect publicly or privately maintained institutions or other institutions and noninstitutional agencies that:
1. Provide board, lodging or care for children who are not placed or financed by the Division of Youth and Family Services or any other New Jersey State agency; and
2. Are not subject to licensing or regulation by any New Jersey State agency.

(g) The Division of Youth and Family Services is authorized to visit and inspect such homes as described in (f) above to assess the general health, safety, and well-being of the children and the care and treatment they are receiving, but cannot require their compliance with this manual and must secure an order from a court of competent jurisdiction, pursuant to N.J.S.A. 30:1-16, to compel correction of serious deficiencies.

10:128-1.2 Definition and types of children’s group homes
(a) “Children’s group home” or “home” means any public or private establishment other than a foster home that provides board, lodging, care and treatment services on a 24-hour basis to 12 or fewer children in a home-like, community-based setting.
(b) Children's group homes that are subject to the provisions of this manual are classified as follows:

1. Group home, which serves from six to 12 children with emotional, social, physical and/or behavioral needs who do not require a more restrictive facility for their own protection or that of others;

2. Supervised transitional living home, which serves 12 or fewer children who are 16 years of age or older, require minimum guidance from staff members in preparation to live independently, and demonstrate maturity to function with minimal adult supervision;

3. Teaching family home, which serves 12 or fewer children with emotional, behavioral or other disabilities and which is certified or in the process of being certified as a teaching family home in accordance with the standards of the National Teaching Family Association. Teaching family homes are used for children who require strong professional support and guidance to participate in the life of the community, but who do not require a more restrictive facility for their own protection or that of others; and

4. Treatment home, which is an agency-operated residence serving five or fewer children who are capable of community living but who need a small group environment and intensive supervision by staff members in order to ameliorate emotional, social and/or behavioral difficulties.

10:128-1.3 Definitions

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

“Adventure activity” means a planned activity of a wilderness or athletic nature that requires specially trained staff members and/or special equipment that is utilized with children to assist in their development of self-confidence and independence.

“Agency” means an organization which has received a certificate of approval from the Bureau to operate more than one group home, treatment home, and/or supervised transitional living home.

“Bureau” means the Bureau of Licensing of the Division of Youth and Family Services, New Jersey Department of Human Services.

“Child” means any person who is under 18 years of age and/or any person between the ages of 18 and 21 who is under the supervision of the Division in placement in a children’s group home.

“Denial of a certificate” means the withholding by the Bureau of an initial certificate of approval for which a home or agency has applied.

“Department” means the New Jersey Department of Human Services.

“Director” means the on-site staff member responsible for the daily operation and management of a home.

“Division” means the Division of Youth and Family Services, New Jersey Department of Human Services.

“Exclusion” means removing a child to an area or room in the home where there is limited stimulation. This removal should be a therapeutic intervention and a time for the child to reflect on his or her behavior in order to gain control so he or she can return to the other children.

“Infant” means any person who is under the care of his or her adolescent mother in a home serving adolescent mothers.

“Manual of Requirements for Children’s Group Homes” or “manual” means the provisions contained in N.J.A.C. 10:128-1.1 to 10:25. These provisions constitute minimum baseline requirements below which no home that is subject to the authority of N.J.S.A. 30:1-14 and N.J.S.A. 30:4C-4 is legally permitted to operate.

“Parent” means a birth or adoptive parent, legal guardian, or any other person having responsibility for, or custody of, a child.

“Person” means any individual, agency, corporation, company, association, organization, society, firm, partnership, joint stock company, the State or any political subdivision thereof.

“Placing agency” means an agency that assumes responsibility for payment of room and board for a child placed in a group home, teaching family home, supervised transitional living home, or treatment home.

“Refusal to renew a certificate” means the non-issuance of a certificate of approval by the Bureau to a home after its existing certificate has expired.

“Regular certificate of approval” or “regular certificate” means a document issued by the Bureau to a home, indicating that the home is in full compliance with all applicable provisions of this manual.

“Restraint” means the holding of a child so that he or she cannot move all or part of his or her body.

“Restrictive behavior management practice” means the use of physical restraint and exclusion as part of a comprehensive treatment plan to help the child develop self-control, to reduce maladaptive behavior or to protect the child and others from harm.

“Revocation of a certificate” means a permanent removal of a home’s current certificate of approval to operate.

“ Shall” denotes a provision of this manual that a home or agency must meet to qualify for a certificate of approval.

“Should” denotes a recommendation reflecting goals towards which a home or agency is encouraged to work.

“Staff member” or “staff” means any person employed by or working for or at a home on a regularly scheduled basis. This includes full-time, part-time, substitute, volunteer, student intern, contract or consulting personnel, whether compensated or not.

“Suspension of a certificate” means a temporary removal of a home’s current certificate of approval to operate.

“Temporary certificate of approval” or “temporary certificate” means a document issued by the Bureau, to a home that is in substantial compliance with all applicable provisions of this manual, provided that no serious or imminent hazard affecting the children exists in the home.

SUBCHAPTER 2. APPROVAL PROCEDURES

10:128-2.1 Application for a certificate of approval

(a) No person shall operate a children’s group home that provides board, lodging, care and treatment services for children who are placed or financed by the Division or by any other New Jersey State agency without first securing a certificate of approval from the Bureau, except for homes that are subject to licensing or regulatory approval pursuant to State law by any other New Jersey State agency.

1. Each group home and supervised transitional living home serving five or fewer children and each teaching family home regardless of capacity shall obtain an individual certificate of approval.

2. Each agency operating more than one treatment home or more than one supervised transitional living home serving five or fewer children shall secure and maintain a single certificate for all such homes in its program. The Bureau-approved agency shall ensure and document that individual treatment homes and supervised transitional living homes serving five or fewer children comply with the provisions of this manual.

3. A single treatment home or supervised transitional living home serving five or fewer children and that is not part of a network or agency shall receive approval from the Division’s Regional Office in the region in which the home is located.

(b) A home or agency applying to the Bureau for an initial certificate of approval shall submit a completed application form to the Bureau, including the documentation specified in N.J.A.C. 10:128-4.1(a), (b) and (c), at least 45 calendar days prior to the anticipated opening of a home.

(c) A home or agency applying to the Bureau for a renewal of its certificate of approval shall submit a completed application form to the Bureau, including the documentation specified in N.J.A.C. 10:128-4.1(d), at least 45 calendar days prior to the expiration of its existing regular certificate.

10:128-2.2 Issuance of a certificate of approval

(a) The Bureau shall issue a regular certificate of approval to a home or agency that has achieved full compliance with all applicable provisions of this manual.

(b) If the Bureau determines that a home or agency is in substantial compliance with, but does not meet all applicable provisions of, this manual, and provided that there is no serious or imminent hazard to the education, health, safety, well-being or treatment needs of the children, the Bureau shall issue a temporary certificate to the home or agency and indicate in writing the steps the home or agency must take to secure a regular certificate of approval.
(c) A temporary certificate may be issued for a period not to exceed six months. The Bureau may issue as many temporary certificates as it deems necessary.

(d) Each certification period, which may include the issuance of one or more temporary certificates or one regular certificate, shall be two years.

1. In determining the expiration date of the first regular certificate of approval, the Bureau shall compute the two-year approval period from the date of issuance of the first temporary or regular certificate.

2. In determining the expiration date of a renewed regular certificate, the Bureau shall compute the two-year approval period from the date on which the previous regular certificate expired. If, however, the home or agency has ceased to operate for a period of one year following the expiration date of its previous regular certificate, the Bureau shall compute the date of expiration from the date of issuance of a new certificate.

(e) The certificate of approval shall be issued to a specific home or agency and shall not be transferable.

(f) The home shall maintain its certificate of approval on file.

(g) No home or agency shall make claims either in advertising or in any written or verbal announcement or presentation contrary to its approval status.

10:128-2.3 Denying, suspending, revoking or refusing to renew a certificate of approval

(a) The Bureau may deny, suspend, revoke or refuse to renew a certificate of approval for good cause, including, but not limited to, the following:

1. Failure to comply with the provisions of this manual;
2. Violation of the terms and conditions of a certificate of approval;
3. Fraud or misrepresentation in obtaining a certificate;
4. Refusal to furnish the Division with files, reports, or records as required by this manual;
5. Refusal to permit an authorized representative of the Division to gain admission to the home, agency or agency-approved home or to conduct an inspection or investigation;
6. Any activity, policy, or staff conduct that adversely affects or is deemed by the Bureau to be detrimental to the education, health, safety, well-being or treatment needs of children or that otherwise demonstrates unfitness by the owner or staff members of the home to operate a children’s group home;
7. Failure of an out-of-state home, agency or agency-approved home to maintain a license, approval or certification in its own state; and
8. Failure by the agency or director to secure and maintain on file criminal conviction disclosures, as specified in N.J.A.C. 10:128-5.11(b).

(b) The Bureau shall provide written notice to the home or agency if it intends to deny, suspend, revoke or refuse to renew its application for a certificate. This notice shall specify the Bureau’s reasons for such action.

(c) If the Bureau denies, revokes, or refuses to renew a certificate of approval, as specified in (a) above, the home or agency shall be prohibited from reapplying for a certificate of approval for one year from the date of certificate denial, revocation or refusal to renew.

After the one-year period has elapsed, the home or agency may submit to the Bureau a new application for a certificate.

(d) If a certificate is suspended, the Bureau shall issue or reinstate the certificate once the home or agency achieves compliance with the provisions of this manual. In such a case, the Bureau shall not require the home or agency to submit a new application for a certificate unless such reapplication is expressly made a condition of the issuance or reinstatement of the certificate.

(e) Each certificate of approval issued by the Bureau to a home of agency remains the property of the State of New Jersey. If the Bureau suspends or revokes a certificate of approval, the home or agency shall return the certificate of approval to the Bureau immediately.

10:128-2.4 Administrative hearings

(a) If a home or agency fails to comply with all applicable provisions of this manual, the Bureau shall issue a directive ordering compliance. Prior to the Bureau’s decision to deny, suspend, refuse to renew or revoke a home’s or agency’s certificate of approval, the home or agency shall have the opportunity to request an administrative hearing, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) As long as the Division determines that children are not at risk and that no imminent dangers exist, the Bureau may permit a home or agency that has requested an administrative hearing, as specified in (a) above, to continue to operate until a final decision is rendered as a result of the hearing.

10:128-2.5 Complaints

(a) Whenever the Bureau receives a report questioning the approval status or compliance of a home or agency or alleging a violation of this manual, the Bureau shall ensure that the allegation is promptly investigated to determine whether the complaint is substantiated.

(b) After the report of the investigation has been completed, the Bureau shall notify the home or agency in writing of the results of the investigation within 15 days, pursuant to the State Public Records Law, N.J.S.A. 47:1A-1 et seq., with the exception of any information not permitted to be disclosed pursuant to the Child Abuse and Neglect Law, N.J.S.A. 9:6-8.10a, or any other State law.

(c) Whenever the Division, through its Bureau of Licensing, Institutional Abuse Investigation Unit or District Offices, conducts complaint investigations, the home or agency shall cooperate with all Division investigators.

10:128-2.6 Public access to the Bureau’s licensing records

Licensing files maintained by the Bureau are public records and shall be readily accessible for examination by any person, under the direction and supervision of the Bureau, except when public access to records is restricted, in keeping with the State Public Records Law, N.J.S.A. 47:1A-1 et seq., or other applicable statutes.

SUBCHAPTER 3. ADMINISTRATION

10:128-3.1 Statement of purpose

(a) The home or agency shall maintain on file a written statement of purpose that shall identify the following:
1. The home’s philosophy, goals, and objectives;
2. Characteristics of the children to be served;
3. Types of treatment services provided to the children, including those provided directly by the home and those provided in cooperation with community agencies or outside individuals;
4. Procedures for implementing those services; and
5. Criteria for successful completion of the program.

(b) The home or agency shall give this statement of purpose to the parents of the children applying for services, to all staff members and to all persons who request this information.

(c) The home or agency shall secure and maintain on file a record of the parents’ and staff members’ signatures attesting to their receipt of the statement of purpose.

10:128-3.2 Rights of children

(a) The home or agency shall prepare a list of children’s rights and shall post it in a prominent location in each home or give it to the children and document such in each child’s record. At a minimum, the list shall specify the children’s right to:
1. Receive prompt medical treatment;
2. Have access to an appropriate education;
3. Live in a safe, clean and healthy environment;
4. Be free of physical or sexual harassment or abuse and corporal punishment;
5. Attend religious services of their choice; and
6. Have unimpeded communication to the Division.

(b) The home or agency shall give this list of children’s rights to the parents of the children applying for admission, to all staff members and to all persons who request this information.
(c) The home or agency shall secure and maintain on file a record of the list of children's rights.

(d) If the home or agency chooses to develop a search and seizure policy, the home or agency shall give all children, staff and parents a copy of this policy, as specified in N.J.A.C. 10:128-6.15.

(e) The home or agency shall prepare, post or give to all staff members and children a written grievance procedure governing how children may raise questions about or voice disagreements with policies, a copy of the procedure for expressing concerns, requirements, provisions, or alleged violations of the manual; and

(f) Advise parents that if they believe or suspect that the home or agency is in violation of any provision of the manual, they may report such alleged violations to the Bureau of Licensing;

(g) Make available, upon request, for parents' review the Bureau's inspection/Violation and Complaint Reports on the home or agency, as well as any letters of enforcement or other actions taken against the home or agency during the current certificate of approval period;

(h) Inform parents that they may request a copy of the home's or agency's behavior management policy, including policies for search and seizure, as specified in N.J.A.C. 10:128-6.13, 6.14, and 6.15;

(i) Inform parents that the home or agency is required to provide the child's parents with copies of the home's or agency's visitation and communication policies, a copy of the procedure for expressing concern or registering complaints regarding their child's placement, and a description of its religious policies, including a statement that the child has a right to practice his or her religion;

(j) Indicate through this document how parents and staff members may secure information about the prevention and reporting of child abuse, neglect or exploitation by any person, whether working at the home or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control, TOLL FREE at 1-800-792-8610, or any District Office immediately, and indicate that such reports may be made anonymously;

(k) Indicate through this document how parents and staff members may secure information about the prevention and reporting of child abuse, neglect or exploitation by any person, whether working at the home or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control, TOLL FREE at 1-800-792-8610, or any District Office immediately, and indicate that such reports may be made anonymously;

(l) Indicate through this document how parents and staff members may secure information about the prevention and reporting of child abuse, neglect or exploitation by any person, whether working at the home or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control, TOLL FREE at 1-800-792-8610, or any District Office immediately, and indicate that such reports may be made anonymously;

(m) Indicate through this document how parents and staff members may secure information about the prevention and reporting of child abuse, neglect or exploitation by any person, whether working at the home or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control, TOLL FREE at 1-800-792-8610, or any District Office immediately, and indicate that such reports may be made anonymously;

(n) Indicate through this document how parents and staff members may secure information about the prevention and reporting of child abuse, neglect or exploitation by any person, whether working at the home or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control, TOLL FREE at 1-800-792-8610, or any District Office immediately, and indicate that such reports may be made anonymously;

(o) Indicate through this document how parents and staff members may secure information about the prevention and reporting of child abuse, neglect or exploitation by any person, whether working at the home or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control, TOLL FREE at 1-800-792-8610, or any District Office immediately, and indicate that such reports may be made anonymously;

(p) Indicate through this document how parents and staff members may secure information about the prevention and reporting of child abuse, neglect or exploitation by any person, whether working at the home or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control, TOLL FREE at 1-800-792-8610, or any District Office immediately, and indicate that such reports may be made anonymously;

(q) Indicate through this document how parents and staff members may secure information about the prevention and reporting of child abuse, neglect or exploitation by any person, whether working at the home or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control, TOLL FREE at 1-800-792-8610, or any District Office immediately, and indicate that such reports may be made anonymously;

(r) Indicate through this document how parents and staff members may secure information about the prevention and reporting of child abuse, neglect or exploitation by any person, whether working at the home or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control, TOLL FREE at 1-800-792-8610, or any District Office immediately, and indicate that such reports may be made anonymously;

(s) Indicate through this document how parents and staff members may secure information about the prevention and reporting of child abuse, neglect or exploitation by any person, whether working at the home or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control, TOLL FREE at 1-800-792-8610, or any District Office immediately, and indicate that such reports may be made anonymously;

(t) Indicate through this document how parents and staff members may secure information about the prevention and reporting of child abuse, neglect or exploitation by any person, whether working at the home or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control, TOLL FREE at 1-800-792-8610, or any District Office immediately, and indicate that such reports may be made anonymously;
HUMAN SERVICES

1. Give each child a secure place to store valuables;
2. Ask the child to sign or otherwise verify that a staff member explained house rules and regulations, children’s rights as specified in N.J.A.C. 10:123-3.2, discipline policy and search and seizure policy, if any; and
3. Inform each child of fire exits and evacuation procedures.

10:128-3.7 Reporting requirements
(a) The director or any staff member shall notify verbally the Office of Child Abuse Control immediately whenever there is reasonable cause to believe that a child has been or is being abused or neglected by staff members, children or any other person, as required by the New Jersey Child Abuse and Neglect Law, N.J.S.A. 9:6-8.10, 8.13 and 8.14. Copies of the law and information about it are available from the Division, upon request.
(b) The home or agency shall notify the Bureau verbally of any of the following changes or events by the next working day after the home or agency learns of their occurrence, to be followed by written notification to the Bureau within five working days:
   1. Injury, accident or illness that results in the admittance of a child to a hospital;
   2. The death of a child while the child was on the premises of the home or in the care of a home staff member or volunteer;
   3. Temporary or permanent closing of a home or agency; and
   4. Any convictions or guilty pleas of any agency or home staff members that involve or affect any child or the operation of the home or agency, as specified in N.J.A.C. 10:128-5.1(b).
(c) The home or agency shall notify the Bureau verbally of any of the following changes or events by the next working day after the home or agency learns of their occurrence:
   1. The occurrence of a reportable disease, as specified in Chapter 2 of the State Sanitary Code, N.J.A.C. 8:57;
   2. Proposed relocation of the home to a site not approved by local municipal officials and the Bureau, as specified in N.J.A.C. 10:128-4.1;
   3. Damage to the premises of the home or agency-approved home, caused by fire, accident or the weather; and
   4. Proposed use of space involving rooms not approved by the Bureau, as specified in N.J.A.C. 10:128-4.3(a)5.
(d) The home or agency shall notify the Bureau in writing at least 30 calendar days before any of the following proposed changes or events:
   1. The anticipated closing or relocation of a home, agency or agency-approved home for any reason other than temporary closings for holidays and vacations;
   2. A change of director or administrator of the home;
   3. A change of type of children served; or
   4. A change of services offered, including the opening of a new treatment home or supervised transitional living home serving fewer than six children.
(e) The home or agency shall notify the Division and the child’s parents within 24 hours of any unauthorized absence of a child from a home.

10:128-3.8 Records
(a) The home’s or agency’s records shall be open for inspection by authorized representatives of the Bureau, the Division’s Institutional Abuse Investigation Unit (IAIU), the Division’s contracting units and, provided that they may only secure information about children under the Division’s supervision, Division case managers.
(b) The home or agency shall maintain on file the following administrative records until the expiration of its regular certificate of approval:
   1. The following records shall be maintained in files located either at an agency’s administrative office or at the home:
      i. A record of comprehensive general liability insurance, as specified in N.J.A.C. 10:128-3.9;
      ii. A record of performance of required monthly fire drills and/or evacuation drills, as specified in N.J.A.C. 10:128-4.5(c);
      iii. A record of training sessions for staff members on evacuation procedures, the use of fire extinguishers, the location of fire alarms, and emergency medical procedures, as specified in N.J.A.C. 10:128-5.4(a)3;
      iv. A copy of the home’s or agency’s vehicle insurance policy, specified in N.J.A.C. 10:128-8.2; and
      v. Transportation records, if transportation is provided to children residing in the home, as specified in N.J.A.C. 10:128-8.4.
   2. The following records shall be maintained in files located at the home:
      i. A current manual;
      ii. A statement of purpose, as specified in N.J.A.C. 10:128-3.1 or 9.2;
      iii. The Life/Safety and Program Inspection/Violation reports and Complaint Investigation Summary reports if applicable to the Bureau, as well as letters of enforcement or other actions taken against the agency or home if applicable, that cover the current certificate of approval period;
      iv. The document providing information to parents, as specified in N.J.A.C. 10:128-3.3(a);
      v. A record of each parent’s signature attesting to the receipt of the information to parents document, as specified in N.J.A.C. 10:128-3.3(b);1
      vi. Documentation of the use of extermination services, if applicable, as specified in N.J.A.C. 10:128-4.3(a)7;
      viii. A record of in-service training conducted for staff members as specified in N.J.A.C. 10:128-5.4 and 10.3;
      ix. A record of all incidents and accidents, recorded on incident and accident report forms, noting all details of the incident and any actions taken by the staff members, as specified in N.J.A.C. 10:128-6.13, 7.3(b) and 9.3(a) and (b);
      x. A copy of the comprehensive health plan, as specified in N.J.A.C. 10:128-7.1, 10.15 and 10.16;
      xi. Copies of menus of food served to the children, including special diets, as specified in N.J.A.C. 10:128-6.11 and 10.24;
      xii. Aggregate statistical information on children served, including the date of each admission, date of each discharge, and reason for each discharge, as specified in N.J.A.C. 10:128-5.2(a)(a)10;
      xiii. A record of signed parental consent for children’s participation in fund-raising, publicity, photography, or audiovisual activities related to the home, as specified in N.J.A.C. 10:128-3.2(a)11
      xiv. A copy of the children’s grievances procedures, as specified in N.J.A.C. 10:128-3.2(d);
      xv. A record of signed parental consent for medical treatment for each child, as specified in N.J.A.C. 10:128-3.6(b);
      xvi. A daily log book, in which an on-duty staff member shall comment on the activities and events of each day and staff member response to those events, as specified in N.J.A.C. 10:128-5.2;
      xvii. A daily log book, a separate log book or notation in the child’s case record, in which all visits to the child shall be recorded as specified in N.J.A.C. 10:128-5.2;
      xviii. A copy of the staff members’ work schedules and time sheets as specified in N.J.A.C. 10:128-5.2;
      xix. A medication log book, as specified in N.J.A.C. 10:128-7.4 7.5 and 10.20;
      xx. For group homes, a written daily schedule of planned recreational, leisure time and physical exercise activities, as specified in N.J.A.C. 10:128-6.8(b) and 10.11;
      xxi. A record of pet vaccinations and the name and address of the licensed veterinarian providing care for the pets, as specified in N.J.A.C. 10:128-6.12;
      xxii. A copy of the parenting education curriculum, as specified in N.J.A.C. 10:128-10.8;
      xxiii. Documentation of the information received from the National Weather service and park service, as specified in N.J.A.C. 10:128-9.1(o) and (p);
      xxiv. A copy of the plan for emergency evacuation procedures, as specified in N.J.A.C. 10:128-9.2(a);
      xxv. A copy of the plan for search and rescue procedures, as specified in N.J.A.C. 10:128-9.2(b);
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xxviii. Copies of biking permits, as specified in N.J.A.C. 10:128-9.6(a);
xxvii. Documentation that permission was obtained to enter a cave on the owner or public authority, as specified in N.J.A.C. 10:128-9.6(c);
xxviii. Documentation on the care of horses, as specified in N.J.A.C. 10:128-9.8(e);
xxix. Documentation on the safety of ropes used in climbing, as specified in N.J.A.C. 10:128-9.9(d);
xxx. A copy of the plan for boating activities, as specified in N.J.A.C. 10:128-9.10;
xxxi. Copies of all permits, certificates or licenses for camping, as specified in N.J.A.C. 10:128-9.15;
xxxii. A copy of the policy for treating snake, animal and insect bites and ingestion or contact with poisonous plants, as specified in N.J.A.C. 10:128-9.16(c)*[9.17]**9.18*;
xxxiii. A copy of the plan and procedures that enable children to receive an emergency message, and send and receive mail, as specified in N.J.A.C. 10:128-9*[9.19](e)*[9.20](e)*;
xxxiv. Documentation that children were permitted to make free telephone calls, as specified in N.J.A.C. 10:128-9*[9.19]**9.20*(e); and
xxxv. A copy of the policy for visiting and communication for parents, as specified in N.J.A.C. 10:128-9.*[9.20](c)*[9.16]*.
(c) The home or agency shall maintain on file the following staff records throughout a staff member's employment and for one year after the staff member has stopped working at the home.

1. The following records for the director and all staff members shall be maintained in files located either at an agency's administrative office or at the home:
   i. Applications for employment, as specified in N.J.A.C. 10:128-5.1(b) and *[9.17]**9.18*;
   ii. References on the director and staff members, as specified in N.J.A.C. 10:128-5.1(b) and *[9.17]**9.18*;
   iii. A record of each staff member's signature attesting to his or her receipt of the policy statement on the disciplining of children by staff members, as specified in N.J.A.C. 10:128-5.1(b); and
   iv. A record of each staff member's signature attesting to his or her receipt of the information to parents document, as specified in N.J.A.C. 10:128-5.1(b).

2. The following staff records shall be maintained in files located at the home:
   i. Current staff member attendance sheets;
   ii. Reasons for discontinuance of employment, if applicable, as specified in N.J.A.C. 10:128-5.1;
   iii. A full written disclosure of the director's and every staff member's background, previous work experience and criminal convictions, if any, as specified in N.J.A.C. 10:128-5.1(b) and *[9.17]**9.18*;
   iv. Documentation that every staff member received and reviewed a copy of the home's statement of propósito, grievance policy, children's bill of rights, fireplace policy and search and seizure policy, as specified in N.J.A.C. 10:128-3.1(b) and 3.3(b);
   v. A written annual performance evaluation, as specified in N.J.A.C. 10:128-5.2; and
   vi. Documentation of training received by staff members, as specified in N.J.A.C. 10:128-5.4 and 10.3.

(d) The home shall maintain on file the following children's records during the child's placement at the home or agency for at least three years after the discharge of the child.

1. The home or agency shall ensure the confidentiality of the following records for each child, in accordance with New Jersey State law:
   i. Identifying information, as specified in N.J.A.C. 10:128-3.6(b) and (c);
   ii. A copy of each treatment plan developed for the child, for group homes, teaching family homes or treatment homes as specified in N.J.A.C. 10:128-6.1; a copy of the case management plan for supervised transitional living homes, as specified in N.J.A.C. 10:128-6.3; and a copy of the case management plan for homes that serve pregnant and parenting adolescents, as specified in N.J.A.C. 10:128-10.4;
   iii. Education records, as specified in N.J.A.C. 10:128-6.7;
   iv. Reports of incidents, including, but not limited to, acts of aggression, violent or destructive behavior, discovery of contraband, suicidal threats, discovery of a weapon, inappropriate sexual behavior, involvement with the police and documentation of efforts made to locate runaways, as specified in N.J.A.C. 10:128-6.13, 6.14, 6.15 and 6.16;
   v. Reports of accidents, as specified in N.J.A.C. 10:128-7.3 and 9.3(a) and (b);
   vi. Documentation of the opening of a child's mail by a home staff member, as specified in N.J.A.C. 10:128-6.6;
   vii. Medical records, as specified in N.J.A.C. 10:128-7.2 and *[9.16]**9.17*(a) and (b);
   viii. Explanations of medical treatment, as specified in N.J.A.C. 10:128-10.19;
   ix. A discharge summary, as specified in N.J.A.C. 10:128-6.2 and 10.5;
   x. An aftercare plan, as specified in N.J.A.C. 10:128-6.2 and 10.5;
   xi. An infant's feeding schedule, as specified in N.J.A.C. 10:128-10.24;
   xii. Documentation that an adolescent mother received life skills development training, as specified in N.J.A.C. 10:128-10.25; and
   xiii. Documentation that a child received information on adventure activities, as specified in N.J.A.C. 10:128-9.1(c).

2. The home or agency shall ensure that all entries in the child’s record indicate the entry date and the name and signature of the person making the entry.

N.J.A.C. 10:128-3.9 Comprehensive general liability insurance
A home or agency shall secure comprehensive general liability insurance coverage and shall maintain on file a copy of the insurance policy.

SUBCHAPTER 4. PHYSICAL FACILITY REQUIREMENTS
10:128-4.1 Physical facility initial approval requirements for all homes located in New Jersey
(a) An applicant seeking an initial certificate of approval, as specified in N.J.A.C. 10:128-2.1, to operate a home shall comply with all applicable provisions of the New Jersey Uniform Construction Code, as specified in N.J.A.C. 5:23 and hereinafter referred to as the NJUCC.
1. For newly constructed buildings, for existing buildings whose construction code use group classification would change from that which it had been, or for existing buildings that require major alteration or renovation, the home or agency shall submit to the Bureau a copy of a Certificate of Occupancy (CO) issued by the municipality in which it is located, reflecting the home's compliance with provisions of the NJUCC, for one of the following use group classifications:
   i. R-2 (Residential) for buildings accommodating children 2½ years of age and older for more than 30 calendar days and having a total occupancy of more than five and fewer than 13 children; or
   ii. I-2 (Institutional) for buildings accommodating six or more children less than 2½ years of age.
2. For homes or agencies that are planning to construct a new building, the home or agency shall submit to the Bureau:
   i. Preliminary architectural drawings for review and comment prior to beginning construction; and
   ii. If applicable, revised architectural or final drawings containing all required items listed in the preliminary plan review for final approval from the Bureau before the home can open.
3. For buildings constructed after the adoption of the NJUCC (1977), whose construction code use group classification is already R-2 or I-2 and that have not had major alterations or renovations since receipt of the CO, the home or agency shall obtain the CO issued by the municipality in which it is located at the time the
building was originally constructed or approved for use in the NJUCC's R-2 or I-2 use group classification. The home or agency shall submit a copy of the building's CO to the Bureau.

4. For existing buildings, whose use prior to the adoption of the NJUCC (before 1977) was and continues to be for a home and that have not had major alterations or renovations, the home shall obtain a Certificate of Continued Occupancy (CCO) or a letter to this effect, issued by the municipality in which it is located, reflecting the building's compliance with provisions of the municipality's construction code requirements that were in effect at the time it was originally constructed or converted for use as a home. The home or agency shall submit a copy of the building's CCO or letter reflecting the building's compliance to the Bureau.

5. The home or agency shall obtain a new CO issued by the municipality in which it is located, reflecting the building's compliance with provisions of the applicable NJUCC use group classification, and submit a copy of the new CO to the Bureau whenever it takes any of the following actions:
   i. Changes the building's use group classification to one other than the one prescribed on its original CO;
   ii. Makes a major alteration or renovation, as defined by the NJUCC, of the building or premises where the home is located;
   iii. Increases the floor area or the number of stories to the building or premises where the home is located; or
   iv. Relocates to another site.
   6. Whenever a municipality grants a home a written variation from any of the requirements of the NJUCC, the Bureau may accept such variations as meeting the applicable requirements of this manual.

(b) An applicant seeking an initial approval, as specified in N.J.A.C. 10:128-2.1, to operate a home shall comply with all applicable provisions of the New Jersey Uniform Fire Code, as specified in N.J.A.C. 5:18, 18A and 18B and hereinafter referred to as the NJUFC. The home or agency shall obtain the building's fire safety inspection certificate issued by the municipality in which it is located, based on a fire inspection conducted within the preceding 12 months, reflecting the home's compliance with all applicable provisions of the NJUFC. The home or agency shall submit a copy of the building's fire safety inspection certificate to the Bureau.

(c) An applicant seeking an initial approval, as specified in N.J.A.C. 10:128-2.1, to operate a home shall comply with all applicable provisions of the State Sanitary Code, as specified in N.J.A.C. 8:24. The home or agency shall obtain a certificate or statement of satisfactory health approval issued by the applicable municipal, county or State health agency, based on a health inspection conducted within the preceding 12 months, certifying that the home complies with applicable provisions of local, county and State health codes and poses no health hazard to the children served. The home or agency shall submit a copy of the certificate or statement of satisfactory health approval to the Bureau.

(d) An applicant seeking the renewal of a certificate of approval to continue operating a home shall obtain and submit to the Bureau, copies of:
   1. A current fire safety inspection certificate for the building; and
   2. A current certificate or statement of satisfactory health approval for the home.

10:128-4.2 Physical facility initial approval requirements for all homes located outside of New Jersey

(a) A home located in a state other than New Jersey shall submit with each application documentation that the home meets the provisions of all applicable codes governing building, fire, safety and health requirements in the state, county and municipality in which the home is located.

(b) All homes located in a state other than New Jersey shall also comply with the physical facility and life-safety requirements specified in N.J.A.C. 10:128-4, with the exception of N.J.A.C. 10:128-4.4(c), (f), (g), (h), (i), and (l).

10:128-4.3 Maintenance and sanitation requirements for all homes

(a) The home shall maintain all indoor areas in a safe and sanitary manner by ensuring that:
   1. The home is free of moisture resulting from water leaks or seepage;
   2. All lally columns in areas used by the children have protective covers or shields;
   3. Floors, walls, ceilings and other surfaces are kept clean and in good repair;
   4. Stairways are free of hazards such as boxes, loose steps, torn carpeting or raised strips;
   5. Carpeting is secured to the floor;
   6. Garbage and food receptacles are:
      i. Made of durable, leakproof and nonabsorbent materials;
      ii. Covered in a secure manner;
      iii. Emptied to the outdoor garbage receptacle when filled; and
      iv. Lined and maintained in a sanitary manner;
   7. The home is free of rodent or insect infestation. If there is evidence of rodent or insect infestation, immediate action shall be taken to remove such infestation. The home shall maintain on file a record documenting the use of extermination services in the incidences;
   8. Toilets, wash basins, kitchen sinks, and other plumbing are in a sanitary manner by ensuring that:
      i. Made of durable, leakproof and nonabsorbent materials;
      ii. Covered in a secure manner;
      iii. Emptied to the outdoor garbage receptacle when filled; and
      iv. Lined and maintained in a sanitary manner;
   9. All corrosive agents, insecticides, bleaches, detergents, polishes, and any toxic substance are stored in a locked cabinet or in an enclosure located in an area not accessible to children under six years of age;
   10. Ventilation outlets are clean and free from obstructions, and filters are replaced when saturated;
   11. Walls are painted or otherwise covered whenever there is evidence of:
      i. Excessive peeling or chipped paint; or
      ii. Heavily soiled conditions; and
   12. All shelving is secured and not overloaded.

(b) The home shall maintain all outdoor areas in a safe and sanitary manner by ensuring that:
   1. The building, land and outdoor play area are free from any hazards to the health, safety or welfare of the children;
   2. The outdoor play area is graded or provided with drains to dispose of surface water;
   3. The building structure is maintained to prevent:
      i. Water from entering;
      ii. Excessive drafts or heat loss; and
      iii. Infestation from rodents and insects;
   4. The railings of balconies, landings, porches, or steps are maintained in a safe condition;
   5. Garbage receptacles are:
      i. Made of durable, leakproof and nonabsorbent materials; and
      ii. Covered in a secure manner, maintained in a sanitary manner and located in an outdoor area;
   6. Homes that provide outdoor space maintain in proper condition all fencing or other natural or man-made barriers or enclosures;

(c) The Bureau shall also require the home to take whatever step is necessary to correct any conditions in the home that may endanger in any way the health, safety and well-being of the children served.

10:128-4.4 Additional maintenance and sanitation requirements for all homes located in New Jersey

(a) The home shall meet the following lighting requirements:
   1. All fluorescent tubes and incandescent light bulbs shall have protective covers or shields;
   2. During activities in the home, at least 20 foot-candles of natural or artificial light shall be provided in all rooms used by the children. This illumination shall be measured three feet above the floor at the farthest point from the light source;
   3. Parking areas, pedestrian walkways, or other exterior portion of the premises subject to use by home occupants at night shall be illuminated to provide safe entrance to and egress from the home;

(b) The home shall meet the following heating requirements:
   1. A minimum temperature of 65 degrees Fahrenheit shall be maintained in all rooms used by the children.
2. Working fireplaces, steam and hot water pipes, radiators and electric space heaters shall be protected by screens, guards, insulation or any other suitable, non-combustible protective device.

3. The home shall not use portable liquid fuel-burning or wood-burning heating appliances.

(c) The home shall ensure that fireplaces meet the following requirements:

1. The use of a fireplace for the children served by the home shall not pose a serious risk of fire safety to occupants of the home, as determined by the local fire official;

2. The fireplace shall be approved by the local government construction official and fire official, in accordance with applicable provisions of the NJUCC and the NJUFC, respectively;

3. The home shall obtain a copy of these certificates or statements of approval and submit them to the Bureau;

4. The home shall develop guidelines, in conjunction with the local fire official, that ensure proper use of the fireplace, safety procedures, and an action plan to be followed in the event of an emergency;

5. The guidelines noted in (c)4 above shall include, but not be limited to, staff member supervision, storage of wood, storage and safeguarding of matches, instruction in the use of fireplace implements, use of the screen, posting of emergency phone numbers for police and fire departments and hospitals, posting of emergency procedures and exits, and methods and safeguards for extinguishing the fire;

6. The guidelines noted in (c)4 above shall be maintained on file by the home and reviewed by all staff members and children in the home.

(d) The home shall meet the following ventilation requirements:

1. Crawl spaces, attic spaces, and all doors and windows used for natural ventilation shall have insect screening;

2. All floor or window fans that are accessible to the children shall have a grille, screen, mesh or other protective covering designed to prevent a child from coming into contact with the blades of the fan; and

3. Ventilation outlets shall be cleaned and free from obstructions and filters shall be replaced when saturated.

(e) The home shall ensure that mirrors, dispensers, and other equipment are fastened securely.

(f) Homes that serve children with special needs shall ensure that:

1. For non-ambulatory children, the toilet facilities are located on the same floor where the children's bedrooms and activities are located;

2. The width and height of toilets and sinks accommodate the children served; and

3. Grab bars are provided in toilet and bathroom areas, as specified in N.J.A.C. 5:23-7 of the Barrier-free Subcode of the NJUCC.

(g) The home shall not use lead paint on and shall remove lead paint from any interior or exterior surfaces of a building used as a home, or on any furniture, toys, or other equipment used therein, in accordance with the provisions of the State Lead Paint Law, pursuant to N.J.S.A. 24:14A-1 et seq., and with the provisions of the State Sanitary Code, as specified in N.J.A.C. 8:51-7. When lead paint is found in areas of a home not specified in N.J.A.C. 8:51-7, the Bureau shall determine whether the lead paint is hazardous to the health, safety and well-being of the children served and, if considered to be hazardous, the home shall remove the lead paint hazard.

(h) The home shall not use spray coatings containing asbestos on any interior or exterior surfaces of the home or on any equipment used therein, in accordance with rules of the State Department of Environmental Protection, as specified in N.J.A.C. 7:27-17.2 and with applicable provisions of the Asbestos Hazard Abatement Subcode of the NJUCC, as specified in N.J.A.C. 5:23-8. If the New Jersey Department of Health determines the presence of sprayed-on asbestos-containing materials, and concludes that corrective action must be taken to minimize exposure potential, the home shall follow the recommendation of the State Health Department for enclosure, removal or other appropriate action to remove the threat or risk of asbestos contamination.

(i) The home shall ensure that swimming pools and natural bathing places used by the children:

1. Comply with applicable provisions of the Public Recreational Bathing Rules, as specified in N.J.A.C. 8:26, and with applicable provisions of the Building Subcode and Barrier-free Subcode of the NJUCC, as specified in N.J.A.C. 5:23; and

2. Provide for supervision of the children, in accordance with applicable provisions of the New Jersey Youth Camp Safety Act rules, as specified in N.J.A.C. 8:25.

(j) The home shall ensure that materials and furniture for indoor and outdoor use are of sturdy and safe construction, easy to clean and free of hazards that may be injurious to children.

(k) The home shall ensure that toilet facilities meet the following requirements:

1. At least one toilet, wash basin and bath tub or shower is provided for every six children in the home. These facilities shall not be located more than one floor from any bedroom; and

2. A supply of hot tap water not exceeding 110 degrees Fahrenheit and cold running water is provided.

(l) A home utilizing a kitchen facility or food preparation area shall ensure that the cooking equipment and kitchen facility are kept clean and sanitary and are operated in compliance with applicable provisions of Chapter 12 of the State Sanitary Code, as specified in N.J.A.C. 8:24.

(m) The home shall obtain prior approval from the Bureau for all space used by the children.

(n) The home shall not care for more children than the number specified in the certificate of approval.

(o) The home shall meet the following space requirements to ensure the safety, treatment, recreational, dining and sleeping needs of the children, including:

1. Adequate space for the implementation of treatment services, including individual, group and family counselling sessions and treatment team meetings;

2. A recreation room or area that can accommodate indoor individual or group activities;

3. A dining area large enough to accommodate tables and chairs for all the children; and

4. Rooms for sleeping:

i. Any bedroom used by a child shall have a minimum ceiling height of seven feet and six inches.

ii. Any bedroom containing a single bed occupied by one child shall provide a minimum of 70 square feet of floor space, including space that is occupied by furniture.

iii. Any bedroom containing two or more single beds and occupied by more than one child shall provide a minimum of 70 square feet of floor space for the first child and 50 square feet of floor space for each additional child, including space that is occupied by furniture.

iv. Any bedroom containing bunk beds or any combination of single beds and bunk beds shall provide 50 square feet of floor space for each child, including space that is occupied by furniture.

10:128-4.5 Emergency evacuation instructions, medical emergencies, fire prevention, first aid and equipment

(a) The home shall prepare and post on each floor written emergency evacuation instructions that include:

1. A diagram showing how the home is to be evacuated in the event of an emergency; and

2. The location of fire alarms and fire extinguishers.

(b) The home shall maintain the following information near a staff telephone or other accessible area for use in the event of medical emergency:

1. The name, address and telephone number of the physician retained by the home or of the health facility to be used in emergencies;

2. The location of written authorizations from parents for emergency medical care for each child;

3. The procedure for obtaining emergency transportation;

4. The procedure for obtaining substitute or on-call supervision, if needed;

5. The telephone numbers of the local police, fire department, ambulance service and poison control; and

6. The location of the first aid kit and any additional first aid supplies.
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(c) The home shall prepare written fire prevention instructions, which delineate that:
1. The home shall conduct fire drills at least once a month, which shall include all staff members and children, and shall inform all staff members and children of the procedures for leaving the building in an emergency situation;
2. The home shall maintain on file a record of each fire drill, which shall include:
   i. The date and time of day of the drill;
   ii. The weather condition at the time of evacuation;
   iii. The number of participating children and staff members;
   iv. The total amount of time taken to evacuate the home; and
   v. The signature of the staff members conducting the drill;
3. All fire extinguishers shall be serviced and tagged at least once a year and recharged, if necessary; and
4. The home shall ensure that all staff members are trained in the use and operation of fire extinguishers.

(d) The following equipment shall be placed in a location that is convenient and accessible to staff members:
1. A standard first aid kit, which is fully restocked within 24 hours of use; and
2. The American Red Cross First Aid Manual or its equivalent.

10:128-4.6 Special requirements for staff members, children, visitors or family members who use tobacco products
(a) If the home permits the smoking of tobacco products or the use of smokeless tobacco, the home shall designate one area or room within the home or an outside area where staff members, children, as identified in (d) below, visitors or family members may use tobacco products.
(b) The home shall prohibit the smoking of tobacco products or the use of smokeless tobacco in:
   1. The presence of infants and toddlers;
   2. Any bedrooms used by children and staff members;
   3. Dining areas when children are participating in meals;
   4. Kitchen areas when meals are being prepared; and
   5. Administrative and staff offices when children are present.
(c) The home shall ensure that staff members comply with the provisions of N.J.S.A. 2A:170-51, which prohibits any person from directly or indirectly selling, giving or furnishing to a minor under 18 years of age any cigarettes made of tobacco or any other matter or substance that can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco.
(d) The home may permit children who smoke tobacco products or use smokeless tobacco to continue to do so, provided that the following conditions exist:
   1. The child shall only be permitted to smoke tobacco products or use smokeless tobacco in the designated area or room identified in (a) above;
   2. The treatment team shall develop goals that will direct, guide and counsel the child to stop smoking tobacco products or using smokeless tobacco; and
   3. The child shall be provided with written and verbal information that outlines the serious health hazards stemming from smoking tobacco products or using smokeless tobacco.
(e) The home shall not utilize tobacco products as a reward in its behavior management program or in any of its policies or practices.

SUBCHAPTER 5. STAFF REQUIREMENTS
10:128-5.1 General requirements for director and all staff members
(a) The director and every staff member shall:
   1. Be of good character and reputation;
   2. Be in sufficient physical, mental and emotional health to perform his or her job duties satisfactorily; and
   3. Possess skills, attributes and characteristics conducive to and suitable for operating a home or dealing with children, as applicable.
(b) Prior to hiring or utilizing a director or a staff member who will be working at the home, the home or agency shall secure and maintain on file:
   1. A signed application for employment from each individual, indicating the applicant's name, address and telephone number; education and work experience; and disclosure of the presence or absence of criminal convictions. The employment application shall be updated to indicate the reasons for discontinuance of employment if applicable;
   2. Two written or two verbal references on each individual. The references shall be secured from former employers or other persons who have knowledge of the individual's work experience or educational and who can attest to the individual's suitability to work with children. The verbal references shall be documented in writing by the home or agency.
   3. A copy of a home study for each treatment home utilized by the agency for children supervised by the Division. The home study shall include:
      i. A description of the rooms in the home;
      ii. A description of the child's bedroom;
      iii. A description of the neighborhood;
      iv. The names of all persons residing in the home, including biological children, other children placed by the Division, boarders and frequent overnight guests;
      v. References as specified in (b)2 above, on all persons identified in (b)3iv above;
      vi. A written health statement on all persons identified in (b)3i above; and
      vii. A statement from the agency that verifies that the supply of hot tap water has been tested and does not exceed 110 degree Fahrenheit.
(c) Failure by any agency, director or other staff member to comply with the requirements as specified in (a) and (b) above, and/or any evidence demonstrating unfitness or unsuitability to fulfill the responsibilities and duties of his or her position or to serve or deal with children in an appropriate manner, shall constitute grounds for one or more of the following actions:
   1. Removal of the director or staff member from his or her position;
   2. Reassignment to other duties that do not involve contact with children;
   3. Termination from the home; or
   4. Denial, refusal to renew, suspension or revocation of the home's certificate of approval.
(d) Evidence of conviction for crimes of violence, antisocial behavior or child abuse and neglect shall be among those actions that are considered in determining an individual's suitability to serve as director or staff member in a home.
(e) Evidence of conviction of a crime, in itself, shall not automatically preclude an individual from serving as director or staff member; or from working in the home and shall not automatically result in the removal or termination of a director or staff member. The home shall submit a written justification to the Bureau, indicating any documentation why it feels the individual at issue should not be precluded from working or holding a leadership position at the home.
(f) The home shall disclose to the Bureau, in writing, information about and circumstances surrounding any previous denial, suspension, revocation or refusal to renew a certificate of approval or a license to operate a home either by the Bureau or by the licensing agency of another state. Evidence of a previous denial, suspension, revocation or refusal to renew a certificate of approval or license, shall not in and of itself result in an automatic disqualification of an individual or home to operate a certificate of approval for another or the same home, but shall constitute grounds for the Bureau to investigate the circumstances that led to the original negative action and make a determination as to whether to reject or process the new application for a certificate of approval.
(g) Requirements to prevent child abuse or neglect are as follows:
   1. The director or any staff member shall verbally notify the Division's Office of Child Abuse Control or District Office immediately whenever there is reasonable cause to believe that a child has
Director, social service workers and house parents or child care staff members shall have a full-time agency administrator or home director assigned to the family.

3. In addition to the reporting requirements specified in 1 above, no home shall notify the Division case manager and parents of any unusual incidents that occurred at the home and that might indicate possible abuse or neglect involving the child. Such notification shall be made on the same day on which the incident occurred. Such incidents may include, but are not limited to: acts of aggression, violent or destructive behavior, suicidal threats or behavior, homicidal threats, inappropriate sexual behavior, running away, withdrawal or passivity, drug or alcohol abuse, or significant changes in the child's behavior or habits. The home shall maintain on file a record of such incidents and documentation that parents and Division case managers have been informed of them.

4. The Division, during the course of investigating an allegation of child abuse and neglect, may determine that immediate, corrective action is necessary to protect the children whenever:

i. The director or staff member has been found by the Division's Institutional Abuse Investigation Unit (IAIU) to pose a risk of harm to children; or

ii. The director or staff member has committed an act of child abuse or neglect, as substantiated by the IAIU; or

iii. The director or staff member has been convicted of such acts.

5. Whenever the IAIU makes such a determination, the agency or director shall carry out the Division's recommendation for immediate remedial action and long term corrective action. Such remedial action may include, but not be limited to:

i. Removal or suspension of the affected director or staff members from the home or reassignment to other duties that do not involve contact with the children; or

ii. When the director or staff member resides at the home, removal of the affected employee from the premises.

6. Such suspension, removal or reassignment, as specified in (g)5 above, shall remain in effect until the results of the Division's investigation have been determined, and a final decision in the matter has been rendered by the Bureau.

7. Substantiation of the child abuse and neglect allegation by the Division's IAIU shall not, in itself, automatically result in the termination of the person's continued employment at the home.

i. The director or staff member has been found by the Division's Institutional Abuse Investigation Unit (IAIU) to pose a risk of harm to children; or

ii. The director or staff member has committed an act of child abuse or neglect, as substantiated by the IAIU; or

iii. The director or staff member has been convicted of such acts.

8. Such suspension, removal or reassignment, as specified in (g)5 above, shall remain in effect until the results of the Division's investigation have been determined, and a final decision in the matter has been rendered by the Bureau.

9. When the director or staff member resides at the home, removal of the affected employee from the premises.

10. Such suspension, removal or reassignment, as specified in (g)5 above, shall remain in effect until the results of the Division's investigation have been determined, and a final decision in the matter has been rendered by the Bureau.

(h) The home or agency shall utilize medical, dental, and psychological personnel serving children on either a staff or community provider basis who shall:

1. Be responsible for ensuring that the needs of the children for medical, dental, and psychological services are met; and

2. Be licensed to practice in the state where the staff member or community provider is located, if required by the laws of that state.

10:128-5.2 Staff qualifications

(a) Group homes, supervised transitional living homes and treatmen homes shall have a full-time agency administrator or home director, social service workers and house parents or child care staff members, who shall meet the requirements in (c) through (e) below.

(b) Teaching family home programs shall have a full-time program administrator, teaching family consultants and teaching family parents, who shall meet the requirements in (g) through (j) below.

(c) The full-time agency administrator or home director shall:

i. Be at least 21 years of age;

ii. Have one of the following qualifications:

a. A bachelor's degree in social work, psychology or a related field from an accredited college or university and four years of professional experience in the human services field, two of which shall have been in a supervisory or administrative position;

b. A master's degree from an accredited graduate school in social work, psychology, or a related field and three years of professional experience in the human services field; or

c. For publicly operated homes, meet the requirements of the State Department of Personnel for the position, if applicable;

iii. Be responsible for implementing the overall planning, operation, and management of the home, including the home's recreational and food programs;

iv. Meet the requirements of the State Department of Personnel for the position, if applicable.

(d) The social service workers shall:

1. Be at least 21 years of age;

2. Provide at least two hours of service per week to each child, including, but not limited to, casework services, intake, treatment planning, family contacts, group work services, and maintenance of each child's record; and

3. Be responsible for ensuring that on-duty staff members complete entries in the daily log book that reflect the activities and events of each day; and

4. Be responsible for maintaining aggregate statistical information on children served, including the date of each admission, date of each discharge, and reason for each discharge.

(e) The house parents or child care staff members shall:

1. Be at least 18 years of age;

2. Provide daily care and supervision of the children;

3. Inform the social service staff members or director of any incidents that may impact on the child's treatment planning, as specified in N.J.A.C. 10:128-6.1; 6.2 and 6.3; and

4. Have one of the following qualifications:

i. A bachelor's degree in social work, psychology or a related field from an accredited college or university and one year of professional experience in the human services field; and

ii. A master's degree from an accredited graduate school in social work, psychology or a related field; or

iii. Meet the requirements of the State Department of Personnel for the position, if applicable.

(f) The house parents or child care staff members shall:

1. Be at least 18 years of age;

2. Provide daily care and supervision of the children;

3. Inform the social service staff members or director of any incidents that may impact on the child's treatment planning, as specified in N.J.A.C. 10:128-6.1; 6.2 and 6.3; and

4. Have one of the following qualifications:

i. A bachelor's degree in social work, psychology or a related field from an accredited college or university and one year of professional experience in the human services field; and

ii. A master's degree from an accredited graduate school in social work, psychology or a related field; or

iii. Meet the requirements of the State Department of Personnel for the position, if applicable.

(g) The house parents or child care staff members shall:

1. Be at least 21 years of age;

2. Provide daily care and supervision of the children;

3. Inform the social service staff members or director of any incidents that may impact on the child's treatment planning, as specified in N.J.A.C. 10:128-6.1; 6.2 and 6.3; and

4. Have one of the following qualifications:

i. A bachelor's degree in social work, psychology or a related field from an accredited college or university and one year of professional experience in the human services field; and

ii. A master's degree from an accredited graduate school in social work, psychology or a related field; or

iii. Meet the requirements of the State Department of Personnel for the position, if applicable.

(h) The home or agency shall utilize medical, dental, and psychological personnel serving children on either a staff or community provider basis who shall:

1. Be responsible for ensuring that the needs of the children for medical, dental, and psychological services are met; and

2. Be licensed to practice in the state where the staff member or community provider is located, if required by the laws of that state.
emotionally disturbed or handicapped children in a group setting; and

3. The person, after he or she is hired, shall work together with an experienced staff member for an initial probationary period of at least six months unless terminated for cause prior to completing the six-month probationary period. After this initial six-month period has ended, the home or agency shall review the person’s work performance, document his or her ability to continue work without being supervised by an experienced staff member and may either:
   i. Appoint the probationary staff member to fill the position as a child care staff member;
   ii. Extend the initial six-month period to further evaluate the performance of the probationary staff member and continue to have the probationary staff member supervised by an experienced staff member; or
   iii. Terminate the probationary staff member after the initial six-month period or any extension of the initial six-month period for failing to perform the job duties and responsibilities of the position.

(g) The teaching family home program administrator shall:
1. Meet the qualifications specified in (e)(1) and 2 above;
2. Provide the Board with current listings of teaching family consultants and the homes to which they are assigned;
3. Ensure that the teaching family homes comply with all applicable provisions of this manual;
4. Designate a staff member to be in charge at all times during his or her absence;
5. Be on call to assist the teaching family consultants in admissions, emergencies and personnel or other problems;
6. Be responsible for ensuring that all teaching family consultants receive an annual performance evaluation; and
7. Assist in the recruitment and training of teaching family parents.

(h) The teaching family consultants shall:
1. Be at least 21 years of age;
2. Meet the requirements of the State Department of Personnel for the position; and
3. Be responsible for ensuring that the teaching family parents perform the duties specified in (i) below.
   (i) The teaching family parents and relief staff shall:
      1. Be at least 18 years of age;
      2. Implement the overall planning, operation and management of the home;
      3. Maintain all staff members’ work schedules, time sheets, and/or payment vouchers for relief staff;
      4. Maintain a daily log book, separate log book or record in the child’s case record of all visits to children;
      5. Complete entries in the daily log book that reflect the activities and events of each day;
      6. Maintain aggregate statistical information on children served, including the date of each admission, date of each discharge, and reason for each discharge; and
      7. Meet all the requirements specified in (e) above.

(j) Teaching family home staff members shall meet staff training and certification requirements of the National Teaching Family Association.

10:128-5.3 Staff to child ratios
   (a) Group homes and supervised transitional living homes shall meet the following staff to child ratios:
      1. The home shall have at least one staff member present in the home or reachable by telephone when the home is in operation but the children are not in the home on a particular day.
      2. The home shall have at least one staff member for every 12 or fewer children when the children are awake and present in the home and when the children are participating in an activity organized by the home.
      3. The home shall have at least one staff member on duty when there are 12 or fewer children in the home and the children are asleep.
         i. In a single-sex home, the staff member may be asleep.
         ii. In a coed home, the staff member shall be awake.
         iii. An additional staff member shall be available to provide emergency in-person coverage within 30 minutes.
   (b) Teaching family homes, supervised transitional living homes serving six or fewer children and treatment homes shall have:
      1. One staff member on duty whenever a child is scheduled to be present in the home;
      2. One staff member as identified in (b) above who is accessible by telephone or beeper at all times when the home is in operation and the children are not present; and
      3. One staff member who can provide emergency in-person coverage within 30 minutes.

10:128-5.4 Staff training and development
   (a) The home shall develop a training plan and the director shall ensure that all staff members, upon employment, are trained in:
      1. The home’s statement of purpose, as specified in N.J.A.C. 10:128-3.1;
      2. The home’s behavior management policy and search and seizure policy, if any, as specified in N.J.A.C. 10:128-6.14 and 6.15;
      3. Emergency procedures, as specified in N.J.A.C. 10:128-4.5(a) (b) and (c);
      4. Protocols for medication, as specified in N.J.A.C. 10:128-7 and 5;
      5. Infection control procedures, as specified in N.J.A.C. 10:128-7.8; and
      6. The home’s techniques for safe physical restraint, if applicable, as specified in N.J.A.C. 10:128-6.13(c)6.
   (b) The home shall ensure that every new staff member is accompanied on his or her duties by an experienced staff member as part of an orientation, until the new staff member is familiar with daily routines and operations of the home.
   (c) The home shall document in each staff member’s record the name of all social service and child care staff members, including full and part-time staff members, receive a minimum of 12 hours of training each year in the following areas:
      1. The principles of behavior management;
      2. Alcohol and substance abuse;
      3. Human sexuality and AIDS; and
      4. Suicide prevention.
   (d) The home’s training plan may include in-depth discussions of staff meetings or attendance at workshops or conferences.

10:128-5.5 Volunteers and student interns
   (a) The home may use volunteers or student interns to support the activities of regular paid staff members, but shall not use volunteers or student interns to substitute for paid staff members.
   (b) The home shall ensure that volunteers and student interns are briefed fully on any special needs or problems they might encounter while working with the children.
   (c) The home shall ensure that volunteers and student interns who have contact with children or parents receive an orientation to the home’s program and are supervised by paid staff members. Volunteers and student interns shall receive authorization from the home prior to accompanying children off-grounds for trips, medical appointments and visits.
   (d) The home shall require references, as specified in 10:128-5.1(b), for volunteers and student interns who provide activities or transportation to a child by themselves.

SUBCHAPTER 6. PROGRAM REQUIREMENTS

10:128-6.1 Treatment plan for children in group homes, teaching family homes and treatment homes
   (a) Group homes, teaching family homes and treatment home shall develop, implement and maintain on file a written individual treatment plan for each child. The plan shall delineate how to meet that child’s needs and to remediate the problems and behavior that led to the child’s placement.
   (b) Group homes, teaching family homes, and treatment home shall form a treatment team that is responsible for the development of a treatment plan for each child. The treatment team shall consist of each of the following:
      1. For group homes and treatment homes:
         i. Staff members representing the clinical component;
         ii. Staff members representing the social work component;
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3. Updated medical and dental examinations, as specified in N.J.A.C. 10:128-7.2; 4. The date when the plan is developed or revised; 5. The names and titles of all persons attending the development or review meeting; 6. The child's social, familial, emotional, behavioral, and academic strengths and weaknesses; 7. Family or friends' visiting schedule or reasons for not scheduling visits; 8. Specific treatment goals in each program area and projected time frames for achieving each goal; 9. The name of the staff member responsible for implementation of each treatment goal; 10. Techniques to be used to achieve each treatment goal; 11. Criteria to be used to determine whether each treatment goal was achieved; 12. A notation of progress made from the previous plan; 13. Documentation of efforts to achieve timely discharge, including, but not limited to, services needed by parents or other persons for whom the child will be discharged; and 14. For children who are 14 years of age and over, how the child is being prepared for self-sufficiency. This documentation shall include, but not be limited to, instruction in: i. Food preparation; ii. Budgeting and money management; and iii. Vocational planning and employment search efforts.

(f) Group homes, teaching family homes, and treatment homes shall send to the Division's case manager or other placing agency a copy of the treatment plan and any revisions to it within 30 calendar days following a child's admission, implement the treatment plan for three months and review or revise the treatment plan at least every three months thereafter.

(g) Group homes, teaching family homes, and treatment homes shall ensure that the child's treatment plan and any revisions to it are explained to the child, his or her parents, and all staff members responsible for the plan's implementation. If the home does not explain the child's treatment plan to the child's parents, the home shall document in the child's case record the reasons why the plan was not explained to the parents.

10:128-6.2 Discharge planning
(a) For discharges that can be anticipated, the home shall develop a plan with the Division's case manager or other placing agency staff at least 30 days before the child's discharge. The plan shall be sent to the Division's case manager or other placing agency* and shall specify the following information:
1. The date of admission;
2. The anticipated or actual date of discharge;
3. Details of the events and circumstances leading to the decision to discharge;
4. The name and address of the individual or agency to whom the child will be discharged and the rationale for planning a discharge to that individual or agency; and
5. An assessment of the child's continuing needs, including, but not limited to, consideration of health care, behavior management and educational or vocational training.
(b) For discharges that were not anticipated at least 30 calendar days ahead of time, the home shall send the Division's case manager or other placing agency a written plan at least 10 working days prior to the child's discharge. This plan shall specify the following information:
1. The date of admission;
2. Details of the events and circumstances leading to the discharge;
3. Efforts made to locate a runaway, if relevant;
4. An assessment of the child's continuing needs including, but not limited to, health care, behavior management and educational and vocational training; and
5. Recommendations for providing follow-up services in the child's new environment.
(c) For emergency discharges that result in the immediate placement of the child in a facility such as a detention center, hospital, psychiatric facility or any other placement outside the home, the home shall notify the Division's case manager or other placing agency by the next working day by telephone. The home shall send a written discharge plan within 10 days after the child's discharge. This plan shall specify the information outlined in (b) through 5 above.

10:128-6.3 Case management plan for children in supervised transitional living homes
(a) The supervised transitional living home shall develop, implement and keep on file a written individualized case management plan for each child. The plan shall delineate how to meet the child's needs and to prepare the child for independent living in the community.
(b) The supervised transitional living home shall develop the initial case management plan within 30 calendar days following a child's admission and shall review or revise the initial case management plan at least every three months thereafter.
(c) The supervised transitional living home shall document in the child's record that the Division's case manager or other placing agency, and the responsible school district of the child, if applicable, were invited to participate in the meeting to develop the case management plan and all subsequent meetings to revise the plan.
(d) The supervised transitional living home shall invite the child's parents to the planning meeting. If the parents do not attend the meeting, the supervised transitional living home shall ensure that the child's case management plan and any revisions to it are explained to the child's parents, or document in the child's case record the reasons why the plan was not explained to the parents.
(e) The case management plan shall include the following information:
1. The name of the child;
2. The date of the child's admission;
3. Updated medical and dental examinations, as specified in N.J.A.C. 10:128-7.2;
4. The date of the meeting at which the plan is developed or revised;
5. The names and titles of all staff members and any other persons attending the development or review meeting;
6. The child's social history, including family background, emotional and behavioral problems and academic strengths and weaknesses;

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7. The family visiting schedule or reasons why visits were not scheduled;
8. Specific case management goals and plan for achieving and monitoring progress;
9. A notation of progress made from the previous plan, if relevant;
10. Goals and recommendations for discharge and aftercare; and
11. A plan for helping the child become self-sufficient, including, but not limited to, instruction in:
   i. Food preparation;
   ii. Budgeting and money management; and
   iii. Career planning and employment and skills training.
(f) The supervised transitional living home shall send to the Division's case manager or other placing agency a copy of the case management plan or any revisions to it within 30 calendar days after the meeting and shall retain a copy of the plan in the child's record.

10:128-6.4 Work and employment
(a) The home shall not allow a child to be responsible for duties assigned to staff members.
(b) The home may require children to perform work assignments in the home that have an instructive value, including household chores, so long as these assignments are not scheduled to interfere with a child's school program, other aspects of the treatment or case management plan, or any regularly scheduled program activity for the children in the home.
(c) The home's staff members shall encourage children to hold part-time employment outside the home, but shall ensure that the work does not interfere with the child's school program, or other aspects of the treatment or case management plan.
   1. The home may require a child to maintain specific academic standards as a condition for seeking or maintaining employment.
   2. The home may prohibit a child's employment, if a child does not maintain appropriate academic or behavioral standards, or if the job is determined to be detrimental to his or her health, safety or well-being.

10:128-6.5 Money and allowance
(a) Group homes, teaching family homes and treatment homes shall provide opportunities for all children to earn an allowance.
(b) The home shall not require a child to assume responsibility for expenses for his or her care and treatment, except for amounts needed to pay for intentional damage done to the home by the child.
   1. When a child damages the home's property, the home shall identify the child who damaged the property in an incident report before requiring the child to pay restitution.
   2. The restitution payments shall not exceed 50 percent of a child's weekly income for family living allowances.
   3. Children who are working or have savings shall have the option to make a lump sum payment for intentional damages.
   4. The home may offer the child the option of performing additional chores in lieu of restitution payments.

10:128-6.6 Visitation and communication
(a) The treatment team shall determine the family members and friends with whom the child may communicate and visit.
   [i] [i] [i] [i] The treatment team shall identify visitors with whom the child may have contact at intake and may revise the list at subsequent treatment planning or case management meetings.
   2. Between treatment planning or case management meetings, the home may curtail a child's contact with individuals after consultation with the Division or other placing agency if the home:
      i. Informs the child of the conditions of and reasons for restriction or termination; and
      ii. Documents in the child's record the reasons for curtailing contact with the specified individuals.
(b) The home shall develop a visiting policy and explain the visiting policy to the child and parents at intake. The visiting policy shall specify:
   1. The hours for visiting family members and how alternative hours may be arranged;
   2. That family visits shall not be denied for a child's infraction of rules, but may be denied if such visits would be contrary to the child's treatment plan;
   3. That visitors who appear to be under the influence of drugs or alcohol shall not be allowed to visit or to transport the child;
   4. That the child may visit his or her Division case manager or other placing agency worker upon request and that these visits shall not be denied for any reason; and
   5. The hours when a child may visit with friends and whether the child's visits with friends may be curtailed for a child's infraction of the rules.
   (c) The home shall adhere to the following policies for the use of the telephone by children:
      i. The home shall permit access to a telephone by the child for telephone conversations with the Division's case managers or other professional persons involved in the child's treatment planning.
      ii. The child shall not be charged a cost for these telephone calls and
         ii. The home shall provide adequate privacy for these telephone calls and all other calls but may locate the telephone in an area where a staff member can observe the child's reactions.
   2. The home shall permit reasonable access to the telephone by the child for telephone conversations with his or her parents. The home may impose restrictions on these conversations if the following conditions exist:
      i. The cost of the telephone calls is prohibitive; or
      ii. The home is complying with a court order which limits the child's contact with his or her parents.
   3. When the home imposes restrictions on a child's access to telephone conversations with his or her parents, as specified in above, the home shall:
      i. Explain the nature of any restrictions to the child; and
      ii. Document the rationale for imposing restrictions in the child record.
   4. The home shall develop and maintain on file a written policy governing the use of the telephone by children when they communicate with friends. The home may impose one or more of the following conditions:
      i. Restricting the time and duration of telephone calls;
      ii. Requiring the child to pay for telephone calls with friends;
      iii. Denying the child the use of the telephone for infraction of house rules; and
      iv. Requesting the child to identify telephone callers.
   5. The home shall not use tapes or any other mechanical listener devices to monitor a child's telephone calls.
(4) The home shall not restrict the amount of mail a child sends or receives, unless a court order stipulates such restriction.
   1. The child shall receive a postage allowance and writing materials for corresponding with family, friends and other persons who have a positive impact on the child's treatment.
   2. No staff member shall open the child's parcels or letters or read the child's letters unless the child is physically incapable of doing so and only in the presence of both the child and another staff member.
   3. A staff member may ask a child to open parcels and letters if the staff member's presence along with at least one other staff member is necessary if he or she suspects the contents to be contraband, as specified in N.J.A.C. 10:128-6.15.
   i. If the child refuses to comply with the staff member's request the home shall store the parcel or letter in a secure place until the child complies or is discharged.
   ii. The home shall document the rationale for and the outcome of all incidents when a staff member asks a child to open mail without a staff member's presence.
10:128-6.7 Education
(a) The home shall ensure that each school-age child receives a educational program pursuant to N.J.S.A. 30:4C-26(c) and N.J.S.A. 18A:7B-12(a).
(b) The home shall make efforts to ensure that the child is enrolled in a local community school, if appropriate.
   1. The home shall document efforts to locate a school setting for the child and specify how the child's school progress will be monitored.
2. After the child is enrolled in a school program, the home shall document contacts with school personnel to discuss the child's progress at each treatment planning meeting.

(c) If a child is receiving education through home instruction, the home shall:
1. Provide space within the home for such home instruction; and
2. Document when home instruction was provided.

(d) If a school-age child is not receiving an educational program, the home shall:
1. Document in the child's record the reasons why educational programming is not feasible;
2. Maintain contact with the responsible school district and/or the local school district to ensure that the school districts are actively issuing alternate educational programming; and
3. Document in the child's record what the child is doing during school hours.

(e) The home shall provide appropriate instructional, educational, and recreational activities for children not of school age who are in the home during school hours. These activities shall be reflected in the child's treatment plan.

128-6.8 Recreation
(a) Group homes, teaching family homes and treatment homes shall plan or provide a balanced on-grounds and off-grounds recreational program. The recreation program shall include planned individual and group activities.
(b) Group homes shall have a written schedule of daily planned recreational and leisure time activities.
1. The home shall ensure that this schedule is developed with input from staff members and children.
2. The home shall keep these schedules on file for 90 calendar days.
(c) Supervised transitional living homes shall encourage children to use their leisure time productively by documenting their efforts:
1. Inform children of appropriate activities in the community;
2. Teach children how to manage time and money to be able to participate in recreational activities; and
3. Teach children how to use public transportation.

128-6.9 Religion
(a) If a home's program has a particular religious orientation, the home shall maintain on file in the home a written description of its religious orientation and any religious practices or restrictions that are observed. Before the child's admission, the home shall give this description to the child and the parents and discuss its religious tenetation, if any.
(b) The home shall ensure that every child is afforded the opportunity to participate freely in religious activities and/or services according to his or her own faith or with that of his or her parents.
(c) The home shall ensure that every child is permitted to attend religious activities and services in the community and the home shall provide transportation for any child who wishes to attend religious activities or services.
(d) The home shall not coerce or require children to participate in religious activities.
1. The home shall not punish children who choose not to participate in religious activities.
2. The home shall not give special rewards to children for participating in religious activities.

128-6.10 Rest, bedroom and sleep
(a) The home shall ensure that:
1. Every child is provided with a standard household bed or crib, age appropriate, in sanitary condition;
2. Every set of bunk beds is limited to two in height:
   i. Have railings on top bunks that are no more than 3 1/2 inches from the top of the bed frame; and
   ii. Have mattresses that are at least five inches from the top of the frame;
3. Every bed or crib is equipped with a firm, sanitary, fire retardant mattress and waterproof mattress cover;
4. Every child is provided with sanitary bed linens that are changed weekly, a blanket or other suitable covering that is cleaned or replaced, as necessary, and a pillow;
5. Two or more children do not share the same bed;
6. Children who are 18 months of age and older do not share the same bedroom with an adult, unless the adult is the mother and they are in placement in a home that provides services to pregnant and parenting adolescents;
7. A child does not sleep on the same bed or crib that another child has occupied unless the bed linen is changed;
8. Children who are five years of age or older occupy a bedroom only with members of the same sex;
9. Any bedroom occupied by children has natural light and ventilation provided by one or more windows opening directly to the exterior;
10. An unfinished attic or basement is not used for sleeping purposes;
11. All rooms used as bedrooms are not used for any other purpose;
12. Each child is provided with a chest of drawers or some other permanent arrangement for storage of clothing and other personal belongings, including storage space or the equivalent;
13. Each child is permitted reasonable freedom to express his or her personal tastes in the decoration of his or her bedroom or living area;
14. Each child has the opportunity for at least eight hours of uninterrupted sleep each night. Schedules for waking and retiring each day shall be adapted according to the ages, physical condition and characteristics of the children in each group;
15. The facility does not permit more than four children to occupy a designated bedroom or living space for sleeping. If partitions are used to designate a bedroom space, the facility shall ensure that the arrangement and height of partitions shall provide privacy for the occupants of the space;
16. Every bedroom is provided with a reading lamp or other means of artificial light for quiet activities; and
17. Every bedroom window is equipped with curtains, shades or blinds.

128-6.11 Food and nutrition for children
(a) The home shall ensure that each child is provided with three nutritious meals daily, either in the home itself or in the community.
1. The home shall make daily snacks available for children who desire them, unless there is a medical reason not to provide them.
2. The home shall select, store, prepare, and serve food in a sanitary and palatable manner.
3. The home shall prepare and date menus and keep the menus on file at the home for a minimum of 90 calendar days.
4. The home shall provide table service for children.
5. The home shall serve meals in a manner that makes mealtime a pleasant social experience.
6. The home shall not force-feed or otherwise coerce a child to eat, except by order of a physician.
(b) The home shall ensure that the daily diet for each child includes a balance of foods from the four basic food groups.
1. The home shall ensure that each meal contains a sufficient amount of food for every child.
2. The home shall make available, as necessary, an alternate choice of food for each meal served for children on special diets or children who, because of religious beliefs, cannot eat particular foods.
3. The home shall follow individualized diets and feeding schedules that are submitted to the home by the child's physician or registered dietician.

128-6.12 Pets
(a) The home shall ensure that pets kept by or located in the home, regardless of ownership, shall be:
1. Domesticated and non-aggressive;
2. Free from disease;
3. Vaccinated, as prescribed by law or as recommended by a licensed veterinarian. The record of the vaccinations shall be maintained on file at the home, along with the name and address of the licensed veterinarian providing care for the pet;
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4. If sick, removed from the area occupied by children, until the pet has been examined by a licensed veterinarian;
5. Effectively controlled by leash, command or cage; and
6. Prohibited from toilet facilities for staff members and children.
(b) The home shall ensure that animal waste is disposed of in a manner that prevents the material from becoming a community health or nuisance problem. Accepted methods include:
1. Burial;
2. Disposal in sealed plastic bags; and
3. Utilization of:
   i. A municipally approved trash removal system; or
   ii. A sewage system for feces.
(c) The home shall ensure that all pet dishes, food and equipment used for pets are kept out of the home's food preparation and food serving areas when food is being prepared or served.
(d) If a pet poses a health hazard to children, the home shall take corrective action that is approved by the licensing agency.
(e) The home shall ensure that pregnant adolescents are not permitted to clean a cat's litter box.

10:128-6.13 Restrictive behavior management practices
(a) Homes that choose to utilize restrictive behavior management practices shall develop policies and procedures that assist children in gaining control of their behavior, protect the children from self-harm, protect other children or staff members, and prevent the destruction of property.
(b) The home shall:
1. Obtain written approval from the Bureau for any restrictive behavior management practice that the home plans to utilize prior to its implementation with children; and
2. Not utilize restrictive behavior management practices as a means of punishment, for the convenience of staff members, or as a substitute for a treatment program.
(c) Prior to the child's admission, the home shall:
1. Explain to the parents, the child, the Division's case manager or other placing agency any restrictive behavior management practice that is used, the circumstances under which it will be employed, and the possible risks involved; and
2. Obtain written consent for the use of each restrictive behavior management practice from the child's parents.
(d) The home shall ensure that the consent form is written in plain language and that either a translated version or an interpreter is available to explain it to non-English speaking parents.
(e) Whenever the parents refuse to consent to a restrictive behavior management practice, revoke their consent for the practice, or cannot be located to give consent, the home shall:
1. Refrain from utilizing the practice and apply other, non-restrictive interventions until such consent is obtained; and
2. Request that the Division's case manager and the placing agency obtain the necessary consent, either through administrative action pursuant to an agreement between the parent, the Division and other placing agency or through legal action, if necessary to protect the best interests of the child.
(f) The home shall maintain a copy of all signed consent forms in the child's records.
(g) At least 10 working days before each staffing or treatment planning meeting, the home shall send a certified letter to the child's parents and a regular letter to the Division's case manager and other placing agency, which shall:
1. Inform them of the frequency and duration of any restrictive behavior management practice that was used with the child;
2. Describe how the child responded to the treatment; and
3. Invite them to the treatment planning meeting to discuss the child's program and progress.
(h) The home shall develop and maintain on file in the home or home's administrative office a policy indicating which restrictive behavior management practices the home uses.
(i) Homes that utilize physical restraint with children shall:
1. Ensure that physical restraint is used only to protect a child from self-harm, or to protect other children or staff members, or to prevent the destruction of property when the child fails to respond to non-restrictive behavior management interventions;
2. Ensure that staff members use only therapeutic physical restraint techniques and holds, such as the basket hold or restrain the child in the prone position. These techniques and holds shall not be utilized if the child has:
   i. Not received a medical examination that documents that he or she will not be adversely affected; or
   ii. A documented respiratory ailment such as asthma;
3. Ensure that a child is released from restraint as soon as he or she has gained control;
4. Document each physical restraint incident in an incident report that reflects the following:
   i. The name of the child;
   ii. The date and time of day the restraint occurred;
   iii. The name(s) of all staff members involved in the restraint;
   iv. Precipitating factors that led to the restraint;
   v. Other non-restraint interventions attempted;
   vi. The time the restraint ended;
   vii. The condition of the child upon release; and
   viii. A medical review by the nurse or physician if injury to the child is suspected;
5. Ensure that all restraint incidents are:
   i. Reviewed by a supervisory staff member within one working day after the incident; and
   ii. If needed, discussed with the staff member involved in the restraint incident within one working day after the incident.
6. Ensure that staff members who are involved in the restraint of a child receive training in safe techniques for physical restraint; and
7. Prohibit staff members from utilizing the following practices during a physical restraint:
   i. Pulling a child's hair;
   ii. Pinching a child's skin;
   iii. Twisting a child's arm or leg in such a manner that causes the child pain;
   iv. Kneeling or sitting on the chest or back of a child;
   v. Placing a choke hold on a child;
   vi. Bending back a child's fingers; and
   vii. Allowing other children to assist in the restraint.
(j) Homes that utilize exclusion shall:
1. Inform staff members through written policy of the circumstances when exclusion may be utilized as a behavior management intervention, such as:
   i. Disruptive behavior, including fighting, name calling and pushing;
   ii. Increased agitation on the part of the child;
   iii. Non-compliant behavior or failure to participate in the program; and
   iv. Uncontrollable emotional outbursts such as crying, screaming and inappropriate laughter;
2. Ensure that the child being excluded has no record of suicidal behavior;
3. Prohibit more than one child from being excluded in a room or area at a time;
4. Ensure that at least one staff member is responsible to make visual contact with the child every 10 minutes and is within hirn's distance of a child when the child is removed from the group;
5. Ensure that the home does not utilize a closet, bathroom, unfinished basement, unfinished attic or locked room when excluding a child from the group;
6. Ensure that the exclusion of a child from the other children does not exceed 30 minutes and a child is not excluded from the group for more than a total of two hours in a 24-hour period;
7. Document each exclusion of a child in an incident report that reflects the following:
   i. The name of the child;
   ii. The date and time of day the exclusion occurred;
   iii. The name(s) of all staff members observing the child;
   iv. Precipitating factors that led to the exclusion;
   v. Other intervention attempted;
   vi. The time the exclusion ended; and
   vii. The condition of the child upon release; and
8. Ensure that the child is reintroduced to the group in a sensitive non-punitive manner as soon as he or she has gained control.

(k) The home shall not utilize mechanical restraint on any child, except:
1. A straight jacket;
2. Leg irons;
3. A papoose board;
4. A rope;
5. Metal handcuffs;
6. Body wraps;
7. Body tubes;
8. Teflon handcuffs;
9. Blanketing; and
10. Four and five point restraint.

(i) The home shall not have a behavior management room, which a room specifically designed and constructed for the isolation of children.

18-6.14 Discipline and control

(a) The home shall develop house rules to help the children develop self-control and conform to acceptable patterns of social behavior.
1. The home shall put the house rules in writing.
2. The house rules shall include a rationale for such rules and lineate the consequences for infractions.
3. The home shall explain its disciplinary practices individually to each child at the time the child is placed in the home.
4. The house rules shall be maintained on file in the home and ade available to parents, as specified in N.J.A.C. 10:128-3.3.
5. The house rules may be incorporated in the child's bill of rights, specified in N.J.A.C. 10:128-3.2.

(b) The home shall assign responsibility for the discipline, control, and supervision of children to staff members and shall not delegate at responsibility to other children.
(c) The home shall not threaten discipline or administer discipline a child for the misbehavior of another child or group of children.
(d) The home shall prohibit the following types of punishment from being used on a child:
1. Any type or threat of physical hitting or the use of corporal mishment;
2. Forced physical exercise or forcing a child to take an unacceptable position;
3. Subjection to verbal abuse, ridicule, humiliation, or other forms degradation;
4. Deprivation of meals, sleep, mail, clothing appropriate to the age or time of day, or verbal communication;
5. Mechanical or chemical restraint;
6. Assignment of overly strenuous physical work;
7. Exclusion from any essential program or treatment service, such education or clinical treatment;
8. Refusal or entry to the residence;
9. Temporary suspension and return of a child from the home to parent, relative, foster home, or shelter, unless approved by the acting agency; and
10. Seclusion in a locked room.

18-6.15 Search and seizure of weapons and contraband

(a) Homes may conduct searches for weapons or contraband, ovided that they maintain on file in the home written policies and procedures that are consistent with the requirements of this manual.
1. The home shall define contraband to include illegal drugs, un­
2. Inspects all such items that are in plain view; and
3. Summons a law enforcement officer to conduct a lawful search of the possessions within the child's immediate control whenever the child refuses a voluntary search by the home staff member.
(e) The home may conduct periodic, unannounced searches of a child's room and other possessions not within a child's immediate possession or control if:
1. The home has explained and documented this practice to the child and his or her parents, as specified in N.J.A.C. 10:128-3.3 and 3.6.
2. The search is conducted in the presence of two staff members, one of whom has supervisory or administrative responsibility; and
3. The home allows the child an opportunity to be present during a search. If the child declines the opportunity, the staff members may conduct the search in the child's absence.
(f) When unannounced room searches occur, as specified in (e) above, the home shall verify which child is responsible for any weapon or contraband brought into the home before imposing a consequence on the child.
(g) Before a home conducts a blood or urine screening on a child to determine substance abuse, the home shall ensure that:
1. Substance abuse screenings are conducted only under the following limited circumstances:
   i. When screening is ordered by the court;
   ii. When the home is specifically designated as a drug treatment facility; or
   iii. When ordered by a physician who has determined that such screening is necessary; and
2. Substance abuse screenings are conducted only if:
   i. The home has informed the child and parents, if available, beforehand about the screening;
   ii. The home uses a licensed facility to conduct the screening, including drawing the sample and completing the analysis;
   iii. The home ensures that the child has privacy when a urine sample is collected, unless the home documents that the child has a history of falsifying samples. If the child has such a history, the home shall request appropriate medical staff of the same sex as the child to witness or verify that the child is not falsifying samples; and
   iv. The home verifies the accuracy of all positive tests through a second screening; and
3. Substance abuse screenings are discontinued whenever previous screenings result in three consecutive negative readings after the initial positive reading was documented, unless a court order requires continued screenings.

(h) The home shall maintain on file an incident report for every instance involving a frisk search of a child, a staff member's request for a child to empty a possession within the child's immediate control, a room search resulting in the discovery of weapons, illegal drugs or other contraband, and a blood or urine screening.

18-6.16 Firearms and weapons

(a) The home shall not maintain any firearm, chemical or other weapon within or on the grounds of the home.
The home shall prepare and implement a comprehensive health plan to ensure that each child's medical, dental, and other health needs are met adequately and promptly.

1. The home shall identify a physician or health care organization who will assume responsibility for routine medical care of each child.

2. The home shall arrange for emergency, routine and follow-up medical care for each child.

10:128-7.2 Health care and medical treatment for children

(a) Within 72 hours after admission, the home shall ensure that each child receives a medical examination, as defined in (d) below, unless the child had received such a medical examination within 30 calendar days prior to his or her placement.

(b) When the home suspects that a child is ill or carrying a contagious disease, the child shall be examined by a physician prior to admission.

(c) When the home suspects that a child has been abused or neglected the home shall ensure that the child is examined by a physician immediately upon admission.

(d) The home shall ensure that each child receives an annual comprehensive physical examination and maintain a copy of this physical examination in the child's record.

1. The physical shall include, but is not limited to:
   i. A measurement of height and weight;
   ii. A determination of blood pressure;
   iii. An objective vision screening which uses a Titmus or Snellen test, or equivalent;
   iv. A hearing screening using an audiometer and, if indicated, tympanometry;
   v. A hematocrit or Hemoglobin test, if indicated; and
   vi. A urinalysis, if indicated.

2. The home may use vision and screening tests completed at the child's school if these tests meet the requirements specified in (d)(iii) and (iv) above.

3. The home shall ensure that eye glasses, orthopedic apparatus or other equipment is available to each child who requires them.

4. The home shall ensure that all children 13 years of age and under receive a Mantoux test unless they have had tuberculosis, and ensure follow-up with the physician if test results are positive.

5. The home shall ensure that all children are appropriately immunized.

(e) The home shall ensure that each child receives a dental examination within three months following admission and at least semi-annually thereafter.

(f) The home shall ensure that children between two and six years of age receive developmental evaluations by a physician, nurse or other appropriate health official.

10:128-7.3 General medical practices

(a) The home shall ensure that any medical, dental, psychological and psychiatric treatment or medication administered to a child is explained to the child.

(b) When serious accidents or illnesses occur to a child, the home shall take *necessary* emergency action and notify the parents immediately. The home shall document these incidents in the child record.

(c) When a child or staff member has a communicable disease, the home shall:

1. Obtain a note from a licensed physician treating the child or staff member, confirming the diagnosis and indicating that there is no risk to the child or staff member, or to others before the child or staff member participates in group activities;

2. Isolate the child or staff member posing a risk to others; or

3. Contact the New Jersey State Department of Health, the local health department or other appropriate public health authority who the child or staff member has a reportable disease, as specified in the table below.

TABLE OF COMMUNICABLE DISEASES

<table>
<thead>
<tr>
<th>Respiratory illnesses</th>
<th>Gastro-intestinal illnesses</th>
<th>Contact illnesses</th>
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</thead>
<tbody>
<tr>
<td>Chicken pox</td>
<td>Giardia lamblia*</td>
<td>Impetigo</td>
</tr>
<tr>
<td>German measles*</td>
<td>Hepatitis A*</td>
<td>Lice</td>
</tr>
<tr>
<td>Hemophilus</td>
<td>Salmonella*</td>
<td>Scabies</td>
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<tr>
<td>influenzia*</td>
<td>Shigella*</td>
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<td>Measles*</td>
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<td>Meningococcus*</td>
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<tr>
<td>Mumps*</td>
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<tr>
<td>Strep throat</td>
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<tr>
<td>Tuberculosis*</td>
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<tr>
<td>Whooping cough*</td>
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</tbody>
</table>

*Reportable diseases, as specified in N.J.A.C. 10:128-7.3(c).
The home shall not administer medication to children as a physician who prescribed the medication. A new blood count test is not required as long as the child had a blood count test within one year of admission, unless the medication prescribed does not require routine follow-up blood work, this blood count test shall be administered prior to the child’s beginning his or her medication regimen. The medication prescribed does not require routine follow-up blood work, a new blood count test is not required as long as the child had a blood count test within one year of admission, unless the psychiatrist determines otherwise: 

i. Urinalysis; 

ii. Blood screening to include an assessment of liver and renal functions, if indicated; 

iii. Cardiogram (EKG) and electroencephalogram (EEG), as indicated, on children with previous histories of cardiac abnormalities central nervous system disorders; and

A written description of:

i. Non-pharmacological interventions that were considered or attempted to address the child’s behavior; 

ii. The purpose of the medication, the specific behavior(s) of the child to be modified and ways in which progress towards the treatment objectives will be measured; 

iii. The dosage; and 

iv. How possible side effects will be monitored and reported to the physician who prescribed the medication. 

c) Within two weeks after admission, the home shall ensure that children already receiving psychotropic medication receive a medical assessment by a physician, as specified in (b) above. 

d) The home may waive the regulations for a pre-treatment clinical assessment by a physician, as specified in (b) above. 

2. The person requesting written informed consent shall ensure that parents, guardians and children are informed about:

i. The behavior or symptoms which the medication is intended to modify; 

ii. The dosage; and 

iii. How possible side effects of the medication will be treated. 

3. When a request for written informed consent is made by staff, the staff member shall inform the parent that a physician is available for consultation regarding the proposed medication. 

4. The home may obtain verbal informed consent by telephone from the child’s parents when the home, physician, registered nurse or staff member is unable to obtain written informed consent, provided that:

i. The home documents the telephone call in the child’s record; and 

ii. The home obtains the written informed consent from the child’s parents or legal guardian within 24 hours of receiving the verbal informed consent. 

5. If the home cannot obtain written informed consent or verbal informed consent, the home shall use certified mail, return receipt requested, and shall send the request to the parent’s or legal guardian’s last known address at least 10 calendar days before the proposed date for the commencement of treatment. The written notice shall specify:

i. The proposed date for beginning of treatment; and 

ii. That a failure to respond by the proposed date for the beginning of treatment shall empower the director, after consultation with the Division’s case manager or other placing agency to grant consent for the medication. 

6. The home shall document all methods for requesting written consent in the child’s record. 

(f) When a parent, legal guardian or child refuses or revokes consent for medication, the following procedures shall apply:

1. The treating physician or his or her designee shall speak to the child or the parent or both to respond to the concerns about the medication. This person shall explain the child’s condition, the reasons for prescribing the medication, the benefits and risks of taking the medication, and the advantages and disadvantages of alternative courses of action; 

2. If the child or parent continues to refuse or revoke consent to medication and the physician or his or her designee still believes that medication is a necessary part of the child’s treatment plan:

i. The director of the home shall advise the child and the parent that the matter will be discussed at a meeting with the child’s treatment team and shall invite the child and parent to attend such meeting; 

ii. The director of the home may suggest that the child and parent discuss the matter with a person of their own choosing, such as a relative, attorney, physician, or mental health clinician; 

iii. The treatment team shall meet to discuss the treating physician’s recommendations and the response of the child or parent; and 

iv. The treatment team shall attempt to formulate a viable treatment plan that is acceptable to the child and parent. 

3. If, after the treatment team meeting, the child or parent continues to refuse or revoke consent to medication and the treating
The home shall maintain on file the results of each staff member's Mantoux tuberculin test or chest x-ray when indicated; and if the staff member has a previous positive Mantoux tuberculin test, the staff member shall have a chest x-ray taken if he or she had a previous positive Mantoux tuberculin test. The staff member shall submit to the home written documentation of the results of each test or x-ray.

(b) Before working for a home and every three years thereafter each staff member who comes in contact with the children for an equivalent of eight hours a week or more shall submit a written statement from a licensed physician indicating that he or she is in good health and poses no health risk to persons at the home. This statement shall be based on a medical examination conducted with the six months immediately preceding such person's association with the home.

(c) The Bureau, home or agency shall require that the staff member obtain a written statement from a physician certifying that he or she poses no threat of tuberculosis or if the State Department of Health recommends retesting.

(d) If the Mantoux tuberculin skin test result is significant (10 more mm of induration), the individual shall have a chest x-ray taken. If the chest x-ray shows positive results, the home or agency shall require that the staff member obtain a written statement from a physician certifying that he or she poses no threat of tuberculosis before allowing the staff member to come in contact with the children. The home shall ensure that the staff member is immediately excluded from the home and that the home or agency document the action taken to exclude the staff member and maintain contact with all other staff members. The home or agency shall document in the staff member's personnel record. The home or agency shall not permit the staff member to resume duties until the condition is no longer present.
DOPTIONS

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1:128-7.8 Environmental sanitation and staff hygiene
(a) Staff members shall use disposable rubber gloves, which shall be discarded after each use, when coming into contact with blood, vomit, urine, fecal matter or other body secretions.
(b) The home shall ensure that areas in the home, bedding, furniture, carpeting, and clothing, that come into contact with blood, vomit, urine, fecal matter or other body secretions are disinfected with a commercially prepared disinfectant that indicates it kills bacteria, viruses and parasites. This solution shall be used in accordance with label instructions.
(c) The following equipment items or surfaces shall be washed and disinfected after an incident, as specified in (b) above:
1. Toilet seats;
2. Sinks and faucets;
3. Mops that were used in the clean-up;
4. Washcloths, towels and sponges that were used in the clean-up; and
5. Thermometers.

SUBCHAPTER 8. TRANSPORTATION REQUIREMENTS

3:128-8.1 General requirements
(a) The provisions of this subchapter shall apply to any home or agency that provides or arranges transportation for children:
1. To or from their homes or other prearranged sites and the home; or
2. In connection with an activity (such as a field trip) conducted by or through the auspices of the home or agency.
(b) Any home, person or agency, as defined in (a) above, shall comply with applicable provisions of New Jersey Division of Motor Vehicles law, pursuant to N.J.S.A. 39:3-76.2a and regulations promulgated thereunder, as specified in N.J.A.C. 13:39:3-76.2a.
(c) The home or agency may authorize staff members to utilize their own private passenger vehicles to transport children from the home, to or from scheduled field trips or to transport children from the home to a hospital, clinic or office for medical treatment. However, staff members may be authorized to do so only if:
1. The vehicle has a capacity of eight or fewer persons;
2. The driver possesses a valid automobile driver's license issued by the New Jersey Division of Motor Vehicles, hereinafter referred to as the DMV;
3. The vehicle has a valid motor vehicle inspection sticker issued by the DMV;
4. The vehicle owner possesses liability insurance at least at the minimum amounts required by the New Jersey State insurance law, pursuant to N.J.S.A. 17:28-1.1a;
5. The home maintains transportation records on every vehicle utilized for the above, as specified in N.J.A.C. 10:128-8.4; and
6. The home or agency ensures that the staff members apply the safety practices, as specified in N.J.A.C. 10:128-8.1(d) and (e).
(d) The home or agency shall ensure that all vehicles used to transport children:
1. Are maintained in clean and safe condition;
2. Have a maximum seating capacity that does not exceed the number of seat belts;
3. Have seats and back rests securely fastened;
4. Have all seats that are facing sideways or backwards bolted down;
5. Have seats upholstered with springs or foam rubber;
6. Have an operable heater capable of maintaining a temperature of 50 degrees Fahrenheit; and
7. Are equipped with:
   i. A triangular portable red reflector device;
   ii. All weather radials or snow tires from November 15 through April 1 (for New Jersey-based homes only); and
   iii. A removable, moisture-free and dust-proof first-aid kit, which shall be located in the vehicle.
(e) The home or agency shall ensure that the following safety practices are followed:
1. A staff person is always present when an adolescent, child or infant is in the vehicle;
2. All passengers who are over one and one-half years of age are secured in an operable seat belt or car seat while the vehicle is in motion; and
3. All passengers, who are one and one-half years of age or less are secured in car seats (child passenger restraint systems) that meet Federal motor vehicle safety standards in accordance with provisions of the New Jersey Motor Vehicles Law, pursuant to N.J.S.A. 39:3-76.2a.
4. Four adolescents, children and infants are loaded and unloaded from the curbside of the vehicle; and
5. Children are not permitted to ride in the back or beds of trucks.
(f) When transporting more than six children below six years of age the home or agency shall ensure that one adult in addition to the driver remains in the vehicle.
(g) When transporting more than four infants without their adolescent mothers, the home shall ensure that one adult in addition to the driver remains in the vehicle.
(h) The home or agency shall maintain transportation records, as specified in N.J.A.C. 10:128-8.4.

(i) If the home decides to utilize a Type I School Bus, Type II School Bus or a Type II School Vehicle, the home shall:
1. Meet all appropriate Division of Motor Vehicles (DMV) rules, Department of Education rules and/or Department of Human Services rules; and
2. Ensure that the drivers of such vehicles possess a valid New Jersey Type I School Bus driver's license, or possess a valid New Jersey Type II School Bus driver's license, or an out-of-State equivalent license, as approved by the DMV.

(j) The home shall limit travel in program vehicles including cars, vans and wagon trains by:
1. Scheduling at least one full day of rest after every four days of travel;
2. Ensuring that no staff member drives for more than four hours without a 30-minute break; and
3. Prohibiting driving between 11:00 P.M. and 6:00 A.M., unless it is necessary to complete an emergency evacuation.

10:128-8.2 Vehicle insurance requirements
(a) The home or agency shall maintain vehicle liability insurance for bodily injury or death in minimum amounts of $300,000 per person and $500,000 per accident for every vehicle that is:
1. Owned or leased by the home or agency; and
2. Utilized to transport children residing in the home.
(b) If the home or agency contracts transportation services, the home shall ensure that the company maintains insurance coverage as identified in (a) above.

10:128-8.3 Additional requirements for transporting physically handicapped, non-ambulatory children
(a) Homes or agencies providing or arranging for transportation services for physically handicapped children who are non-ambulatory shall have a vehicle that has a ramp device or hydraulic lift with a lift minimum pay load of 600 pounds. Any ramp device that is installed shall:
1. Have a non-skid surface;
2. Be securely stored and protected from the elements when not in use; and
3. Have at least three feet of length for each foot of incline.
(b) If wheelchairs are used, the home shall ensure that:
1. All wheelchairs are securely fastened and face forward;
2. All wheelchair passengers are secured with a seat belt;
3. Arrangements for wheelchairs do not impede access to emergency and exit doors; and
4. Any aisle leading from a wheelchair position to the emergency or exit door has a minimum width of 30 inches.

10:128-8.4 Record requirements
(a) The home or agency shall maintain on file the following:
1. A photostatic copy of the driver's license of each person whom the home or agency has authorized to transport children;
2. A photostatic copy of the registration of each vehicle used to transport children;
3. A staff person is always present when an adolescent, child or infant is in the vehicle;
4. Record of all relocations within the home or agency; and
5. Transportation records, as specified in N.J.A.C. 10:128-8.4.
3. A copy of the insurance policy for every vehicle owned, leased, contracted or utilized by the home or agency; and
4. The name and address of the lessor or contractor furnishing a vehicle to the home or agency, if relevant.

(b) The home or agency shall maintain transportation maintenance records for all vehicles used by the home for the transportation of children, including repair and inspection records, and shall retain them for the lifetime of the vehicles.

(c) The home or agency shall develop and maintain on file a log of all trips where the home’s vehicles are used that documents:
   1. The times each staff member drove;
   2. The mileage covered; and
   3. Incidents of the day.

SUBCHAPTER 9. ADVENTURE ACTIVITIES

10:128-9.1 General requirements
(a) The requirements of this subchapter shall apply to any home or any agency that provides or contracts for adventure activities that may include, but are not limited to:
   1. Biking;
   2. Canoeing, kayaking and tubing;
   3. Caving;
   4. Hiking;
   5. Horseback riding;
   6. Ropes and rock climbing;
   7. Sailing and boating;
   8. Snow skiing;
   9. Solos;
   10. Swimming;
   11. Water skiing; and
   12. Camping.

(b) All homes whose program consists primarily of adventure activities shall maintain on file a written statement of purpose that shall identify the following:
   1. The home’s philosophy, goals, and objectives;
   2. Characteristics of the children to be served;
   3. Types of adventure activities that a child may participate in and other treatment services provided to the children, including those provided directly by the home and those services that may be provided in cooperation with community agencies or outside individuals;
   4. Procedures for implementing those services; and
   5. Criteria for successful completion of the program.

(c) For homes whose program consists primarily of adventure activities, the home shall describe to the child and the parents prior to admission to the facility, the types of adventure activities in which the child will be asked to participate. This discussion shall include:
   1. An explanation of the anticipated benefits of the activity;
   2. A description of the potential risks of the activity, as well as an explanation of how the facility will take precautions to minimize such risks; and
   3. A clear statement that no child will be forced to do an adventure activity against his or her will.

(d) For homes whose program does not consist primarily of adventure activities, the home shall discuss with the child and his or her parents the information specified above before the child is scheduled to participate in the activity.

(e) The home shall document that a staff member discussed the information specified in (c) and (d) above in the child’s record.

(f) The home shall maintain on file at the home or home’s administrative office a list of all children and staff members who participate in an adventure activity, but may require a child to observe an adventure activity to assist the child in getting over his or her fears of particular activity or to foster an interest in participating in a particular activity.

(g) The home shall ensure that staff members discuss the following topics with all the children who have participated in an adventure activity:
   i. How they felt during and after the activity; and
   ii. What they learned about themselves as individuals and members of a group after completing the activity.

(h) The home shall prohibit children from participating in adventure activities, the home shall ensure that all children and staff receive instruction about the value of the activity and necessary safety precautions, such as how to prevent dehydration, frostbite, heat exhaustion, hyperthermia, hypothermia, poisoning from plants and animals, sun poisoning, snow blindness, or drowning.

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5. Policy that indicates when to call law enforcement agencies and telephones numbers of local law enforcement officials; and
6. Procedures for reviewing the incident with the person(s) who conducted the search.

(c) For adventure activities occurring outside the home, the home shall ensure that each staff member supervising an adventure activity:
1. Reviews the plan detailing the procedures for emergency evacuation;
2. Reviews the plan detailing the procedures for search and rescue; and
3. Brings a copy of these plans on each adventure activity.

(d) The director of the home or his or her designee shall document and maintain on file at the home or home's administrative office that all emergency evacuation and search and rescue missions were reviewed within five days of the incident, and issue a statement to staff members indicating approval or recommendations for improving these practices, if applicable.

(e) For adventure activities occurring outside the home's grounds, the home shall give at least one staff member money or credit cards to handle emergencies.

0:128-9.3 Reporting requirements
(a) The home shall report all fatalities and all accidents requiring hospitalization or medical care by a physician to the Bureau as soon as staff have access to a telephone, as specified in N.J.A.C. 10:128-3.7(b).
(b) The home or agency shall provide written notification and maintain on file reports of all incidents and accidents requiring hospitalization or medical care by a physician, and incidents where an accident or fatality was avoided ("near miss") within five working days of the incident.
1. This documentation shall specify:
   i. The factors leading to the incident;
   ii. The nature of the fatality, accident or "near miss";
   iii. How staff members handled the incident; and
   iv. Recommendations for avoiding such incidents in the future.
2. The director of the home or his or her designee shall document in writing and maintain on file that he or she reviewed every incident and accident within five working days after the incidents or accidents occurred.
3. The home shall send a written report within 10 working days of the incident or accident to the Bureau and to the child's parents about what precautions have been taken to prevent a similar kind of incident or accident from occurring in the future.
(c) The home shall submit a written description to the Bureau and permit an on-site inspection prior to its implementation of the following high risk adventure activities:
1. Caving;
2. Ropes and rock climbing; and
3. Solo camping.
(d) The home shall submit a written description to the Bureau prior to the implementation of the following medium risk adventure activities:
1. Canoeing, kayaking and tubing;
2. Water skiing;
3. Snow skiing; and
4. Boating and sailing.
(e) The written descriptions required in (c) and (d) above shall include, but not be limited to, the following information:
1. The types of equipment that will be utilized;
2. The qualifications of the staff who will be involved in implementing the adventure activity; and
3. The policies and procedures to ensure the safety of the children and staff during the adventure activity.

0:128-9.4 Biking
(a) Prior to implementing a planned biking trip that is off the grounds of the home or away from the neighborhood of the home, the home shall:
1. Obtain the necessary permits to ride on roads or highways from host states and local governments; and
2. Maintain on file at the home or the home’s administrative office copies of these permits.
(b) The home shall prohibit all biking from taking place:
1. In inclement weather;
2. On roads with heavy traffic unless there is a wide shoulder;
3. After sunset and before sunrise; and
4. On mountains and off trails.
(c) The home shall ensure that all persons engaged in biking:
1. Wear helmets that are approved by the American National Standards Institute (ANSI) or the Snell Memorial Fund;
2. Ride in single file on the right side of the road;
3. Obey all traffic signs and signals;
4. Yield to traffic;
5. Are led by a staff person, with another staff person riding at the end of the group; and
6. Take a 30-minute break every two hours, or sooner when a child expresses a need for rest or when a child is injured or ill.
(d) The home shall ensure that the following equipment is brought on a biking trip:
1. A road map;
2. A bike repair kit; and
3. A water bottle for each child and staff member, unless the itinerary provides access to potable water.
(e) The home shall ensure that all bikes are locked at night.
(f) Before starting a trip and every day of the trip thereafter, the home shall ensure that all bikes have:
1. Brakes that are in good working order;
2. Tires with treads and sufficient air;
3. Handlebars that are no more than 16 inches above the seat so that the biker can sit comfortably;
4. Pedals with treads that are a distance of 3½ inches or more from the front wheel or fender; and
5. Reflectors in the front, rear, pedals and spokes.

10:128-9.5 Canoeing, kayaking, and tubing
(a) The home shall ensure that all staff members and children:
1. Wear Personal Flotation Devices (PFD) (life jackets) rated Class I, II, or III by the U.S. Coast Guard; and
2. Never stand up in the canoe, kayak or tube, unless the children are in a confined area for staff supervised activities.
(b) The home shall ensure that life jackets are not used for seating or bedding.
(c) The home shall ensure that:
1. At least two staff members have a lifesaving or lifeguarding certificate issued from an organization that is recognized by the New Jersey State Department of Health or other appropriate authority; and
2. Children and staff members wear footwear that is secured to their feet, unless the activity occurs on a lake with a sandy bottom and no rocks; and
3. All children and staff members stay away from debris and any trees that have fallen across the river and carry the canoe, kayak or tube along the riverbank past the debris or fallen tree, if necessary.
(d) The home shall prohibit canoeing, kayaking, and tubing:
1. At night;
2. In the open ocean; and
3. During electrical storms.
(e) The home shall ensure that the following equipment is brought along:
1. One spare life jacket for every 12 persons; and
2. Throw lines.
(f) For canoeing and kayaking, the home shall ensure that:
1. Each canoe and kayak has flotation at either end;
2. Each canoe and kayak has an extra paddle;
3. All equipment is secured;
4. Spray covers, if used, release promptly; and
5. The water temperature is 55 degrees Fahrenheit or higher unless a wet suit is provided to each child and staff member.
(g) For canoe or kayak trips in water with rapids rated Class III and IV on the International Scale of River Difficulty (hereafter referred to as the ISRD) developed by the American Canoe Association, the home shall ensure that:
1. All children and staff have completed at least three trips on water with rapids rated as Class I or II by the ISRD.
2. All children and staff wear helmets that are tied under the chin; and
3. For trips in water with rapids rated Class IV, all staff and children can do an Eskimo roll, as defined by the American Canoe Association.
(b) The home shall not take children on water with rapids rated Class V or VI on the ISRD.
(i) For tubing, the home shall prohibit trips when the water is:
1. Less than 55 degrees Fahrenheit; and/or
2. Rated above Class I on the ISRD.

10:128-9.6 Caving
(a) The home shall ensure that:
1. No child or staff member who is claustrophobic is taken on a caving trip;
2. All children and staff members wear helmets that are tied under the chin at all times;
3. At least three-quarters of the children on the caving trip are 12 years of age or older;
4. Children wear gloves if crawling is required;
5. Children have had at least two caving expeditions in horizontal caves before going into a vertical cave;
6. Children do not climb in vertical caves by hand-over-hand ropes methods;
7. Children and staff members do not run or jump in the cave;
8. All debris and human waste are carried out of the cave;
9. Animals and plants are left unharmed;
10. No marking or vandalism is done within the cave by children or staff members.
(b) The home shall ensure that at least one staff person on the trip:
1. Knows how to contact a local emergency rescue squad, such as the Cave Rescue Communications Network;
2. Is familiar with the terrain of the cave;
3. Carries a map of the cave, if available; and
4. Knows how to assist a child or staff member who becomes claustrophobic.
(c) For non-commercial caves, the home shall obtain written permission to enter the cave from the owner or public authority and maintain this on file for two years from the date of the expedition at the home or home's administrative office.
(d) The home shall ensure that the following equipment is brought along on all non-commercial caving expeditions:
1. A space blanket;
2. A whistle;
3. Three sources of light, one of which is either carbide, electric or a miner's headlamp;
4. Waterproof matches;
5. Potable water;
6. Climbing rope;
7. Emergency food; and
8. Spare clothes.

10:128-9.7 Hiking
(a) The requirements of this section apply for all walks or hiking expeditions in remote areas that are away from ordinary means of communications.
(b) The home shall ensure that:
1. At least two staff persons carry and know how to use a compass;
2. A first aid kit is brought along that includes treatment for snake, animal and insect bites, and treatment for the ingestion of or contact with poisonous plants;
3. All children and staff wear footwear appropriate for hiking;
4. No child or staff member carries a pack weighing more than 45 percent of his or her body weight; and
5. No child or staff member is allowed to destroy the environment.
(c) The home shall ensure that each child and staff member has access to potable water.

10:128-9.8 Horseback riding
(a) The home shall ensure that all staff members and children who go horseback riding wear shoes or boots that have heels, long trousers, and approved protective head gear that is fastened under the chin.
(b) The home shall ensure that:
1. The horse is tame and can be ridden by a novice rider;
2. Two or more persons do not ride a horse at the same time;
3. The time a horse spends in ring riding is limited to a total of six hours a day, with no more than three hours of riding without at least a 15-minute break; and
4. The time a horse spends in trail riding is limited to a total of eight hours a day, with no more than four hours of riding without at least a 15-minute break.
(c) The home or agency shall provide written documentation to horses that they own that the horses are:
1. Checked daily, including the mouth;
2. Checked daily for cracked feet and reshoed as necessary;
3. Fed at least once a day or according to a specified feeding schedule; and
4. Given water at least once a day or according to a specified watering schedule.
(d) The home shall retain on file at the barn housing the horse or at the home or the home’s administrative office documentation of compliance with the requirements specified in (c) above.
(e) Homes that rent horses for horseback riding shall verify that the stables meet all the requirements specified in (c) above prior to utilizing their services.

10:128-9.9 Ropes initiatives and rock climbing
(a) The home shall ensure that staff members:
1. State the objectives of the ropes course or climbing trip to the children;
2. Emphasize the importance of safety procedures of each initiative to the children before starting the activity;
3. Allow each child to decide whether or not to participate in the ropes course;
4. Inspect the ropes before each group of children uses them; and
5. Demonstrate effective observation ("spotting") and how one is secured by a rope ("belayed").
(b) The home shall prohibit:
1. Smoking near the ropes;
2. The wearing of jewelry, loose clothing and hair, and eyeglasses that are not fastened;
3. Unsafe practices, including, but not limited to, solo climbing hanging upside down, diving head first, throwing people or over-stretching; and
4. The activity known as the "electric fence", in which a rope is attached to trees or poles and suspended four feet from the ground in a circle, and children standing inside the rope are expected to get out without touching the rope or passing under the rope.
(c) The home shall ensure that persons on a high rope or rock climbing activity:
1. Are individually secured with an approved rope, or "belayed";
2. Wear helmets that are fastened under the chin.
(d) The facility shall document and maintain on file at the site of the ropes course or at the home or the home’s administrative office that all ropes are:
1. Approved by the Union International Alpine Association (UIAA);
2. Visually inspected by the staff before use and discarded if the rope appears frayed or damaged; and
3. Logged for use and retired at four years from the date of purchase or after the rope has sustained the number of falls that the manufacturer's label indicates that the rope can sustain.
(e) The home shall ensure that all carbiners that are used to secure belay ropes are constructed of steel or a metal of equal strength and hardness, and have a locking gate.
Sailing and boating
(a) The home shall ensure that all sailing vessels and motor boats used by children and staff comply with all applicable Federal, State and local laws.
(b) The home shall develop and have on file at the home or home's administrative office a plan for each boating activity specifying:
   1. A description of boat and engine, if relevant;
   2. The names of all persons on board;
   3. The survival equipment on board; and
   4. The itinerary and phone number of the closest Coast Guard station.
(c) The home shall ensure that at least one staff person has completed a boating course offered by the U.S. Coast Guard Auxiliary, J.S. Power Squad, American Red Cross, or the equivalent.
(d) The home shall ensure that the following non-commercial oats have a current decal indicating a satisfactory rating on a courtesy inspection by the U.S. Coast Guard Auxiliary:
   1. For motor boats, 12 feet to 65 feet; and
   2. For sailboats, 16 feet to 65 feet.
(e) For sailboats and motor boats less than 16 feet, the home shall ensure that there is a throw line and a Personal Flotation Device (PFD) rated Class I, Class II or III by the U.S. Coast Guard on board for every passenger.
(f) The home shall prohibit sailing and boating outside U.S. coastal waters.
(g) The home shall ensure that all marine heads (toilets) are certified by the U.S. Coast Guard of a type authorized for the area where the boating will occur.

0:128-9.11 Snow skiing
(a) The home shall not permit skiing in areas known to have avalanches or in temperatures below zero degrees Fahrenheit.
(b) The home shall ensure that staff:
   1. Are familiar with the terrain; and
   2. Carry a ski repair kit when skiing in remote areas.
(c) The home shall ensure that all children and staff members use ski equipment that is appropriate for each person's height, weight and ability and that bindings are secure.
(d) The home shall ensure that all children and staff wear appropriate clothing, gloves and eye protection.

0:128-9.12 Solo (solitary) activities
(a) The home shall ensure that children freely consent to do a solo, defined as a camping experience where a child is living away from direct supervision of staff, and shall not coerce or force the children to do a solo.
(b) The home shall:
   1. Limit solos to a maximum 72 hours;
   2. Ensure that children know the boundaries of the solo activity; and
   3. Prohibit children from making fires and from rock climbing.
(c) The home shall ensure that children receive the following equipment:
   1. A whistle to signal for help;
   2. Shelter such as a tent or tarpaulin;
   3. Three liters of water a day;
   4. Food sufficient for three meals a day; and
   5. At least one change of clothes appropriate for the weather.
(d) The home shall ensure that staff:
   1. Communicate with the child at least twice a day by whistle, radio or other means to check on his or her safety and document all contacts in the shift log; and
   2. Are available to provide face-to-face contact and care immediately if a child requests attention from staff.
(e) The home shall not allow children to do a solo in areas with bodies of water higher than four feet or in areas having rivers or streams with a strong water current.

0:128-9.13 Swimming
(a) A home using off-grounds swimming facilities that are not public recreational bathing facilities shall ensure that at least two of the required staff members have a lifesaving or lifeguarding certificate issued from an organization that is recognized by the New Jersey State Department of Health or out-of-State health department or other appropriate authority.
(b) The home shall ensure that at least one lifeguard remains out of the water and is located in a position where he or she can observe all swimmers.
(c) No staff member shall assume lifeguarding responsibility for more than three hours without a break.
(d) The home shall prohibit swimming:
   1. At night time;
   2. Under docks; and
   3. When the water temperature is less than 55 degrees Fahrenheit.
(e) The home shall test each child's swimming ability. If a child cannot swim 100 feet, tread water for three minutes and swim under water for 10 feet, the facility shall ensure that the child wears a life jacket whenever he or she is in water over four-and-one-half feet deep, unless under direct supervision for swimming instruction. The home shall ensure that the life jacket:
   1. Indicates a Class I, Class II, or Class III Personal Flotation Device (PFD) rating by the U.S. Coast Guard; and
   2. Is never used as a cushion for sitting or kneeling at any time.
(f) The home shall provide staff members with the following equipment:
   1. A whistle; and
   2. A ring buoy with rope.
1. Have railings on top bunks that are no more than 3½ inches from the top of the bed frame;
2. Have mattresses that are at least five inches from the top of the railing; and
3. Are limited to two in height.
   (i) If the home uses latrines instead of toilets, the home shall ensure that all latrines:
      1. Provide for privacy;
      2. Are dug at least six feet deep; and
      3. Are at least 100 feet from the campsite and bodies of water.
   (j) The home shall ensure that there is one latrine for every 10 persons.
   (k) Homes using cabins, tents or teepees for over seven continuous days shall ensure that:
      1. There is one shower or bathtub for every 10 children and staff members;
      2. The children have access to bathing facilities every day during normal waking hours; and
      3. The children have privacy when bathing.
   (l) Homes that camp overnight for seven or fewer continuous days shall ensure that children have access to bathing facilities or are provided with other means of maintaining personal hygiene. These may include, but are not limited to, wet towels and dry shampoo.
   (m) Whenever regular plumbing facilities are not available for bathing or washing, the home shall:
      1. Ensure that all washing is done with biodegradable non-detergent soap; and
      2. Prohibit all washing and bathing in lakes, rivers and streams.

10:128-9.16 Requirements for wagon trains
   (a) The home shall ensure that the canvas and wheels are in good repair.
   (b) If horses are used, the home shall ensure that the requirements regarding the care of horses, as specified in N.J.A.C. 10:128-9.8 are met.
   (c) If animals other than horses are used, the home shall:
      1. Limit travel to 10 hours a day;
      2. Water the animals at least every four hours;
      3. Develop and maintain on file a feed plan; and
      4. Check the animals daily for broken hooves and bones.

10:128-9.17 Health and sanitary practices
   (a) The home shall ensure that each child has a health examination performed by a licensed physician that documents:
      1. That the child can perform each type of adventure activity that he or she will be asked to do;
      2. Receipt of a tetanus shot;
      3. Notation of asthma, allergies or dietary needs; and
      4. Notation of whether the child is on medication that would require the child to avoid using sunscreen and/or to take other special precautions.
   (b) Within 30 days of a child’s participation in an adventure activity, the home shall document in writing and maintain on file in the child’s record that the child’s current health status allows the child to engage in the specified adventure activity.
   (c) The home shall develop and give to each staff member a written policy for treating:
      1. Snake, animal and insect bites; and
      2. Ingestion of, or contact with poisonous plants.
   (d) The home shall ensure that all perishable food is refrigerated at a temperature of 45 degrees Fahrenheit or lower.
   (e) The home shall ensure that all non-disposable utensils used for eating and preparing food are:
      1. Not used by another person before rewashing;
      2. Washed and rinsed in water that is at least 180 degrees Fahrenheit or water that has been sanitized chemically; and
      3. Free of cracks.
   (f) The home shall ensure that all water in streams and lakes that is used for drinking, food preparation and dishwashing is boiled, filtered or purified with iodine or tablets specifically designed to purify water.

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3. The home shall not use electronic devices to monitor children’s telephone calls to family members, but may observe their reaction during the telephone call.
4. The home shall maintain documentation that children were permitted to make free telephone calls to family members. Such documentation may include but is not limited to copies of telephone bills or notes in logs.

(f) The home shall not prohibit a child from receiving messages by mail or from making bi-weekly monthly telephone calls as a consequence for misbehavior.

(g) The home shall explain its policies and procedures to all families and children upon admission and give parents a written explanation of the policy for visiting and communication. This explanation shall include the procedures for sending emergency messages and mail.

SUBCHAPTER 10. SERVICES FOR PREGNANT AND PARENTING ADOLESCENTS

10:128-10.1 General requirements

(a) Any home or agency that provides services to pregnant adolescents and adolescent parents caring for their children shall meet all requirements of this subchapter and all applicable requirements of subchapters 1 through 9 of this manual (N.J.A.C. 10:128-1 through 9).

(b) The home or agency shall provide services that include, but are not limited to the following:

1. Services regarding paternal involvement;
2. Services to the adolescent’s family;
3. Parenting education;
4. Infant stimulation;
5. Health education and physical care of the adolescent mothers and infants;
6. Nutrition; and
7. Life skills development.

(c) The home shall provide the following indoor space:

1. A private place where adolescents can store their belongings and those of their infant and shall provide the adolescents access to this place at all times;
2. Sufficient space to accommodate tables and chairs for all adolescents and on-duty child care staff to eat meals together;
3. Adequate space for the implementation of treatment services including individual counseling sessions, parent training sessions, family counseling sessions and case management planning meetings; and
4. The following additional floor space:
   i. At least 70 square feet for the first occupant of a bedroom and 50 additional square feet for each additional occupant. The home shall not allow more than four occupants, including adolescents and/or infants, to sleep in the same bedroom; and
   ii. For each adolescent and infant, at least 35 square feet of common living space, defined as those areas that adolescents and infants can use for socializing or recreation during waking hours. The dining area shall not be included in determining compliance with this requirement, unless the dining area is accessible to adolescents and infants outside of meal time.

(d) The home shall maintain all indoor areas in a safe and sanitary manner by ensuring that:

1. There are no poisonous plants;
2. Any corrosive agents, insecticides, bleaches, detergents, polishes, any products under pressure in an aerosol spray can, and any toxic substance are stored in locked cabinets or enclosed in areas not accessible to infants;
3. All electrical outlets accessible to infants have protective covers;
4. All fluorescent tubes and incandescent light bulbs have protective covers or shields;
5. All windows and other glass surfaces that are not made of safety glass and that are located within three feet above the floor shall have protective guards unless the home does not provide services to ambulatory infants or toddlers;
6. Staff has access to any bedrooms that the adolescents are allowed to lock;
7. Non-permanent safety barriers (safety gates) are installed to prevent infants from falling if the home has stairs, ramps, balconies, porches or elevated play areas;
8. Materials and furniture for indoor and outdoor use are of sturdy and safe construction, easy to clean and free of hazards that may be injurious to adolescents and infants;
9. Infants are kept away from hot stoves, irons and ironing boards, knives, glassware and other equipment that may cause injury; and
10. Poisons, insect traps, and rodent traps are kept out of the reach of infants.

(e) The home shall maintain all outdoor areas in a safe and sanitary manner by ensuring that:

1. Non-permanent safety barriers (safety gates) are installed to block steps used by infants, unless the steps are blocked by a door;
2. Snow is removed from sidewalks and from the walkways and paths leading to the entrances and exits of the home:
   i. Within 24 hours of cessation of snowfall; or
   ii. According to local ordinance; and
3. All drains and wells have protective coverings.

(f) The home shall provide a crib for each infant under 18 months of age but may allow infants to sleep in a playpen or on a mat at least one-inch thick on the floor for naps during the daytime.

(g) The home shall provide a crib or bed for each infant 18 months of age or older.

(h) The home shall ensure that:
1. Crib and playpen slats are no more than 2 1/2 inches apart;
2. Crib, bed and playpen mattresses are fire retardant;
3. All drains and wells have protective coverings.
4. Infants are kept away from hot stoves, irons and ironing boards, knives, glassware and other equipment that may cause injury; and
5. Beds or cots used solely for a specific infant shall have linens and blankets replaced with clean linens and blankets before each use.

(i) The home shall provide beds for all adolescents.

(j) The home shall prohibit use of bunk beds for pregnant adolescents, adolescent mothers and infants.

(k) The home shall not use lead paint on and shall remove lead paint from any interior or exterior surfaces of a building, or on any furniture, toys, or other equipment used therein if deemed hazardous by a governmental agency, as specified in N.J.A.C. 10:128-4.

10:128-10.2 Staff and staff ratio requirements

(a) The home shall only employ staff members who are at least 21 years of age.

(b) Homes may use student interns and volunteers to support the activities of regular paid staff members. However, student interns and volunteers below the age of 21 years shall not be permitted to provide activities or transportation by themselves.

(c) Homes that serve three or more pregnant or parenting adolescents shall have at least one staff person who is certified in first aid and cardiopulmonary resuscitation (CPR), as defined by a recognized health organization (such as the American Red Cross) in the home during periods of operation.

(d) Treatment homes serving one or two adolescents shall have a child care staff member or house parent on duty whenever an adolescent or infant is present in the home.

1. When a treatment home serves two adolescents who together have five or more infants, the treatment home shall have at least two child care staff members or house parents to provide direct supervision when all adolescents and all infants are present in the home.
2. If five or more infants are present in the treatment home without their mothers, the treatment home shall provide at least two staff members or house parents to care for the infants.

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(c) Homes serving three or more adolescents shall have a minimum of two staff on duty at all times. Once this minimum is met, the following staff ratios shall be used to determine staff ratio requirements for the actual number of adolescents and infants present in the home:

<table>
<thead>
<tr>
<th>Waking Hours (Adolescents and infants)</th>
<th>Staff Ratio Requirement</th>
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<tbody>
<tr>
<td>Staff: 6 residents</td>
<td>1 staff: 6 residents</td>
</tr>
<tr>
<td>Waking Hours (Infants only)</td>
<td>1 staff: 4 infants</td>
</tr>
<tr>
<td>Waking Hours (Adolescents only)</td>
<td>1 staff: 6 adolescents</td>
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(f) A home may permit an adolescent to care for another adolescent's infant if the following conditions are met:

1. The adolescent who is assuming the care of another adolescent's infant cares for no more than one other infant in addition to her own at any one time;
2. The adolescents discuss the expectations of the caregiver, including duration of child care, infant's nutritional and toileting needs, and whether the mother will make arrangements for compensation; and
3. The home documents approval of the arrangement, including how these arrangements will protect the health and well-being of both infants.

10:128-10.3 Staff development and training

(a) Upon employment, the home shall document in each staff member's personnel record that each staff member received instruction in:

1. The home's statement of purpose; and
2. Protocols for dispensing medication.

(b) The home shall develop, document, and maintain on file a training plan to ensure that the director, social service worker(s), and child care staff receive a total of at least 24 hours of training each year that includes at least one hour of training in each of the following topics:

1. Recognizing and reporting child abuse and neglect;
2. Evacuating the facility; and
3. Infant and adolescent growth and development;
4. Discipline of adolescents and infants;
5. Infant care and stimulation;
6. Drug and alcohol abuse;
7. Human sexuality and AIDS prevention; and
8. Depression and suicide prevention.

(c) The home's training plan may include in-depth discussions at staff meetings, or attendance at workshops and/or attendance at conferences.

(d) The home may train staff in evacuating the facility, infant care and development, discipline, drug and alcohol abuse, and human sexuality and AIDS prevention by including staff in instructional programs attended by the adolescents.

10:128-10.4 Case management requirements

(a) The home shall develop, implement, and maintain on file a written case management plan for each adolescent and her infant.

(b) The home shall form a case management planning team that is responsible for the development of a case management plan for each adolescent and infant. The team shall consist of each of the following:

1. Staff members representing the clinical or social work component;
2. Staff members representing the child care component;
3. Staff members representing the administration of the home, if necessary;
4. Representatives from the adolescent's responsible school district and/or current school district, if necessary;
5. A representative from the Division or other placing agency;
6. The adolescent's family, if applicable; and
7. The infant's father or paternal relatives, if applicable.

(c) The home shall document in the adolescent's and infant's record that the Division's case manager or other placing agency representative, the adolescent's therapist, parents or legal guardian, and the responsible or current school district, if applicable, were invited to participate as members of the case management planning team and in all subsequent revisions of the plan.

(d) The home shall develop the initial case management plan within 30 calendar days following an adolescent's and/or her infant's admission and shall review or revise the plan at least every three months thereafter.

(e) The case management plan shall include the following information:

1. The name of the adolescent, and infant, if relevant;
2. The date of admission of the adolescent, and infant, if relevant;
3. The date when the plan is developed or revised;
4. The names and titles of all persons attending the development and review meeting;
5. The adolescent's plan for and receipt of medical and dental care;
6. The infant's plan for and receipt of medical care, and dental care if the infant is three years of age or older;
7. Documentation that a referral to the Supplemental Feeding Program for Women, Infants, and Children (WIC) was made and that any necessary follow up was done, or documentation that the adolescent or infant was ineligible for WIC;
8. The adolescent's social, familial, emotional and behavioral strengths and weaknesses;
9. An assessment of the infant's father's interest in the child, including a notation of whether the infant's father's interest has been legally established;
10. An assessment of the adolescent's parenting capabilities including but not limited to the adolescent's ability to feed and play with her infant, provide for her infant's grooming, provide medical care, and use child care responsibly, if applicable;
11. An assessment of the adolescent's academic progress, including a report of attendance and grades obtained within 30 calendar days of the case planning meeting;
12. An assessment of the health and development of the infant, including available developmental assessments from health examinations;
13. Specific treatment goal(s) in each program area and a projected time frame for completing each goal;
14. The name of the person responsible for the implementation of each treatment goal;
15. Techniques to be used to achieve each treatment goal;
16. Criteria to be used to determine whether each treatment goal is achieved;
17. A notation of progress made from any previous plan;
18. Efforts to achieve timely discharge, including but not limited to services needed by parents or other persons to whom the adolescent will be discharged; and
19. Documentation of how the adolescent is being prepared for self-sufficiency. This documentation shall include but not be limited to instruction in:

   i. Food preparation, including participation in preparing at least one meal a week and training in food shopping at least once a month;
   ii. Budgeting and money management, including but not limited to discussion of standard deductions from a paycheck, costs for housing and transportation and how to open and use a savings and checking account; and
   iii. Career planning and job training, including but not limited to discussion of entry level requirements for job openings in the community and assistance in obtaining the qualifications for these positions.

(f) The home shall send to the Division's case manager or other placing agency a copy of the case management plan and any revisions to it within 30 calendar days after the planning meeting and retain a copy of the correspondence in the adolescent's and infant's record.

(g) The home shall explain to the adolescent, her parents, and all persons responsible the adolescent's and infant's case management plan and any revisions to it. If the home does not explain the adoles-
By the New Jersey State Library.

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...and infant's case management plan to the adolescent's parents, the home shall document in the adolescent's case record the reasons that the plan was not explained to the parents.

(h) The home shall provide and monitor all services specified in the case management plan and document the rationale for any deviations from the most recent case management plan in the adolescent's and infant's record.

(i) When an adolescent mother expresses interest in surrendering her infant for adoption, the home shall:
1. Explain to the adolescent mother the implications and process of adoption;
2. Notify the Division's case manager or other placing agency;
3. Notify the adolescent's parent or legal guardian, if applicable; and
4. Provide the adolescent with information in order to contact legal counsel if she so chooses.

10:128-10.5 Discharge planning requirements

(a) For discharges that can be anticipated at least 30 calendar days ahead of time, the home shall develop a plan with the Division's case manager or other placing agency at least 30 calendar days before the adolescent's or infant's discharge. The plan shall specify the following information:
1. The date of admission;
2. The anticipated date of discharge;
3. Details of the events and circumstances leading to the decision to discharge;
4. The name and address of the individual or agency to whom the adolescent or infant will be discharged and the rationale for planning a discharge to that individual or agency;
5. An assessment of the adolescent's and infant's continuing needs including, but not limited to, consideration of health care, behavior management and educational or vocational training; and
6. An assessment of the infant's continuing needs including, but not limited to, consideration of health and child care and referral to the Supplemental Feeding Program for Women, Infants and Children (WIC).

(b) For discharges that were not anticipated at least 30 calendar days ahead of time, the home shall send the Division's case manager or other placing agency a written plan at least 10 working days prior to the adolescent's or the infant's discharge. This plan shall specify the following information:
1. The date of admission;
2. Details of the events and circumstances leading to the discharge;
3. Efforts made to locate a runaway, if relevant;
4. An assessment of the adolescent's continuing needs including, but not limited to, health care, behavior management and educational and vocational training;
5. An assessment of the infant's health and child care needs, if relevant; and
6. Recommendations for providing follow-up services in the adolescent's or infant's new environment, including consideration of whether the adolescent or infant would be eligible for WIC.

(c) For emergency discharges that result in the immediate placement of the adolescent or infant in a facility such as a detention center, hospital, psychiatric facility or any other placement outside the home, the home shall notify the Division's case manager or other placing agency by the next working day by telephone. The home shall send a written discharge plan within 10 days after the adolescent's or infant's discharge. This plan shall specify the information outlined in (b) through 6 above.

10:128-10.6 Services regarding paternal involvement

(a) The home shall explain to the adolescent mother:
1. The benefits of establishing paternity for her infant and her options for establishing paternity;
2. How to establish paternity of the infant, including:
   i. Clarification that naming a father on her infant's birth certificate does not establish paternity unless she is or was married to the infant's father; and
   ii. Information about the procedures for establishing paternity;
3. How to deal with future questions her infant may have about his or her father;
4. How to manage visitation arrangements between her infant and the infant's father; and
5. That establishing paternity is not a condition for remaining in the home.

(b) The home shall discuss the topics specified in (a) above in individual or group meetings with adolescent mothers and assist the adolescent in establishing paternity if she so requests. These individual or group meetings shall be held:
1. Weekly for homes that discharge the adolescents soon after they deliver; and
2. At least monthly for homes that continue to provide services to the adolescents and their infants after delivery.

(c) When the infant's father is known and the adolescent mother agrees, the home shall attempt at least two in-person contacts with him within two months of the adolescent's admission to the home to discuss his interest in his child.

1. If the father does not respond to initial contacts made by the home, the home shall send a certified letter to all known addresses where the father may be residing indicating the home's interest in discussing his involvement with his child.
2. The above requirements may be waived only if the home documents that the father's involvement would place the adolescent or infant at physical or emotional risk.

(d) The home shall allow the fathers of infants residing in the home to attend parenting classes provided by the home.

10:128-10.7 Services to the adolescent's family

(a) The home shall attempt two in-person contacts with the adolescent's parents, or other adult relatives that are responsible for the adolescent if the parents are not available, within two months of the adolescent's admission to discuss the case management plan.

1. If the adolescent's parents or other responsible adult relatives do not respond to the initial contacts, the home shall send a certified letter to all known addresses where they may be residing indicating the home's interest in discussing their involvement with their daughter and grandchild.
2. The above requirement may be waived if the home documents that the family's involvement would place the adolescent or infant at physical or emotional risk.

10:128-10.8 Parenting education

(a) The home shall have a written curriculum or guidelines for providing parenting education that shall include, but not be limited to, the following topics:
1. Infant and child development including alternatives to punishment and options for toilet training;
2. Age-appropriate stimulation, games and other recreational activities for children;
3. Providing for child care;
4. Health and nutritional care including an explanation of the Supplemental Feeding Program for Women, Infants and Children (WIC);
5. Relationships with the adolescent mother's family;
6. Dealing with feelings about the adolescent's relationship with the father's family; and
7. Options for placing the infant in a separate foster care placement or for adoption.

(b) The home shall provide parenting education on a group or individual basis to each adolescent.

(c) The home shall provide each adolescent at least one hour of parenting education each week until the home documents that the adolescent has mastered skills or resolved issues specified in (a) above.

(d) The home shall involve the adolescent in shopping for her infant's clothes and other necessities.

(e) The home shall provide information to the adolescent on preventing child abuse and neglect, including, but not limited to:
1. Discussion of mandatory reporting;
2. How to identify the report abuse and neglect; and
3. Resources to help parents avoid abusing or neglecting their children.

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10:128-10.9 Infant stimulation
   (a) The home shall ensure that all infants under three months of age are held and spoken to, or placed in a position to observe group activity when they are awake during daytime hours.
   (b) The home shall ensure that infants up to six months of age are held by their mother or staff members throughout all feedings and that older infants are held if they are incapable of holding a bottle on their own.
   (c) The home shall ensure that all infants have at least one toy that is accessible to them in their bedrooms.
   (d) The home shall ensure that when adolescent mothers are in school or working, their infants are cared for, either in the home, in a licensed child care center or in a licensed or registered family day care or group day care home.
   (e) Homes that provide services to adolescent mothers and infants between three and 18 months of age shall ensure that the adolescent mothers engage in at least four of the following activities with their infants for at least a total of 45 minutes each day:
      1. Sensory activities: crib mobiles, teething toys, busy boxes, baby mirrors, rattles, melody chimes, squeeze toys, or other comparable supplies or equipment;
      2. Language activities: picture books, toy telephones, records, hand puppets, stuffed animals, soft washable dolls, photographs, or other comparable supplies or equipment;
      3. Manipulative activities: squeeze and grip toys, boxes, sorting and stacking toys, three or four-piece wooden inlay puzzles, puzzle blocks, simple threading toys, mobile pull toys, balls, or other comparable supplies or equipment;
      4. Building activities: soft lightweight blocks, toy cars, trains or boats, figures of animals and people, stacking rings or cups, nesting toys, or other comparable supplies or equipment;
      5. Large muscle activities: low climbers, slides, riding or rocking toys, foam or soft plastic balls, gym mats, play tunnels, or other comparable supplies or equipment;
      6. Music activities: rhythm instruments, record player and records, toys equipped with musical tones, musical mobiles, busy boxes, drums, xylophones, pianos, or other comparable supplies or equipment.
   (f) Homes that provide services to adolescent mothers and infants 18 months of age and older shall ensure that adolescent mothers engage in at least three of the following activities with their child for at least a total of 45 minutes each day:
      1. Language activities: reading a book, playing with flannel boards, pictures for discussion, materials for recognition, identification or classification, puzzles, audio-visual equipment, or other comparable supplies or equipment;
      2. Science and math activities: plants and gardening equipment, aquarium with fish or other appropriate live animals, water table and supplies, sand table and supplies, cooking supplies, weather chart, thermometer, counting equipment, or other comparable supplies or equipment;
      3. Manipulative activities: puzzles, pegs and pegboards, lacing boards, table top building toys, dominos, pounding bench, lotto games, or other comparable supplies or equipment;
      4. Large muscle activities: rocking boat, wheel toys, climbers, slides, balance beam, barrels, large cartons, parachute, balls and beanbags, outdoor play equipment, gym mats, or other comparable supplies or equipment;
      5. Building activities: unit blocks—minimum of four sizes, transportation toys, farm animals, play people, work bench and tools, table top building toys, building logs, or other comparable supplies or equipment;
      6. Art activities: crayons, tempera paint, large brushes and newsprint, finger paint and finger paint paper, construction paper in assorted colors, *past* or *paste* or glue, blunt scissors, collage materials, non-toxic felt tip markers, easels, clay or playdough, or other comparable supplies or equipment;
      7. Music activities: record player and records, piano, organ, guitar, rhythm sticks, drums, cymbals, bells, tape recorder, or other comparable supplies or equipment.
   (g) The home shall ensure that television watching is not used as a substitute for mother-child interaction.

10:128-10.10 Infant toys and equipment
   (a) The home shall only use infant and play equipment that is sturdy and of safe construction, non-toxic and free of hazards.
   (b) The home shall have a choker tube to ensure that all parts or all toys used by infants under three years of age are large enough so they can not be swallowed by the infants.
   (c) The Bureau may also require the home to take other necessary precautions to promote toy and equipment safety in keeping with recommendations of the United States Consumer Product Safety Commission.

10:128-10.11 Recreation
   (a) In addition to the requirements specified in N.J.A.C. 10:128-6.8, the home shall encourage each adolescent to use her leisure time productively by documenting in the adolescent's case management plan the home's efforts to:
      1. Inform the adolescent of appropriate activities for herself and her infant in the community;
      2. Teach the adolescent how to manage time and money to be able to participate in recreational activities; and
      3. Teach the adolescent how to use public transportation so she and her infant can go to activities in the community.
   (b) The home shall organize monthly outings or planned group activities within the home for adolescents and their infants.

10:128-10.12 Money and allowance
   (a) The home shall provide opportunities for all adolescents to earn an allowance, unless the adolescent is receiving AFDC benefits.
   (b) The home shall not require an adolescent to assume responsibility for expenses for her care or that of her infant, except for amounts needed to pay for damages done to the home by the adolescent or her infant.
      1. When an adolescent damages the home's property, the home shall verify who damaged the property in an incident report before requiring the adolescent to pay restitution.
      2. When an infant damages the home's property, the home shall verify who damaged the property and that the damage resulted from a lack of supervision by the adolescent mother, before requiring the adolescent mother to pay restitution.
   3. The restitution payments shall not exceed 50 percent of an adolescent's weekly income from allowance and earnings.
   4. Adolescents who are working or have a savings account shall have the option to make a lump sum payment for intentional damages.
   5. The home may offer the adolescent the option of performing additional chores in lieu of restitution payments.

10:128-10.13 Visiting and communication
   (a) The home shall ensure that the adolescents and infants are allowed to have regular contact with family members, including the infant's father.
      1. The home may designate hours for family visits provided that there are at least three opportunities for families to visit each week.
      2. The home may limit family members' visits to designated places within the home provided that family members visiting with the infant have access to equipment and toys that can foster communication with the infant.
   (b) The home shall develop a visiting policy and explain the visiting policy to the adolescent and her parent(s) at intake. The visiting policy shall specify:
      1. How visiting may be arranged;
      2. That family visits shall not be denied for an adolescent's infraction of rules, but may be denied as part of a case management plan after consultation with the Division's case manager or other placing agency;
      3. That family members who are under the influence of drugs or alcohol shall not be allowed to transport the adolescent or her infant;
      4. That the adolescent and infant may visit with representatives from the Division or other placing agency upon request and that these visits shall not be denied for any reason;
      5. The hours when an adolescent may visit with friends and whether the adolescent's visits with friends may be curtailed for infraction of the rules;
6. That the home may overrule an adolescent's arrangements for
  caving her infant with persons living outside the home; and
7. That family members, including the infant's father, shall not be
denied visitation unless the home documents show they pose a risk
to the infant or adolescent.

10:128-10.14 Behavior management
(a) Staff members shall follow all the requirements as specified in
(b) The home shall assign responsibility for the discipline, control,
and supervision of adolescents to staff members and not delegate that
responsibility to other adolescents.
(c) The home shall prohibit adolescents from using the punish­
ments specified in N.J.A.C. 10:128-6.14 on their own infants or on
another infant for whom they are caring.
(d) The home shall ensure that no staff member or adolescent
mother disciplines an infant for refusing to eat or sleep, or for crying
or soiling.

10:128-10.15 Comprehensive health plan for pregnant adolescents
(a) The home shall ensure that all pregnant adolescents receive
comprehensive prenatal care including, but not limited to:
  1. Monthly visits to an obstetrician or certified nurse mid-wife
     during the first 28 weeks of gestation;
  2. Biweekly visits to an obstetrician or certified nurse mid-wife
     from the 29th to 36th week of gestation;
  3. Weekly visits to an obstetrician or certified nurse mid-wife from
     the 36th week of gestation until delivery;
  4. Child birth classes provided by a registered nurse or child birth
     educator; and
  5. A post partum visit within six weeks of delivery.
(b) The home shall ensure that pregnant adolescents make up
missed medical appointments.
(c) The home shall refer all pregnant adolescents to the Sup­
plemental Feeding Program for Women, Infants and Children (WIC)
and make necessary follow-up, or document that the pregnant adoles­
cent was ineligible for WIC.
(d) The home shall ensure that arrangements for the birth of the
infant are made by the end of the first trimester. If the adolescent
enters the home after the first trimester, the home shall ensure that
arrangements for delivery are made by the second prenatal visit.
  1. The home shall ensure that a system is established to provide
     background medical information on the pregnant adolescent to
     the hospital identified for delivery or at the birthing center identified
     for delivery.
  2. The home shall document that delivery arrangements have been
     made by recording the name and address of the selected hospital or
     birthing center in:
     i. The adolescent's record; or
     ii. As part of the administrative record.
(e) The home shall ensure that a staff member or volunteer accom­
panies the adolescent to the hospital or birthing center when she is
ready to deliver and that the staff member or volunteer remains with
the adolescent until health care personnel are assigned to her.
(f) The home shall arrange for pregnant adolescents to receive a
dental examination within three months of admission and every six
months thereafter.

10:128-10.16 Comprehensive health plan for infants
(a) The home shall ensure that infants are referred to the Sup­
plemental Feeding Program for Women, Infants and Children (WIC)
and take necessary follow-up, or document that the infant was in­
eligible for WIC.
(b) Unless contraindicated by the physician, the home shall ensure
that adolescent mothers adhere to the following schedule in obtaining
health care for infants:
  1. At age one month, the infant receives:
     i. A physical examination including height, weight, temperature
        check, and measurement of head and chest circumference; and
     ii. A check for PKU, if indicated.
  2. Between two and two and one-half months of age, the infant
     receives:
     i. A physical examination, as specified in (b)1i above; and
     ii. Immunization for diphtheria, tetanus, pertussis (DPT) and
        Trivalent Oral Polio Vaccine (TOPV).
  3. Between three and one-half and four months, the infant receives
     a physical examination, and immunizations as specified in (b)2 above;
  4. Between five and six months, the infant receives:
     i. A physical examination, as specified in (b)1i above; and
     ii. Immunization for DPT; and
     iii. A developmental assessment;
  5. Between eight and nine months, the infant receives:
     i. A physical examination, as specified in (b)1i above; and
     ii. A hemoglobin test; and
     iii. A sickle cell screening, if indicated;
  6. Between 11 and 12 months, the infant receives:
     i. A physical examination, as specified in (b)1i above; and
     ii. A developmental assessment; and
     iii. A tuberculin test;
  7. At 15 months, the infant receives:
     i. A physical examination, as specified in (b)1i above;
     ii. Immunizations for rubella and measles; and
     iii. At 15 or 16 months, immunization for mumps;
  8. At 18 months, the infant receives:
     i. A physical examination, as specified in (b)1i above;
     ii. A DPT booster;
     iii. A TOPV booster; and
     iv. Immunization for hemophilus influenza Type B;
  9. At 24 months and annually thereafter (until age five), the infant
     receives:
     i. A physical examination, as specified in (b)1i above;
     ii. A developmental assessment;
     iii. A hemoglobin test;
     iv. Urinalysis, and a tuberculin test if indicated; and
  10. At 36 months and semi-annually thereafter, a dental exami­
    nation.

*[(b)**(e)]*(c)* The home shall ensure that the adolescent mother
obtains a hemophilus influenza Type B (meningitis) immunization
for her child when the child is two years of age, or at the earliest
date possible thereafter.
*[(c)**(d)]*(e)* The home shall ensure that the adolescent mother has
her child's sight and hearing tested when she takes a child over three
and one-half years of age for a medical examination. This testing shall
be repeated for children ages four and five years old who remain in
the home.
*(d)**(e)* The home shall ensure that a child who is five years
old receives a DTP booster and a TOPV booster when he or she
remains in the home.

10:128-10.17 Comprehensive health care for adolescent mothers
who are not pregnant
(a) The home shall ensure that all adolescent mothers who are not
pregnant and who have not had a health examination within one year
prior to admission, receive a comprehensive health examination
within one month of admission to the home. This comprehensive
health examination shall include but not be limited to an assessment
of:
  1. Height and weight;
  2. Blood count;
  3. Urinalysis;
  4. Vision;
  5. Hearing; and
  6. Gynecological exam.
(b) The home shall arrange for follow-up medical care rec­
ommended as part of the comprehensive health examination.
(c) The home shall ensure that adolescent mothers receive a dental
examination within three months of admission and every six months
thereafter.

10:128-10.18 Care of sick infants*[a, adolescents and staff]*
(a) When an infant at the home has any illness or symptom of
illness including but not limited to those specified below, the home
shall ensure that the adolescent mother or staff contacts a licensed
physician:
  1. Severe pain or discomfort;
2. Acute diarrhea, characterized as twice the child's usual frequency of bowel movements with a change to a looser consistency within a period of 24 hours;
3. Two or more episodes of acute vomiting within a period of 24 hours;
4. Elevated oral temperature of 101.5 degrees Fahrenheit or over or axillary temperature of 100.5 degrees Fahrenheit or over in conjunction with behavioral changes;
5. Sore throat or severe coughing;
6. Yellow eyes or jaundiced skin;
7. Red eyes with discharge;
8. Infected, untreated skin patches;
9. Difficult or rapid breathing;
10. Skin rashes, excluding diaper rash, lasting more than one day;
11. Weeping or bleeding skin lesions that have not been treated by a physician or nurse;
12. Swollen joints;
13. Visibly enlarged lymph nodes;
14. Stiff neck; or
(b) The home shall follow the physician's advice about whether to permit the infant who is ill to have contact with other infants.

10:128-10.19 General medical practices
(a) The home shall ensure that any medical, dental, psychological or psychiatric treatment or medication administered to an adolescent is explained to the adolescent.
1. The home shall ensure that any medical, dental, psychological or psychiatric treatment or medication administered to an infant is explained to the adolescent mother.
2. The home shall document all of these explanations in the adolescent's record.
(b) When serious accidents or illnesses occur to an infant, the home shall take necessary emergency action and notify the adolescent, the adolescent's parents, if applicable, the Division's case manager or other placing agency and the Bureau immediately.
(c) When serious accidents or illnesses occur to an adolescent, the home shall take necessary action and notify the adolescent's parents if she is under 18 years of age, the Division's case manager or other placing agency and the Bureau immediately.

10:128-10.20 Medication
(a) The home shall ensure that adolescents use only prescription and non-prescription medication that is authorized by a physician.
1. The home shall permit adolescents to administer medication to their infants and themselves, unless the physician, psychiatrist or psychologist advises otherwise; in such cases the home shall document the reasons in the adolescent's record.
2. The home shall ensure that adolescents follow the advice of the infant's physician for administering medication to their infants.
3. The home shall supervise the adolescent's administration of all medication to infants and may require the adolescent to record the information specified in (b) below.
(b) The home shall maintain a medication log book that contains the following information:
1. Name of adolescent or infant receiving medication, whether prescription or non-prescription;
2. Type of medication, dosage, and intervals between dosages;
3. What to do if a dosage is missed;
4. Reason for medication;
5. Date and time medication was administered;
6. Possible side effects of the medication, if any; and
7. Signature and title of staff member or adolescent dispensing medication.
(c) The home shall ensure that the following procedures for storage are followed:
1. Homes shall keep prescription and non-prescription drugs in a locked cabinet, or, as needed, a locked container in a refrigerator that is inaccessible to infants;
2. External drugs and internal drugs shall be stored in separate locked shelves;
3. All outdated stocks and prescriptions no longer in use shall be disposed of safely, as specified in N.J.A.C. 10:128-7.4;
4. The telephone number of the regional poison control center shall be posted at all medication-dispensing stations and by each telephone; and
5. Medical supplies shall be stored in an area accessible to sta members at all times.
(d) In situations where the home determines that an adolescent capable of self-administration of prescription birth control-related supplies, the home may allow the adolescent to maintain prescriptive birth control-related supplies among her personal possession provided that the home:
1. Provides a locked cabinet or box for storage; and
2. Documents the rationale and arrangements for the adolescent to maintain prescription birth control-related supplies.

10:128-10.21 Environmental sanitation requirements for disinfecting
(a) The home shall first wash with soap and water and then disinfect those items specified below with a solution that shall either:
1. A commercially prepared disinfectant that indicates it kills bacteria, viruses and parasites. This solution shall be used in accordance with label instructions; or
2. A self-made solution consisting of one-quarter cup of household bleach to each gallon of water (one tablespoon per quart), which shall be prepared daily and placed in a labeled, sealed container. *This self-made solution shall not be utilized with those items specified in (d) below.*
(b) The home shall ensure that the following equipment items are surfaces are washed and disinfected after each use:
1. Toilet training chairs that have first been emptied into a toilet unless each infant has his or her own toilet training chair;
2. Sinks and faucets used for handwashing, if the sink is also used for rinsing a toilet training chair;
3. Diapering surfaces, used by more than one infant;
4. Toys mouthed by infants before being given to another infant;
5. Mops used for cleaning; and
(c) The home shall wash and disinfect the following items at least daily:
1. Toilets and toilet seats used by more than one infant;
2. Diaper pails and lids used by more than one infant;
3. Drinking fountains;
4. Water table and water play equipment;
5. Play tables; and
6. Smooth surfaced non-porous floors in areas used by infants.
(d) The home shall wash and disinfect the following items at least weekly, and before use by another infant:
1. Cribs, cots, mats, playpens or other sleeping equipment approved by the Bureau; and
2. Sheets, blankets or other coverings.
(e) The home shall wash and disinfect tables used by the infant for eating before each meal.
(f) Homes that maintain outside sandboxes or play areas containing sand shall ensure that:
1. Only asbestos-free sand is used; and
2. The sand is maintained in a safe and sanitary manner.

10:128-10.22 Personal hygiene requirements
(a) The home shall ensure that adolescents and staff members wash their hands with soap and running water immediately:
1. Before preparing or serving food;
2. After diapering a child;
3. After toileting;
4. After assisting a child in toileting;
5. After caring for a child who appears to be sick;
6. After handling animals or their equipment or after coming in contact with an animal's body secretions; and
7. After coming into contact with blood; fecal matter, urine, vomit, saliva, nasal secretions or other body fluids or secretions.
(b) The home shall ensure that adolescents or staff members:

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1. Change each infant's diaper when wet or soiled; and
2. Wash and dry each infant's bottom during each diaper change with an individual disposable wash cloth, paper towel or disposable diaper wipes.
(c) The home shall ensure that soiled diapers are placed in a closed container that is lined with a leakproof or impervious lining.
1. Disposable diapers shall be removed from the home daily and placed in a closed container that is outside the building and used for refuse collection.
2. Non-disposable diapers shall be stored and laundered separately for each child *except when the diapers are laundered by a commercial laundry service*.

10:128-10.23 Health education and physical care for adolescents and infants
(a) The home shall ensure that adolescents receive training in personal care, hygiene, and grooming habits.
1. The home shall discuss the physiological changes experienced during adolescent pregnancy and childbearing with adolescents in the home.
2. The home shall instruct adolescents about sexually responsible behavior, including how to protect themselves from pregnancy and sexually transmitted diseases, including AIDS.
3. The home shall inform all adolescents about the health consequences of cigarette smoking and alcohol and drug use.
(b) The home shall ensure that each adolescent bathes and grooms her infant daily, and provides other personal hygiene services that are necessary to meet the infant's needs.
1. The home shall give each adolescent and infant individual towels and washcloths.
2. The home shall ensure that soap and toilet paper are available for the adolescents and infants at all times.
(c) The home shall ensure that each adolescent and infant has a personal supply of adequate, clean, well-fitting, and attractive clothing appropriate to his or her age, gender, individual needs, community standards, and season.
1. The home shall ensure that each adolescent's and infant's clothing is kept clean and in good repair; and the home may require adolescents to do their own laundry and that of their infant.
2. The home shall not require adolescents or infants to wear any clothing that would identify them as a resident of the home.
3. The home shall supply adolescents with necessary personal hygiene items.

10:128-10.24 Food and nutrition for infants
(a) In addition to the requirements specified in N.J.A.C. 10:128-6.11, the home shall ensure that each adolescent mother obtains and follows a written plan developed with the infant's health care provider regarding the feeding schedule, specific formula, nutritional needs and introduction of new food for each infant.
1. The home shall maintain on file the feeding schedule of each infant residing in the home in the infant's record.
2. The home shall ensure that the adolescent makes the feeding schedule available to all of the infant's caregivers.

10:128-10.25 Life skills development
(a) The home or agency shall ensure that the adolescent mothers receive instruction and experience in the following:
1. Meal planning and meal preparation;
2. Food shopping;
3. Locating affordable housing;
4. Securing appropriate medical and dental services;
5. Utilization of public transportation;
6. Home safety practices including, but not limited to:
   i. Checking for gas leaks;
   ii. Keeping the child away from a hot stove;
   iii. The dangers of open windows when infants are present;
   iv. The appropriate methods to rid the home of pests;
   v. Fire prevention; and
   vi. Contacting the appropriate community agency when an emergency occurs;
7. Banking; and
8. Applying for public assistance.
(b) The home or agency shall document in the adolescent mother's record that she has received the training in (a) above.

Insurance (a)

Division of Administration
Nonrenewal of Automobile Insurance Policies
Adopted Concurrent Repeals and New Rules:
N.J.A.C. 11:3-8.4, 8.5, and Appendix A and B
Adopted Concurrent Amendment: N.J.A.C. 11:3-8.3.
Proposed: December 17, 1990 at 22 N.J.R. 3766(b).
Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.
Filed: January 25, 1991 as R.1991 d.89, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
February 19, 1991, changes upon Adoption.
Operative Date: April 1, 1991.
Expiration Date: January 4, 1996.
These rules were adopted on an emergency basis and concurrently reproposed on November 26, 1990 pursuant to N.J.S.A. 52:14B-4(c). The present adoption of the current reproposed rules is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-6.4(d)).
Summary of Public Comments and Agency Responses:
The Department of Insurance (Department) received 10 public comments from insurers and insurance trade organizations.
Initially the Department notes that these rules are closely related to other rules contemporaneously adopted concerning the definition of "eligible person," N.J.A.C. 11:3-34; Standard/Non-Standard Rating Plans, N.J.A.C. 11:3-19; and Automobile Insurance Underwriting Rules, N.J.A.C. 11:3-35. All of these rules relate to statutory changes concerning the voluntary automobile insurance market set forth in the Fair Automobile Insurance Reform Act of 1990, N.J.S.A. 17:33B-1 et seq. (FAIR Act). Recognizing this, some commenters addressed their comments generally to all of these rules and some duplicated their comments, while other commenters did not identify the specific rule being commented upon. Often, commenters addressed a particular rule, but their comment was similar to a comment on a different rule. In preparing adoption notices for all of these rules, the Department has in some instances combined similar comments and responses, and those that related to more than one of these rules may appear only once. The Department believes that not only does this avoid duplication, but also promotes clarity and consistency. In other instances, the Department found that a more cogent response could be provided to various aspects of general comments by addressing each aspect in connection with a particular rule to which it is related. The reader is therefore urged to examine also the adoption notices for the other rules set forth above.
COMMENT: Many commenters restated comments previously made to this rule when first proposed on August 6, 1990 (see 22 N.J.R. 2224(b)), or stated simply that comments to that proposal were "incorporated by reference."
RESPONSE: These commenters are referred to the Department's responses set forth when these rules were reproposed (see 22 N.J.R. 3766(b)). The Department notes, however, that many of the following comments and responses contain elements of previous comments regarding particular aspects of these rules. Some of the following responses may serve to promote a greater understanding of the Department's previous responses when applicable.
COMMENT: Some commenters objected generally to various provisions of these rules which incorporate statutory standards.
RESPONSE: These provisions simply set forth standards required by the applicable statutes.
COMMENT: Several commenters stated that the implementation of these rules would involve significant expenditures for the system changes required to comply.
RESPONSE: The Department recognizes that the statutory changes implemented by these rules require system changes by insurers.
COMMENT: Several commenters stated that the five-year record retention period set forth in N.J.A.C. 11:3-8.7 appears to be unnecessarily long.
RESPONSE: The Department believes that a five-year retention period of these records is appropriate, noting that this is the same period previously required for documents regarding nonrenewals based on underwriting guidelines (see former N.J.A.C. 11:3-8.4(c)).
COMMENT: A commenter stated that "if an insurer offers to renew a policy on the condition that the premiums and a completed renewal questionnaire is returned by a specified date, may the insurer consider the renewal offer "Not accepted" if the conditions are not met?"
RESPONSE: The Department notes that such a provision regarding renewal would be required to be stated in the insurer's policy forms in order to be part of the insurance contract. Policy forms are subject to review by the Department and prior approval. It is not appropriate that the Department undertake in this context to rule on the propriety of the form of a policy which has not yet been submitted for approval.
COMMENT: All of the commenters expressed objections or questions regarding N.J.A.C. 11:3-8.4(a) which permits nonrenewal of persons "who are not eligible persons defined in N.J.A.C. 11:3-34." The commenters stated that they had difficulty understanding what to do when a household consists of both eligible and "non-eligible" persons.
RESPONSE: Since the FAIR Act requires insurers to offer to renew "eligible persons," if a household consists of one eligible person and one who is not, and two automobiles, an insurer must offer to renew the eligible person (that is, the automobile that person principally drives) and may nonrenew the "not-eligible person" (that is, the automobile that person drives). This may, of course, require that the previous policy be split as the new policy would cover only one vehicle. The not-eligible person might then seek coverage in the residual market. If the policy covered only one vehicle, it may be nonrenewed, assuming the "not-eligible" person was responsible for at least 10 percent of the vehicle use.

The Department further notes that N.J.A.C. 11:3-8.4(a)3 provides that notices of nonrenewal shall only be issued in accordance with an insurer's underwriting rules filed and approved pursuant to N.J.A.C. 11:3-35. In order to improve insurer understanding of this rule, the Department has included relevant provisions from N.J.A.C. 11:3-35 in this rule and deleted N.J.A.C. 11:3-35.3(c)10 replacing it with a provision in N.J.A.C. 11:3-35.4 specifically addressing underwriting rules for eligible persons (see adoption notice for N.J.A.C. 11:3-35 elsewhere in this issue of the Register).

The Department believes that the provisions of this rule and those of N.J.A.C. 11:3-35 yield a result consistent with the stated purpose of the FAIR Act to "guarantee that 'good drivers' secure motor vehicle insurance coverage in the voluntary market. . . ." N.J.S.A. 17:33B-2h(6). These rules provide that in a household of three drivers with three vehicles and two eligible persons (that is, with a "non-eligible" driver and the vehicle principally driven by that person would be insured in the residual market (assigned risk plan). The commenters would nonrenew the entire policy and require all three drivers and automobiles to seek coverage in the assigned risk plan. Because of the 10 percent limit on the assigned risk plan set forth in N.J.S.A. 17:32D-1, adding to the assigned risk plan all eligible persons who happen to reside in the household of a "not-eligible" person would quickly fill the plan beyond its statutory capacity. When so filled, and closed by the Commissioner, other "not-eligible" drivers would become entitled to be insured in the voluntary market. The Department believes the rule as adopted and as clarified with the additional language from N.J.A.C. 11:3-35 provides a superior result.

COMMENT: Several commenters requested clarification concerning compliance with N.J.A.C. 11:3-8.3(3)(i). Many insurers objected to the requirement under (i)ii that the nonrenewal notice reference the specific underwriting rule by which the insured is disqualified. One commenter inquired whether a citation of the section is sufficient. Another noted that most insurers are more interested in the facts, rather than other matters.

RESPONSE: As noted in N.J.A.C. 11:3-8.3(0), a valid notice - nonrenewal should include designated provisions of the subchapter as the correct facts which bring the insured under the provision. The "facts" include not only the circumstances of the incident (the accident the motor vehicle violation) but also, as to (i)ii the eligibility point assessed for the incidents and the total eligibility points, as well as substantiation of the source of the information (for example, the accident claim record, motor vehicle abstract, renewal application, etc.). Insure have for many years been able to convey this type of information when issuing a notice of nonrenewal. As a practical matter, however, the use of N.J.A.C. 11:3-3.8(0)(ii) will cease upon approval and implementatic of the insurers' underwriting rules filed in accordance with N.J.A.C. 11:3-35. Use of the insurer's underwriting rules simply adds an additional fact to the notice, that is, that the insured no longer qualifies for renewal in accordance with the insurer's approved underwriting rules (for example, "which provide that persons who have accrued nine or more eligibiliy points shall not be renewed").

COMMENT: One commenter requested clarification concerning the nonrenewal provisions of these rules and the provisions of the standard non-standard rating plan rules, N.J.A.C. 11:3-19, concerning the transit between tiers.

RESPONSE: Nonrenewals should be provided the notice set forth in N.J.A.C. 11:3-8.3(0). Persons transferred between tiers of a standard non standard rating plan should be given notice in accordance with the insurer's underwriting rules filed in accordance with N.J.A.C. 11:3-19.5. One notice is required to be given at the time the notice of transfer between tiers is provided. The transfer will not be deemed a "nonrenewal" for the purpose of the reports and limitations set forth in these rules concerning nonrenewable:

COMMENT: Several companies requested "further clarification" concerning the ability to nonrenew per territory a limited number of "eligible persons," if a household consists of one eligible person and one who is not, and two automobiles, an insurer must offer to renew the eligible person (that is, the automobile that person principally drives) and may nonrenew the "not-eligible person" (that is, the automobile that person drives). This may, of course, require that the previous policy be split as the new policy would cover only one vehicle. The not-eligible person might then seek coverage in the residual market. If the policy covered only one vehicle, it may be nonrenewed, assuming the "not-eligible" person was responsible for at least 10 percent of the vehicle use.

The Department notes that many commenters generally objected to the statutory requirement to insure eligible persons, and complained that the FAIR Act and the Department's rules prohibit any underwriting discretion that insurers have traditionally exercised. The Department notes that the nonrenewals permitted by N.J.S.A. 17:29C-7.1 provide some limited underwriting discretion.

COMMENT: One company inquired whether "renewal rules" must be filed.

RESPONSE: N.J.A.C. 11:3-8.4(a)3 cross-references N.J.A.C. 11:3-3 with respect to underwriting rules approved pursuant to that section. This provision is stated in provisions of the nonrenewal applicable to all automobile policies. N.J.A.C. 11:3-35.4 requires insurers to file for approval their underwriting rules "use to accept or reject new business, to renew or nonrenew current business and to assign business to the standard or non-standard rate level of an approved standard/non standard rating plan. . . ." Notices of nonrenewals issued in accordance with N.J.A.C. 11:3-35.4 should be consistent with an insurer's underwriting rules. With respect to the discretionary nonrenewals permitted by N.J.S.A. 17:29C-7.1 and N.J.A.C. 11:3-8.5, the Department notes that because these are intended by the Legislature to be discretionary, it is illogical to attempt to set forth in underwriting rules all of the factors that may result in a determination to nonrenew in accordance with those provisions. The commenter should note that the cross-reference to accordance with underwriting rules is set forth in N.J.A.C. 11:3-8.4, not N.J.A.C. 11:3-8.5.

COMMENT: Several commenters requested that insurers be permitted to carry over the N.J.A.C. 11:3-8.5(a) two-for-one or "two-for-one" credit beyond the calendar year.

RESPONSE: The Department disagrees that any "carry over" is authorized by statute, and believes that the rule as stated is consistent with the provisions of N.J.S.A. 17:29C-7.1. The Department also notes that many insurers have not satisfied their residual market depopulation apportionment share obligation and have been barred by Order of the Commissioner from any "two-percent" and "two-for-one" nonrenewals.

COMMENT: Several commenters requested deletion of the requirement for consecutive numbering for notices of nonrenewal issued pursuant to N.J.A.C. 11:3-8.5.
RESPONSE: The Department believes that consecutive numbering is important both to require insurers to establish the number of permitted discretionary nonrenews in each territory, and to permit the Department to monitor effectively and respond promptly to consumer complaints.

COMMENT: One commenter requested that a lead time "grace period" be included in the regulation so that nonrenewals processed prior to the adoption of the regulation will not be deemed invalid.

RESPONSE: These rules were adopted November 26, 1990. They affect renewal of policies expiring April 1, 1991 and thereafter. Since N.J.A.C. 11:3-8.3(f) requires nonrenewal notices to be issued no less than 50 days and no more than 90 days prior to the expiration of the current policy, any notice of nonrenewal effective April 1, 1991 and thereafter which was issued prior to November 26, 1990 would be ineffective in any event.

COMMENT: One commenter objected to the reports required by N.J.A.C. 11:3-8.7. The commenter suggested that the Department adopt a reporting requirement similar to that of the State of New York. Another commenter also objected to the reporting requirements and suggested a different form of report, which provided some of the information set forth in Appendix A and B, and a different format.

RESPONSE: The Department is not willing to modify these forms further at this time, noting that similar forms were originally proposed March 5, 1990 (see 22 N.J.R. 769(a)) and again on December 17, 1990 (see N.J.R. 3766(b)). The Department notes that the forms of reports as adopted include modifications as the result of previous comments (see 22 N.J.R. 3769).

COMMENT: One commenter stated that the rules need "to be clarified with respect to its application to commercial automobile policies," noting the cancellation and nonrenewal requirements for commercial automobile policies are set forth in N.J.A.C. 11:1-20.

RESPONSE: The Department does not believe that clarification is necessary concerning these amendments to N.J.A.C. 11:3-8; it notes that N.J.A.C. 11:3-8.1 provides the scope of the subchapter as applying "to all automobiles as defined in N.J.S.A. 39:6A-2a excluding those owned by business entities or insured through any statutorily mandated residual market mechanism, and to all policies or contracts of insurance insuring such automobiles." The Department has proposed no amendments to N.J.A.C. 11:3-8.1.

COMMENT: One insurer inquired about the application of N.J.A.C. 11:3-8.4 with respect to personal fleet policies that may be issued to a person who owns a large number of cars or who collects cars. The commenter suggested N.J.A.C. 11:3-8.4 be amended to provide that the entire fleet policy may be nonrenewed by the insurer, where a driver is ineligible.

RESPONSE: The Department does not believe that such an amendment is necessary. It notes that the presumptions in N.J.A.C. 11:3-35.3(c)(ii), and now incorporated into N.J.A.C. 11:3-8, are applicable to a situation in which there are more automobiles than drivers in a household, and therefore that an individual is the principal driver of more than one automobile. In such circumstances, the company may nonrenew the ineligible driver, that is, the policy covering all automobiles for which that individual was the principal driver. The Department notes, however, that the insurer would nevertheless be required to offer to renew insurance covering automobiles in which other eligible members of the household are the principal drivers. To include the language suggested by the commenter would authorize the insurer to nonrenew the policies covering these other eligible persons and the automobiles they principally drive.

COMMENT: One commenter objected to N.J.A.C. 11:3-8.5(a)(2), which provides the "two-for-one" nonrenewals. The commenter objected to the provision of the rule that limits the language "voluntarily writes" so as not to include any exposure transferred to or assigned to an insurer pursuant to N.J.S.A. 17:33B-11 (which establishes the Market Transition Facility), as well as quotas established pursuant to N.J.S.A. 17:30E-14 (which establishes the JUA quotas). The commenter states that while N.J.S.A. 17:30E-14 provides a limit on an insurer's ability to nonrenew, no such limit is provided in N.J.S.A. 17:33B-11. The commenter asserts that its right to nonrenew in accordance with N.J.S.A. 17:30C-7(c) may not be overcome by the rules. The commenter makes a similar argument with respect to N.J.A.C. 11:3-8.5(b).

RESPONSE: While the Department recognizes the technical legal argument made by the commenter, it believes that the rule as stated is authorized not only by N.J.S.A. 17:33B-11, but also by other statutes providing the Commissioner with more general powers.

COMMENT: One commenter suggested that these rules "should accommodate those reasons that justify cancellations, such as nonpayment, failure to cooperate in claim investigations, fraud, etc."

RESPONSE: The Department notes that this rule concerns nonrenewals, not cancellations as provided in N.J.S.A. 17:39C-7 for nonpayment of premium or suspension or revocation of driver's license or motor vehicle registration. Rules concerning cancellation for nonpayment of premium are set forth at N.J.A.C. 11:3-7.6. With regard to nonrenewal for such things as failure to cooperate, etc., the Department notes that N.J.A.C. 11:3-8.5 provides additional discretionary nonrenewals per territory, which are not affected by an individual's status as an eligible person.

COMMENT: With respect to N.J.A.C. 11:3-8.7(b), which requires reports February 15 and August 15 of each year, one commenter inquired whether the reporting period is to end on June 30 and December 31, noting these dates are not contained in the rule or exhibits.

RESPONSE: No specific date is stated as the end of a reporting period because the Department recognizes that insurers have different capabilities with respect to obtaining the correct data to be set forth on these reports. Some insurers may be able to provide up-to-date data as of the end of January and the end of July. Others may submit the reports as this commenter suggested, based on mid-year and end-of-year data.

COMMENT: One commenter suggested that the format of the rule be changed to reverse the order of N.J.A.C. 11:3-8.4 and 8.5. It stated that it would make the rules much clearer.

RESPONSE: The Department notes that the current format was previously proposed August 6, 1990 (see 22 N.J.R. 2224(b)) and does not believe this change is necessary.

The Department notes that the text of N.J.A.C. 11:3-8.2(3) as adopted on an emergency basis and concurrently proposed differs from the proposed and adopted text of those paragraphs as reflected in the recent readoption of this chapter (see 22 N.J.R. 1678(a) and the notice of readoption in the February 5, 1991 New Jersey Register). The Department intended this concurrently proposed form for those paragraphs to be the final form, and it is that text that is reproduced herein for final inclusion in the Code.
taken and the correct facts which bring the insured under the provision(s), including dates and any other facts necessary for identification of the incidents.

i. In the event action is being taken under N.J.A.C. 11:3-8.4(a) (ineligible person), the notice shall provide the basis by which the insured fails to qualify as an eligible person. When notice of nonrenewal is based on automobile insurance eligibility points, the notice shall identify the number of eligibility points and the events and sources which resulted in their assessment.

ii. In the event action is being taken under N.J.A.C. 11:3-8.4(b) (underwriting rules) to nonrenew an insured who is not an eligible person in accordance with the approved underwriting rules applicable to the non-standard rate level of an approved standard/non-standard rating plan, the notice shall provide the basis by which the insured fails to qualify as an eligible person and shall reference the specific underwriting rule by which the insured is disqualified. The notice shall set forth the specific facts upon which the insurer relied to determine that the insured is not an eligible person and is no longer qualified to be insured in accordance with the insurer’s approved underwriting rules.

iii. In the event action is being taken under N.J.A.C. 11:3-8.5(a), the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.5(a) (one percent territorial nonrenewal) and shall be consecutively numbered in each territory.

iv. In the event action is being taken under N.J.A.C. 11:3-8.5(a)(2), the notice shall specify that the action is being taken in accordance with N.J.A.C. 11:3-8.5(a)(2) (one nonrenewal for each two newly insured automobiles) and shall be consecutively numbered in each territory.

2. Each notice of nonrenewal shall include or be accompanied by the statement prescribed in (f)(2) below which shall be clearly and prominently set out in boldface type or other manner which draws the reader’s attention.

i. Each notice of nonrenewal must set forth: “If you have reason to believe that our decision to nonrenew your policy is not in compliance with New Jersey Regulation N.J.A.C. 11:3-8, you should file a written complaint with the New Jersey Department of Insurance, Division of Enforcement and Consumer Protection, CN 329, Trenton, New Jersey 08625-0329. Your written complaint should indicate the facts on which you are basing your complaint.”

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

11:3-8.4 Standards of nonrenewable applicable to all automobile policies

(a) An insurer may issue a notice of nonrenewal to any person who is not an eligible person as defined in N.J.A.C. 11:3-34.

1. For the purpose of determining whether a person is an eligible person who must be renewed, an insurer shall consider those eligibility points accrued only in the 36-month period ending 90 days prior to the expiration of the current policy.

2. An insurer shall not issue a notice of nonrenewal for the reason that a member of the insured’s household is not an eligible person unless the member of the insured’s household usually accounts for 10 percent or more of the use of the vehicle insured. *For the purpose of this section:

i. Any driver who is the principal driver of an automobile shall be presumed not to account for 10 percent or more of the use of any other automobile in the household.

ii. Except when there are more automobiles than drivers in the household, a person shall be presumed not to be the principal driver of more than one automobile.*

3. No insurer shall issue a notice of nonrenewal to any person qualified to be renewed in accordance with the insurer’s underwriting rules filed and approved pursuant to N.J.A.C. 11:3-35.

(b) An insurer which has filed a standard/non-standard rating plan pursuant to N.J.A.C. 11:3-19 may issue notices of intention not to renew any insured who is not an eligible person and who no longer qualifies for any rate level in accordance with its approved underwriting rules.

11:3-8.5 Additional nonrenewals

(a) Any insurer may:

1. For each calendar year period, issue notices of intention not to renew an automobile insurance policy in the voluntary market in an amount not to exceed two percent of the number of current market automobile insurance policies of the insurer, rounded to the nearest whole number, which are in force at the end of the previous calendar year in each of the insurer’s territories; and

2. For every two newly insured automobiles which an insurer voluntarily writes in each territory during each calendar year period issue a notice of intention not to renew one additional automobile in that territory. For the purpose of this subsection, “voluntary writes” shall not include any exposure voluntarily written by an insurer to an insurer to meet any quota established pursuant to N.J.S.A. 17:30E-14 and N.J.S.A. 17:33B-11 and shall not include an insurer that does not write its apportionment share of an insurance policy or insurance policies in the voluntary market not exceeding the 2.4 percent territorial nonrenewal quota established by the Commissioner pursuant to N.J.S.A. 17:30E-14 and N.J.S.A. 17:33B-11 within the applicable time shall be precluded from nonrenewing automobile insurance policies pursuant to (a) above during the following year.

(c) Nothing in this rule shall be construed to authorize insurer to act in contravention of any applicable State or Federal law prohibiting discrimination on impermissible bases.

11:3-8.6 Suspension of nonrenewals

(a) Notwithstanding the provisions of this subchapter, if the plan for automobile insurance established pursuant to N.J.S.A. 17:29D-7 is not accepting new applications for coverage pursuant to N.J.S.A. 17:29D-7, no insurer transacting automobile insurance in the State shall refuse to renew any private passenger automobile insurance policy in this State.

11:3-8.7 Reporting requirements

(a) Insurance companies shall maintain records of nonrenewals for not less than five years which shall include a copy of the notice of nonrenewal, data concerning the allowable number of nonrenewals in each territory computed in accordance with N.J.A.C. 11:3-8.5(a)1 and data concerning the actual number of newly insured automobiles and nonrenewals in each territory for each category, computed in accordance with N.J.A.C. 11:3-8.5(a)2. Such records and data shall be made available to the Department upon request. In addition, each insurer shall file summary reports of its nonrenewals as follows:

1. For all other insurers, in the form of report set forth as Exhibit A of the Appendix incorporated herein by reference;

2. For all other insurers, in the form of report set forth as Exhibit B of the Appendix, incorporated herein by reference.

(b) An insurer shall submit summary reports of their nonrenewals for the year to date on or before February 15 and August 15 of each year to the following address:

New Jersey Department of Insurance
Division of Enforcement and Consumer Protection
20 West State Street
CN-329
Trenton, New Jersey 08625-0329

Recodify existing N.J.A.C. 11:3-8.6 and 8.7 as 8.8 and 8.9 (No change in text).
**APPENDIX**

**EXHIBIT A**

**NONRENEWAL REPORT—A**

Standard/Nonstandard Rating System

**Insurer Group Name:** ________________________________  **NAIC Group No.** ________________________________

**Company Name:** ________________________________  **NAIC Company No.** ________________________________

(list all companies in standard/nonstandard plan)

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<th>Vehicles N/R for cause</th>
<th>N.J.A.C. 11:3-8.4(a)</th>
<th>Vehicles N/R Underwriting</th>
<th>N.J.A.C. 11:3-8.4(b)</th>
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*Does not include a vehicle cancelled within the first 60 days.
## INSURANCE ADOPTION

**Insurer Group Name:**

**NAIC Group No.**

**Company Name:**

**NAIC Company No.**

(list all companies in standard/nonstandard plan)

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<tr>
<th>Territory</th>
<th>Vehicles Insured</th>
<th>Vehicles by Insured</th>
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<th>Vehicles N/R Underwriting</th>
<th>Vehicles N/R 2% Rule</th>
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**Totals:**

**Notes:**
- Column (1) shall be numbered in accordance with insurer's approved rating plan.
- Column (2) shall be dated as of previous year.
- No cancellation or nonrenewal shall be double counted by including it in more than one column.
- Renewals within standard/nonstandard system are not to be reported as nonrenewals or cancellations.
- Nonrenewals for underwriting (column 6) do not qualify for highest rated tier of standard/nonstandard plan.
- Column (7) cannot be greater than .02 X column (2).
- Report total only for column (10).
- *Columns (4), (5), (6), (7) and (8) may be reported together as a single number for each territory, but if the insurer is eligible to do 2% or 2:1 nonrenewals, then the single number reported cannot exceed the permissible total of 2% and 2:1 nonrenewals for that territory.*

*Does not include a vehicle cancelled within the first 60 days.

**Date Submitted**

(CITE 23 N.J.R. 512) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
EXHIBIT B
NONRENEWAL REPORT—B
Individual Company

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<th>NAIC Company No.</th>
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<td>N.J.A.C. 11:3-8.4</td>
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*Does not include a vehicle cancelled within the first 60 days.
INSURANCE

ADDITIONS

NONRENEWAL REPORT—B
Individual Company

Company Name: __________________________________________ NAIC Company No.: ______

<table>
<thead>
<tr>
<th>Territory</th>
<th>(1) Vehicles Insured</th>
<th>(2) Vehicles Canceled by Insured</th>
<th>(3) Vehicle N/R for cause</th>
<th>(4) N.J.A.C. 11:3-8.4</th>
<th>(5) Vehicles N/R 2% Rule</th>
<th>(6) N.J.A.C. 11:3-8.5(a)</th>
<th>(7) N.J.A.C. 11:3-16.5(a)</th>
<th>(8) *Vehicles Newly Insured</th>
<th>(9) *Vehicles Depopulation</th>
<th>(10) *cJUA Quota</th>
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Notes: Column (1) shall be numbered in accordance with insurer's approved rating plan.
Column (2) shall be dated as of previous year.
Columns (3) through (10) shall contain information as of date in column (10).
No cancellation or nonrenewal shall be double counted by including it in more than one column.
Column (6) cannot be greater than .02 X column (2).
Report total only for column (9).
Column (10) equals column (2) plus column (8) minus column (3), (4), (5), (6) and (7).

*Columns (4), (5), (6), (7) and (8) may be reported together as a single number for each territory, but if the insurer is eligible to do 2% nonrenewals of 2:1 nonrenewals, then the single number reported cannot exceed the permissible total of 2% and 2:1 nonrenewals for that territory. *

Date Submitted ____________

DIVISION OF ADMINISTRATION
Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance

Adopted Concurrently Proposed Amendments:
N.J.A.C. 11:3-16

Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.
Filed: January 25, 1991 as R.1991, d.91, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 11:3-4.3).
Effective Date: January 25, 1991, Readoption of Emergency Amendments; February 19, 1991, Changes upon Adoption.
Expiration Date: January 4, 1996.

These amendments were adopted on an emergency basis and concurrently proposed on November 26, 1990, pursuant to N.J.S.A. 52:14B-4(c). These present adoption of the concurrent proposed amendments is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), except for the changes upon adoption, which are effective on the date of publication of this notice, February 19, 1991.

Summary of Comments and Agency Responses:

The Department of Insurance (Department) received 15 written comments from insurers, the Department of Public Advocate, Division of Rate Counsel (Public Advocate), an insurance trade association, a rating organization and the New Jersey Property-Liability Insurance Guaranty Association.

Several commenters approved the fact that the proposed amendments substantially reduce the volume of data required from the existing rules. In addition, numerous commenters expressed concerns regarding specific provisions of the proposed amendments as follows:

COMMENT: Several commenters objected to the requirement that rate change filings include a computer disk that contains the rating system to be implemented for filers with at least 40,000 exposures.

One commenter specifically stated that it does not currently have a rating system on computer disk and that such a system would be difficult and expensive to develop. The commenter also requested clarification regarding the purpose of requiring the data in this manner. Finally, the commenter stated that it could provide hard copies of all of its rating information and a number of rating examples in lieu of providing a rating system on computer disk.

Another commenter suggested that the rules require the rating system on computer disk or if available.

Another commenter stated that this submission and that required 1 N.J.A.C. 11:6-16.3(a)5 involves the disclosure of proprietary and trade secret information which will be accessible by competitors and unauthorized third parties.

RESPONSE: The Department previously addressed this concern in the Notice of Adoption of N.J.A.C. 11:3-16 (see 22 N.J.R. 399). As was stated previously, the requirement that an insurer provide the rating system on computer disk is necessary both to determine that the rates are properly implemented and to respond to consumer inquiries. Further, the Department increased the threshold of the exemption from this requirement for insurers with less than 1,000 exposures in the prior years, to insurers with less than 40,000 exposures in the prior year. In addition, the Department notes that many insurers have developed the systems required for the use of their agents or employees. Pursuant to N.J.A.C. 11:3-16.3(a), a filer that does not currently have a rating system on computer disk, and not otherwise exempt pursuant to N.J.A.C. 11:3-16(j), must develop such a system and report data collected on filings made or required to be made on or after April 1, 1992. Further the Department previously addressed the issue of proprietary and trade secret information (see 22 N.J.R. 401).

COMMENT: The Department of the Public Advocate, Division of Rate Counsel stated that requiring a rating system on computer disk only for filers with 40,000 or more exposures may have an anti-competitive effect. In a competitive rating system, more insurers should be required to provide rating systems on computer disk so that consumers may obtain price comparisons. The Public Advocate suggested that a more reasonable threshold be considered.

RESPONSE: After consideration of the commenter's suggestion, the Department has determined that no change to the threshold is required. The Department believes that the new threshold is reasonable and that the use of the disks by the Department may not justify the cost for insurers with less than 40,000 exposures during the prior calendar year. Further, the Department notes that while the commenter suggested that a more reasonable threshold be considered, it failed to suggest an alternative.

COMMENT: One commenter noted that the calculation of indicative rate level need has been deleted by the proposed amendments. The commenter questioned whether this was intentional.
RESPONSE: The Department did not intend to delete both N.J.A.C. 1:3-16.8(b) and (i), but rather to simply delete N.J.A.C. 11:3-16.8(c) which relates to rating organizations. The Department notes that this requirement is identified in the cover letter submitted with prior approval filings.

COMMENT: One commenter noted that the proposed amendments eliminate the requirement for data regarding investment earnings previously included in N.J.A.C. 11:3-16.9(c). The commenter stated that this data appears to be required since N.J.A.C. 11:3-16.10 specifies that the manner in which the investment income calculation is to be performed.

RESPONSE: The Department agrees. The rules are changed upon adoption to confirm that this data must be submitted as it is required or calculation of investment income pursuant to N.J.A.C. 11:3-16.10.

COMMENT: Several commenters expressed concern with the language contained in N.J.A.C. 11:3-16.11(b)(1). This rule requires filers to report assessments imposed by N.J.S.A. 17:30A-8(9) to provide an explanation why it believes that the assessment should be reflected in the "requests rates since the assessment, by statute, is classified as a loan." The commenters believe that this language does not accurately reflect the intent of the Legislature. The payment by the New Jersey Property Liability Insurance Guaranty Fund (Guaranty Fund) is the "loan" described in the statute. Payment by the member insurer to the Association is not a "loan." The commenters thus suggested that the phrase "...since the assessment, by statute, is classified as a loan," be eliminated.

Another commenter specifically stated that classification of the assessment as a loan raises the following questions: 1) the interest rate to be applied; 2) whether assessments and surtaxes should be considered an investment and results of the loan reflected as investment income; 3) whether such a loan would be considered a non-admitted asset; and 4) whether the assessments and surtaxes are considered a premium tax, which will result in retaliatory taxes on New Jersey domestic insurers.

Another commenter additionally stated that the assessment has none of the traditional characteristics of a loan (that is, no specified interest rate, no definite period for repayment).

RESPONSE: After consideration of the comments the Department has determined that no change is required. N.J.S.A. 17:29A-35 as amended provides that merit rating plan surcharge money is to be remitted to the Association upon a certification by the Commissioner that the monies are no longer needed to fund the New Jersey Automobile Insurance Guaranty Fund (Guaranty Fund) is the "loan" denominated in the statute. Payment by the member insurer to the Association is not a "loan." The commenters thus suggested that the phrase "...since the assessment, by statute, is classified as a loan," be eliminated.

RESPONSE: The definition of "allocated loss adjustment expenses" is intended to be narrow in its definition so that it can be used which may be compiled and disseminated to insurers by rating organizations or advisory organizations for rate making purposes. Many of the expenses listed in the standard definitions of "allocated loss adjustment expense" include expenses which vary between companies based on different allocation methodologies. The Department believes that it is inappropriate to permit development of new data for two or more insurers utilizing such expenses pursuant to N.J.S.A. 17:33B-31.

COMMENT: The Public Advocate stated that the definition of "allocated loss adjustment expenses" in N.J.A.C. 11:3-16.7(b) and (c) appears inconsistent with past practices of the Department and other standard definitions. This may create problems in comparing past and prospective New Jersey experience to that in other states.

RESPONSE: The definition of "allocated loss adjustment expense" is intended to be narrow in its definition so that it can be used which may be compiled and disseminated to insurers by rating organizations or advisory organizations for rate making purposes. Many of the expenses listed in the standard definitions of "allocated loss adjustment expense" include expenses which vary between companies based on different allocation methodologies. The Department believes that it is inappropriate to permit development of new data for two or more insurers utilizing such expenses pursuant to N.J.S.A. 17:33B-31.

COMMENT: The Public Advocate stated that the Department has determined to change the calculation of investment income for the following reasons: N.J.S.A. 11:3-16.12 provides that insurance companies should be permitted to keep the insurance reserve calculated on the reserve filing in all cases. In order to streamline the review process of rate filings, the Department has reduced the amount of data required through these proposed amendments. If the Public Advocate, however, believes that clarifying, explanatory or supplemental information is necessary, it may request that the filer provide such information pursuant to N.J.A.C. 11:3-16.6(e). The Department, however, still consider the commentor's concerns and may propose amendments to the rules as necessary.

COMMENT: The Public Advocate stated that the term "consistent levels" as used in N.J.A.C. 11:3-16.7(a)1 requires definition.

RESPONSE: "Consistent levels" means the same point in time but not a future point in time. The rules are changed upon adoption to reflect this clarification.

COMMENT: The Public Advocate stated that the definition of "allocated loss adjustment expenses" in N.J.A.C. 11:3-16.7(b) and (c) appears inconsistent with past practices of the Department and other standard definitions. This may create problems in comparing past and prospective New Jersey experience to that in other states.

RESPONSE: The definition of "allocated loss adjustment expenses" is intended to be narrow in its definition so that it can be used which may be compiled and disseminated to insurers by rating organizations or advisory organizations for rate making purposes. Many of the expenses listed in the standard definitions of "allocated loss adjustment expense" include expenses which vary between companies based on different allocation methodologies. The Department believes that it is inappropriate to permit development of new data for two or more insurers utilizing such expenses pursuant to N.J.S.A. 17:33B-31.

COMMENT: The Public Advocate stated that the Department has determined not to change the provision of the Department's current Internal Revenue Service discount rate plus 200 basis points as the standard interest rate.

RESPONSE: After consideration of the commenter's suggestion, the Department has determined not to change this provision. The Department believes that the Treasury constant three-year maturity rate, which is used as the standard interest rate for the calculation of investment income in N.J.A.C. 11:3-16.10(a), is inappropriate. Insurers should be able to earn a higher rate of return. Utilizing the rate proposed may result in much of an insurer's investment income being excluded from the rate-making process. The Public Advocate suggested that the Department utilize the current Internal Revenue Service discount rate plus 200 basis points as the standard interest rate.

COMMENT: The Public Advocate suggested that the rules state that insurers have a continuing obligation to provide additional data requested by the Department and the Public Advocate.

RESPONSE: The rules currently state that the Commissioner of Insurance (Commissioner) may request any additional information deemed necessary as follows: N.J.A.C. 11:3-16.4(b) (for annual informational filings), N.J.A.C. 11:3-16.8(b) (recodified as 16.8(b) upon adoption) and 11:3-16.9(e)3 (recodified as 16.9(f)3 upon adoption) (for prior approval filings), and N.J.A.C. 11:3-16.1(b)4 (for rate filings reflecting surtaxes and/or assessments imposed by N.J.S.A. 17:33B-49 and 17:30A-8(9)). The Department believes that this clearly and adequately indicates to insurers that they are under an obligation to submit additional information upon request. Further, the Public Advocate may specifically request additional information pursuant to N.J.A.C. 11:3-16.6(e). Therefore no change is warranted.

COMMENT: The Public Advocate suggested that the time frames for requesting additional information be lengthened. In view of the recent changes to New Jersey's insurance laws, additional time may be necessary as filers may not have all the necessary data to provide additional data within the time frames.

RESPONSE: The Department believes that the time frames are appropriate in consideration of the time frames for the Commissioner's action on rate filings established by N.J.S.A. 17:29A-14.

COMMENT: The Public Advocate noted that its address is stated incorrectly in the rules. The correct address is: Department of Public
RESPONSE: After consideration of the commenters' suggestions, the Department has determined that no change is required. The Department utilizes this for purposes in addition to reviewing the differential (for example, to project premium increases for physical damage coverage).

COMMENT: Several commenters stated that filing requirements contained in N.J.A.C. 11:3-16.11 regarding rate filings reflecting surtaxes and/or assessments is burdensome, unnecessary, irrelevant, arbitrary at capricious (for example, the Schedule of Key Performance Indicators; the schedule of premiums, incurred losses and operating expenses; and the estimate of the synergistic effects of providing mandated private passenger automobile insurance in this State). One commenter specifically stated that a company should not be required to submit all of data under N.J.A.C. 11:3-16.11(b) if a prior approval filing has already been made.

RESPONSE: The Department agrees. The rules are changed upon adoption to reflect this clarification.

COMMENT: Several commenters stated that filing requirements contained in N.J.A.C. 11:3-16.11 violate the Unite States and New Jersey constitutional provisions regarding the taking of property without just compensation, due process of law and equal protection.

RESPONSE: The Department disagrees. N.J.A.C. 11:3-16.11 is unsupported by New Jersey law and is thus ultra vires.

Finally one commenter stated that the requirements in N.J.A.C. 11:3-16.11(b) are impossible to comply with due to conflicts between the required certifications and the New Jersey laws.

COMMENT: One commenter suggested that N.J.A.C. 11:3-16.11(f) be reworded to make clear that the required information is appropriate, relevant and necessary to evaluate an insurer's rate filing which reflects surtaxes and/or assessment imposed by the Fair Act, and to determine whether an increase in revenue is necessary to enable the insurer to earn a constitutionally adequate rate of return. The Department notes that some filers may not be in a position to provide all of the required information or have not collected data in such a manner so as to facilitate its reporting. This situation is addressed in N.J.A.C. 11:3-16.3(a), which provides that filers must begin collecting data in a manner to facilitate reporting by January 1, 1991 to be included in filings made on or after April 1, 1992, and N.J.A.C. 11:3-16.11(c) which provides for the waiver of any filing requirement contained in N.J.A.C. 11:3-16.11 in the Commissioner's discretion, upon good cause shown.

Regarding the comment that an insurer need not file all of the data under N.J.A.C. 11:3-16.11(b) if a prior approval filing has already been made. The Department may reference it prior approval filing to satisfy N.J.A.C. 11:3-16.11(b)(1) provided no change to the data has occurred since the prior approval filing was submitted. Any data submitted in the prior approval filing which has changed since the time of its original filing must be submitted. The Department believes the amendments do not violate the United States or New Jersey Constitutions, and that the amendments are supported by New Jersey Law.

COMMENT: Several commenters stated that internal audit reports and management comments required by N.J.A.C. 11:3-16.11(b)(1) are proprietary information and should not be disclosed. The commenters also questioned the relevance of this information to a review of the rate filing.

RESPONSE: The Department believes that this information is necessary and relevant in its review of rate filings which reflect surtaxes and/or assessments imposed by the Fair Act. The Department notes that internal audit reports and management responses submitted pursuant to N.J.A.C. 11:3-16.11(b) are confidential pursuant to N.J.S.A. 17:23-6. The rules have been changed upon adoption to reflect this clarification.

COMMENT: Several commenters stated that the provisions that the Commissioner shall, in determining whether an insurer is making an adequate rate of return, consider whether the insurer is efficient in its operations, is unclear.

(CITE 23 N.J.R. 516)
One commenter inquired whether this determination is made in conjunction to insurers on a Statewide or countrywide basis. The commenter further stated that no standard is provided for measuring efficiency.

RESPONSE: The Department believes that this provision is clear. As stated in N.J.A.C. 11:3-16.11(d), the Commissioner shall consider whether the insurer is reasonably efficient in its operations on both a Statewide and countrywide basis. An insurer that seeks to include surtaxes and/or assessments imposed by the Fair Act in its requested rates must demonstrate that it is unable to earn a constitutionally adequate rate of return. The Department believes it is appropriate to require specified data to enable the Commissioner to, among things, determine whether the insurer is unable to earn an adequate rate of return due to imposition of surtaxes and/or assessments imposed by the Fair Act in the requested rates. This is consistent with general practice and the Commissioner specifically stated that it is unlawful for the Commissioner to allow a rate increase in private passenger automobile rates to resolve a profitability problem with workers’ compensation.

RESPONSE: The Department disagrees. If an insurer is unable to earn a constitutionally adequate rate of return due to imposition of surtaxes and/or assessments imposed by the Fair Act, it may request a rate increase reflect such surtaxes and/or assessments. However, the Department does not believe that the Constitution requires approval of rates that guarantee that an insurer will make a profit in all lines for all years. In the Department's view, it is appropriate to determine the insurer's experience on all lines of its business for a period of time over which it could plan to earn a reasonable rate of return.

COMMENT: Several commenters stated that the consideration of the synergistic effect of mandated private passenger automobile insurance on the sale of other lines the filer writes (N.J.A.C. 11:3-16.11(d)(4)) is inappropriate. One commenter stated that this requirement fails to recognize that insurers who are unable to adjust automobile rates would likely retain the benefit of this effect to offset the losses in automobile insurance; or reflect the effect of the rating of the collateral lines of insurers. In either case, the synergistic effect has been transferred to the insured. Another commenter requested that the Department provide clarification regarding the meaning of "synergistic effects of private passenger automobile insurance in this State."

RESPONSE: After consideration of the comments, the Department has determined not to change this provision. The synergistic effect of mandated private passenger automobile coverage means the amount of business in other lines the filer writes that may be attributed to its providing automobile coverage in this State. While an insurer may not make a profit in its automobile line for a particular year, it may do so in other lines. Since private passenger automobile insurance may generate business in other lines, the Department believes it appropriate to review and consider any synergistic effects of providing automobile coverage on other lines.

COMMENT: Several commenters requested that N.J.A.C. 11:3-16.13 be clarified to provide that an insurer must submit plans to reduce rates upon repayment of assessments only if it successfully sought rate relief pursuant to N.J.A.C. 11:3-16.11. The Department believes it appropriate to require insurers to submit a plan to reduce rates commensurate with the repayment of assessments. Upon repayment of the loans, the Commissioner must determine that rates are not inadequate, excessive or unfairly discriminatory.

COMMENT: One commenter requested that the rules confirm that a consulting actuarial firm may continue to develop rates independently for two or more insurers. This is necessary for a small company with no actuarial staff which may no longer use ISO to provide data for ratemaking purposes.

RESPONSE: The rules do not prohibit a consulting actuarial firm from developing and transmitting separate, independent rate filings for its clients. Rather, the rules prohibit combined rate filings made by any entity on behalf of two or more insurers, pursuant to N.J.S.A. 17:33B-31. The Department believes that no clarification is necessary.

COMMENT: One commenter inquired whether only studies relied upon by the filer in its rate filing are required to be submitted.

RESPONSE: Only studies relied upon need to be submitted.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.3(1), which precludes an insurer from filing rates for its lines of business to subsidize automobile insurance is contrary to the practice of recognizing each insurer as a distinct legal entity. Further, it is inconsistent with current Department practice of recognizing each insurer as a distinct legal entity. The commenter further suggested that N.J.A.C. 11:3-16.3(1) be revised to confirm that voluntary market experience includes risks assigned to a company under the procedures provided in the Voluntary Placement Program in the Plan of Operation of the New Jersey Automobile Full Insurance Underwriting Association (as superseded by the Market Transition Facility).

RESPONSE: The Department does not believe that experience derived from risks insured through an assigned risk plan should be reflected in rates for the voluntary market. Further, the referenced rule prohibits experience from risks insured through "any assigned risk plan established pursuant to N.J.S.A. 17:29D-1." Voluntary market experience from risks assigned to a company pursuant to the Voluntary Market Placement Program are not excluded by this provision since they are not from an assigned risk plan established pursuant to N.J.S.A. 17:29D-1.

COMMENT: One commenter noted that N.J.A.C. 11:3-16.6(b) requires that rate filers submit data based on their own experience to the extent it is credible. The commenter inquired as to what action a filer should take if its own data is not credible.

RESPONSE: There are several ratemaking methodologies that a filer may utilize in this situation (for example, Consumer Price Index data, and expected loss ratios).

COMMENT: Several commenters stated that N.J.A.C. 11:3-16.11, governing rate filings which reflect assessments and surtaxes imposed by the Fair Act, is inappropriate since these charges violate the United States and New Jersey State and Constitutions, and other laws of New Jersey.

RESPONSE: The Department notes that the commissioner's position is currently being litigated. The Department believes that laws are presumed to be constitutional unless and until determined unconstitutional.

COMMENT: Several commenters stated that N.J.A.C. 11:3-16.11(b), which requires data of the filer's affiliates for rate filings reflecting surtaxes and/or assessments is inappropriate in that it is inconsistent with N.J.S.A. 17:33B-2g which provides that automobile insurers are entitled to earn an adequate rate of return through the ratemaking process; runs afoul of other state's insurance rating laws which prohibit interstate subsidization; would require excess insurance rates be levied on New Jersey citizens for other lines; and is inconsistent with current Department practice of recognizing each insurer as a distinct legal entity. Further, this requirement will distort healthy competition by providing advantages to some insurers and disadvantages to others based on their mixes of business in different markets.

COMMENT: Several commenters stated that requiring other lines of business to subsidize automobile insurance is contrary to the historical development of and approval in the automobile ratemaking process.

RESPONSE: The Department does not require through N.J.A.C. 11:3-16.11(b) that other lines of business subsidize the private passenger automobile line. As was stated in a response to a previous comment, an insurer is entitled to rates which permit it to earn a constitutionally adequate rate of return. This does not mean, however, that an insurer is entitled to make a profit in all lines for all years. Thus, the Department believes it appropriate to consider an insurer's overall profitability over a reasonable time in determining whether an insurer's rates are constitutionally adequate, considering the payment of surtaxes and/or assessments imposed by the Fair Act.

COMMENT: One commenter stated that providing the schedule of Key Performance Indicators set forth in Exhibit G in the Appendix to these rules will be expensive. The commenter further questioned the relevancy of required items to the rate filing.

RESPONSE: As was stated in a response to a previous comment, the Department believes that the Key Performance Indicators as set forth in Exhibit G are necessary and relevant to its review of rate filings reflecting surtaxes and assessments and does not place an undue burden on filers.

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COMMENT: One commenter stated that the data requirements in N.J.A.C. 11:3-16.1(a) relating to flex rate filings are unclear and requested clarification regarding the type of data requested.

RESPONSE: The Department believes that the data requirements are self-explanatory. Because the commenter did not elaborate on the paragraph's lack of clarity, no further response is possible.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.11 is ambiguous in that it is difficult for large insurers with numerous affiliates to determine whether data is required by the filer or by the enterprise. For example, the commenter inquired whether worldwide expense data is required by the filer or by the enterprise.

RESPONSE: The Department believes that the filing requirements are self-explanatory. The Department notes that the filer is required to submit the data for which it is responsible.

COMMENT: One commenter stated that the requirement that insurers submit a separate rate filing to reflect surtaxes and assessments is contrary to the Department's position (as expressed by the Attorney General) in Jackson v. Twin City Fire Insurance Company, et al., in which the Attorney General stated that assessments and surtaxes imposed by the Fair Act may be allowable into the expense base for determining rates. Accordingly, the separate filing requirement and the requirement in N.J.A.C. 11:3-16.10(b) that assessments and surtaxes imposed by the Fair Act be excluded from the expense base in determining rates should be eliminated.

RESPONSE: The Department disagrees. Insurers may not directly avoid through assessments and/or surtaxes imposed by the Fair Act on a dollar for dollar basis to policyholders pursuant to N.J.S.A. 17:30A-16 and 17:33B-51. Thus, assessments and/or surtaxes are excluded from the expense base in determining rates using standard methodologies. However, an insurer may request an increase in rates on the basis that it is unable to earn a constitutionally adequate rate of return unless these expenses are considered. The filing requirements set forth in N.J.A.C. 11:3-16.11 enable the Commissioner to determine whether a rate change is necessary to provide the insurer with the opportunity to earn a constitutionally adequate rate of return.

COMMENT: One commenter stated that "an estimate of the amount of business in other lines produced by the synergistic effects of the insurer writing private passenger automobile insurance," as required by N.J.A.C. 11:3-16.10(b)iv, is not produced by companies and is therefore not available.

RESPONSE: The Department believes that this information may be produced by filers. The Department further notes that a filer may request a waiver of any of the filing requirements imposed by N.J.A.C. 11:3-16.1(b) for cause.

COMMENT: One commenter objected to the requirement that the insurer's President and Chief Financial Officer certify that a reasonable, prudent person would not determine that another allocation methodology is reasonable (Exhibit E, Item 11), in that opinions may differ. Thus the commenter believes that this requirement serves no useful purpose.

RESPONSE: This provision is intended to require the insurer's President and Chief Financial Officer to certify the reasonableness of its allocation methodology. The Department believes it appropriate to require such a certification.

COMMENT: One commenter requested clarification regarding the itemization set forth in N.J.A.C. 11:3-16.11(b) as follows:

1. N.J.A.C. 11:3-16.11(b)8—"number of insureds;" specifically, whether this refers to named insureds, additional insureds and/or omnibus insureds; if this refers to the named insured only, whether it refers only to the first named insured.
2. N.J.A.C. 11:3-16.11(b)8ii—"number of employees directly dedicated to the line of business;" specifically, whether this is the rating exposure or volume of exposures.
3. N.J.A.C. 11:3-16.11(b)8iii—"square feet of office space dedicated to the line of business;" specifically, whether this is the rating exposure or volume of exposures.
4. N.J.A.C. 11:3-16.11(b)8iv—"number of exposures;" specifically, whether this is the rating exposure or volume of exposures.

RESPONSE: The term "number of insureds" means the total number of named insureds for whom insurance coverage is provided by the insurer for each line of business written in New Jersey; "number of employees directly dedicated to the line of business" means the number of employees that either solely or partially perform duties relating to providing insurance coverage in New Jersey for each line of business; "square feet of office space dedicated to the line of business" means the amount of office space which is wholly or partially utilized in providing insurance coverage in New Jersey for each line of business (excluding corpor or administrative office space); and "number of exposures" means the total volume of exposures. The rules are changed upon adoption to reflect appropriate clarifications.

COMMENT: One commenter stated that it allocates hours of processing time charged by line of business rather than line of business by state, as required by N.J.A.C. 11:3-16.11(b)iv. Production of the data in the required format would be costly and time consuming. The commenter further believes that this requirement serves only to dissuade companies from making rate filings to reflect surtaxes and assessments since rates have not been made using data processing expenses charged in this manner.

RESPONSE: The Department disagrees. As was stated in a response to a previous comment, the Department believes that this information is necessary and appropriate to its review of rate filings reflecting surtaxes and/or assessments. If a filer is not currently collecting data in a manner to facilitate reporting, it must begin doing so by January 1, 1991 to include the information on filings made on or after April 1, 1992 pursuant to N.J.A.C. 11:3-16.3(a).

COMMENT: Several commenters incorporated by reference their prior comments submitted in conjunction with the prior proposal of N.J.A. 11:3-16. One commenter additionally incorporated by reference the following:

1. Comments to N.J.A.C. 11:3-18 submitted December 5, 1989;
2. Statement of Items Comprising the Record on Appeal filed behalf of the Department of Insurance on August 8, 1989 in the Superior Court of New Jersey, Appellate Division (Docket No. A-5324-88T);
4. Statement of Principles Regarding Property and Casualty Insurance Rate-making as adopted in May 1988 by the Casualty Actuarial Society of American;
5. The Insurance C-porter published November 1989 by the New Jersey Department of Insurance which contains a profitability report;

RESPONSE: The Department similarly incorporates by reference responses to the materials described in the comment as appropriate, set forth in 22 N.J.R. 390(a).

COMMENT: One commenter requested the opportunity to provide verbal actuarial, economic, and other testimony at a hearing to more fully address the issues regarding these rules.

RESPONSE: The Department disagrees. A hearing is not statutorily required. The Department obtains public input from comments submitted.

COMMENT: Several commenters stated that the open-ended requirement for additional information contained in N.J.A.C. 11:3-16.4(b)2, 16.8(1) 16.9(e)3 and 16.11(b)4 are inappropriate. The Department should specify the information that would pertain to the Commissioner's review of rate and informational filings.

RESPONSE: The Department disagrees. The rules set forth data elements for private passenger automobile rate filings and informational filings. The Department, however, believes it appropriate to require the provision of additional, clarifying or supplemental information.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.11(b)1 requires insurers with life and health affiliates to submit an enormous amount of data with respect to those lines of business. Life and health insurance is not related to property and casualty insurance, and accordingly, information regarding life and health experience should not be required.

RESPONSE: As was stated in a response to a previous comment, the Department believes that information relating to the filer's profitability for all lines is necessary and relevant to its review of rate filings reflecting surtaxes and assessments imposed by the FAIR Act.

COMMENT: One commenter stated that these rules are redundant conflict with other New Jersey statutes and regulations including N.J.S.A. 17:23-1 et seq. and N.J.A.C. 11:3-20.5 et seq. Further, numerous provisions of these rules appear to conflict with actuarial principles as require disclosure of confidential, proprietary and trade secret information, with no provisions protecting the company making disclosure pursuant to the rules.

RESPONSE: As was stated in a response to a previous comment, the Department believes that all data submitted is necessary and relevant to its review of rate filings. Further, as indicated in another response to previous comments, the rules have been changed upon adoption to confirm.
COMMENT: Several commenters stated that since these rules were adopted November 26, 1990, the time by which insurers must begin collecting the required data (currently January 1, 1991) should be extended to January 1, 1992.

RESPONSE: The Department disagrees. Much of the data required was contained in these rules as adopted on February 5, 1990. In fact, these proposed amendments generally reduce the amount of data required for annual informational filings, flex rate filings and prior approval filings which do not reflect surtaxes and/or assessments imposed by the FAIR Act. The Department notes that the rules require that insurers begin collecting required data no later than January 1, 1991 for inclusion in filings made on or after April 1, 1992. The Department believes that these time frames are reasonable and impose no undue burden on filers.

COMMENT: Several commenters objected to the Department prescribing a “preferred rate making methodology” as expressed in these rules. Specifically, objections were as follows: establishment of the maximum expense base permitted by corporate form from the A.M. Best Averages and Aggregates; requiring that expense and profit data exclude Automobile Insurance Risk Exchange (AI RE) assessments and reimbursements; the prescribed method (the Clifford formula) as a means to calculate investment income (N.J.A.C. 11:3-16.10(a)); the imputation of a specific interest rate for calculation of investment income (N.J.A.C. 11:3-16.10(a)(a)); the limitation of other acquisition and general expenses to a prevailing wage or inflation factor in the calculation of expense trends (N.J.A.C. 11:3-16.10(b)(5)); the industry average cap on certain expenses (N.J.A.C. 11:3-16.10(b)); and the limitation of Unsatisfied Claim and Judgment Fund (UCJF) expense provisions to the actual assessment prescribed by the commissioner.

RESPONSE: The Department previously addressed these comments (see 22 N.J.R. 399(a)). The Department has determined not to make any changes to the rules regarding its preferred ratemaking methodology at this time. The Department notes that in addition to making a rate filing utilizing the Department's preferred ratemaking methodology, a filer may propose an alternative ratemaking methodology in total or in part supported by such calculations or information it deems appropriate to demonstrate the superiority of the alternate procedure in the determination of the filer's rates pursuant to N.J.A.C. 11:3-16.10(f).

COMMENT: Several commenters generally stated that the rules, while reducing the amount of data required, still require an excessive amount of data which is unnecessary; burdensome; irrelevant to sound actuarial ratemaking; and inconsistent with sound actuarial principles. Specifically, commenters stated that the rules exceed the Commissioner's statutory authority and obfuscate the standard that rates be reasonable, adequate and not unfairly discriminatory; the requirement that insurers submit class plans (N.J.A.C. 11:3-16.10(a)) with each filing is unnecessary; the trend analysis required by N.J.A.C. 11:3-16.8(b) is burdensome and meaningless.

RESPONSE: The Department previously addressed these comments (see 22 N.J.R. 399(a)). The Department believes that the data is necessary and relevant for its review and readily available, and does not place an undue burden on filers. The Department further notes that these amendments generally reduce the amount of data required for informational filings, flex rate filings and prior approval filings.


RESPONSE: This change has been made upon adoption. A similar change is also made to N.J.A.C. 11:3-16.10(c).

COMMENT: One commenter stated that N.J.A.C. 11:3-16.8(d) and 16.10(a) applies that basic personal injury protection (PIP) data should be collected only for coverage above $250,000 starting January 1, 1991. Apparently this is to prohibit trend data for the layer of coverage (from $75,000 to $250,000) starting January 1, 1991. Since insurers have the option to offer coverage above $250,000, the commenter suggested that data for coverage in excess of $250,000 be allowed.
RESPONSE: The filing requirements set forth in these rules are minimum requirements. Filers may include any additional information it believes relevant to its filing. Thus, a filer which offers additional PIP coverage may include data it believes relevant to the determination of rates for providing such additional coverage.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.8(d)2 is inconsistent with Exhibit AII(5) in that N.J.A.C. 11:3-16.8(d)2 requires trend factors for the latest six, nine, 12, 16 and 20 months, and the Exhibit requires trend factors for only two periods, either six, nine, 12, 16 or 20 months. The commenter further stated that the use of two periods is sufficient.

RESPONSE: The Department agrees that two periods are sufficient. The rules are changed upon adoption to reflect this clarification.

RESPONSE: The Department agrees. The rules are changed upon adoption to reflect this clarification.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.10(a)5 requires filers to use page 14 Annual Statement data to calculate the ratio of loss reserves to incurred losses, which would include AIP reserves from old claims. The commenter believes that this is incorrect because such reserves would be compared to incurred losses which exclude AIP losses. Reserves would appear to be overstated which would thus overstate insurors' insolvency.

RESPONSE: The Department agrees. The rules are changed upon adoption to reflect this clarification.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.10(a)5 and 16.10(a)7 are inconsistent. N.J.A.C. 11:3-16.10(a)5 refers to "ratio of loss reserves to expected losses" while 16.10(a)7 refers to the expected loss and loss adjustment expense ratio." The commenter suggested that N.J.A.C. 11:3-16.10(a)5 be revised to read "ratio of loss reserves to incurred losses and loss adjustment expenses." The Department disagrees. N.J.A.C. 11:3-16.10(a)5 and 11:3-16.10(a)7 refer to two separate requirements. Therefore, no change is required.

COMMENT: Several commenters stated that the prohibition against including assessments and surtaxes imposed by the FAIR Act as expenses for ratemaking violates sound actuarial principles.

RESPONSE: The exclusion of surtaxes and/or assessments imposed by the FAIR Act implements the intent of the Legislature as expressed in N.J.S.A. 17:30A-16, as amended, and N.J.S.A. 17:33B-31. These provisions prohibit "direct pass-through" of surtaxes and/or assessments to policyholders. Insurers may not automatically include these charges as an expense to be reflected in the rates. If an insurer is unable to earn a constitutionally adequate rate of return, it may seek to reflect surtaxes and/or assessments in requested private passenger automobile rates pursuant to N.J.A.C. 11:3-16.11.

COMMENT: One commenter objected to N.J.A.C. 11:3-16.12, which allows insurers 30 days within which to cure deficiencies in its filing as identified by the Department. Given the complexity of Department deficiency notices, it is difficult to cure deficiencies within 30 days. The commenter further noted that this rule requires that the Department provide insurers with a notice of deficiency within a stated period of time. The commenter suggested that the Department be allowed the same period of time in which to issue delinquency notices that insurers are given to cure deficiencies.

RESPONSE: The Department believes that the time frames are appropriate in consideration of the time frames for the Commissioner's action in rate filings established by N.J.S.A. 17:23A-14. Further, the Department is required to notify filers of deficiencies within 25 days of the receipt of the filing pursuant to N.J.A.C. 11:3-18.6.

COMMENT: One commenter suggested that N.J.A.C. 11:3-16.11 be omitted in its entirety. If a separate process is adopted to permit insurers to reflect surtaxes and assessments imposed by the FAIR Act, the procedures should be streamlined to permit immediate inclusion of these charges and to allow insurers the opportunity to earn a constitutionally adequate rate of return. Any Department concerns regarding the level of insurer profits can be dealt with in the context of the excess profits report filings.

RESPONSE: The Department disagrees. As was stated in a response to a previous comment, the FAIR Act prohibits direct pass-through of surtaxes and/or assessments to policyholders. If an insurer is unable to earn a constitutionally adequate rate of return it may request an increase in rates based on these additional charges. The Department believes the filing requirements are necessary and appropriate in its review of rate filings which reflect these charges. Further, the Excess Profits Report filed by insurers does not contain all of the information required in N.J.A.C. 11:3-16.11.

COMMENT: One commenter stated that it insures mobile homes as recreational vehicles only. The commenter believes that mobile homes are not "private passenger automobiles" for purposes of New Jersey law. Although not specifically stated, the commenter implied that it is therefore not subject to these rules.

RESPONSE: The Department disagrees. The Department conside mobile homes and recreational vehicles to be private passenger automobiles in that they are not used for commercial purposes, carry pass passenger and are designed for use on the public roads, highways and not c rails.

COMMENT: One commenter stated that the rules do not specify permit insurers to refer to information provided by a rating organization and do not appear to provide any role for rating organizations in the filing process. The failure to provide for rating organization filings inefficient, counterproductive and burdensome for the Department and insurers. Further, the rules fail to provide a mechanism for insurers refer to information permitted to be disseminated by these rules which is submitted by rating organizations. This will increase the burden on the Department in that it will be required to receive and review multiple copies of the same data. In addition, N.J.S.A. 17:29A-1 et seq. and N.J.S.A. 17:33B-31 recognize the necessity for rating organizations to make information available to all insurers lacking sufficient premium or loss data of their own to make statistically reliable estimates of prospective losses. The Department also implicitly recognizes that insurers should be able to include other information in support of their filings since N.J.A.C. 11:3-16.6(b) provides that filers must submit data based on the own loss experience "to the extent it is credible." The commenter suggested that the rules provide for the filing of historical data by rating organizations and for the review of such data by insurers.

RESPONSE: The rules do not prohibit filings by rating organization of historical data or prohibits use by insurers of such data. The Department believes that no mechanism for insurer use of the information necessary at this time. The Department will, however, consider the commenter's suggestion for possible future amendment.

COMMENT: One commenter stated that the proposal Summary language regarding rating organization activity in ratemaking for private passenger automobile business is incorrect in that it states that the FAIR Act prohibits rating organizations. Rating organizations are still authorized to engage in the ratemaking and filing process pursuant to N.J.S.A. 17:29A-1 et seq. The FAIR Act limits rating organization activity in ratemaking for private passenger automobile business only.

RESPONSE: The Department believes that the proposal Summary language regarding rating organization activity in ratemaking for private passenger automobile business reflects the statutory requirements as forth in N.J.S.A. 17:33B-31.

COMMENT: One commenter questioned the Department's authority to apply the requirements of these rules to form filings as stated in N.J.A.C. 11:3-16.1.

RESPONSE: These rules apply to any insurer wishing to affect the rat level by changing rates, rules or forms. The Commissioner has the statutory authority to review and approve rates pursuant to N.J.S.A. 17:29A- et seq.

COMMENT: One commenter stated that the definitions of "filer" an "rating system," which exclude rating organizations, are inconsistent with the definitions of these terms in N.J.S.A. 17:29A-1 et seq. The insurer laws of New Jersey do not prohibit rating organizations from filing related information. Accordingly, the commenter believes that eliminating references to these activities in the rules exceeds the Department's statutory authority.

RESPONSE: The Department disagrees. The definition of "rating organization" in these rules was derived from N.J.S.A. 17:29A-1(f). An insurer may not use a rating organization or advisory organization in ratemaking for private passenger automobile insurance except for the compilation, collection and dissemination of historical data, pursuant to N.J.S.A. 17:33B-31. Accordingly, a rating organization may not file rates and rules on behalf of insurers. The Department believes that the definitions of "filer" and "rating system" are consistent with N.J.S.A. 17:33B-31, and that no change is required.

COMMENT: One commenter stated that the definition of "trending" in N.J.A.C. 11:3-16.7(d) is inconsistent with the general rules of construction set forth in N.J.S.A. 1:1-1 (technical words and phrases shall b

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OBTIONS

RESPONSE: The Department disagrees. The Department believes that N.J.A.C. 11:3-16.7(a)(ii) adequately provides for rating organization activities necessary for the accurate collection and compilation of data. As indicated in a response to a previous comment, revisions to N.J.A.C. 11:3-16.7 have been made to clarify permissible rating organization activity.

COMMENT: One commenter stated that the rules should be revised to authorize rating organizations to develop standardized coverage parts and permit insurers to refer to such data. The commenter stated that standardized coverage parts serve many functions. These include: enabling the statistical agent to collect data necessary for sound ratemaking; providing basic categories or “benchmarks” for pooling historical data; assisting regulators, producers and insurers in making comparisons and evaluations among insurers with respect to price and coverage; and providing a base from which insurers and producers can depart and tailor endorsements to insur risks or compete in markets.

RESPONSE: The commenter appears to be referring to forms as “coverage parts.” Joint development of forms are not addressed in these rules. The Department suggests that the commenter review Bulletin No. 90-8 (issued September 19, 1990) as it relates to forms.

COMMENT: One commenter stated that N.J.A.C. 11:3-16.7(b), which prohibits the exchange of marketing data, rate data and rate manuals, is overly broad and ambiguous.

RESPONSE: The Department believes that this rule clearly prohibits the exchange of marketing data, rate data and rate manuals to the extent the data may not be exchanged pursuant to N.J.A.C. 11:3-16.7.

Summary of Agency-Initiated Changes:

The Department has made minor editorial changes upon adoption to the following sections to correct errors and as a matter of form: N.J.A.C. 11:3-16.8(c)2; 16.8(c)6; 16.8(d)2ii; 16.9(a); Exhibit AU and Exhibit E. The Department has also revised N.J.A.C. 11:3-16.4(b) to confirm that this is to be utilized upon a determination by the Commissioner that additional information on a particular subject is needed at a particular time.

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

SUBCHAPTER 16. RATE FILING REQUIREMENTS:

VOLUNTARY MARKET PRIVATE PASSENGER AUTOMOBILE INSURANCE

11:3-16.1 Purpose and scope

(a) This subchapter establishes data, filing format and preferred ratemaking requirements for all private passenger automobile rate filings for the voluntary market, in implementation of N.J.S.A. 17:29A-1 et seq and as required by N.J.S.A. 17:29A-36.2.

(b) This subchapter applies to all insurers making private passenger automobile insurance rate filings for the voluntary market in this State.

(c) These requirements apply to all rate filings made by insurers for the revision of base rates; informational filings to be made on July 1 of each year pursuant to N.J.S.A. 17:29A-36.2b; and those filings made under the flex rate provisions of N.J.S.A. 17:29A-44.

(d) Any insurer wishing to effect the rate level by changing rates, rules or forms must file data pursuant to this subchapter.

11:3-16.2 Definitions

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

... “Advisory organization” means every group, association or other organization of insurers, whether located within or outside this State, which assists insurers which make their own filings or rating organizations, in ratemaking, by the collection and furnishing of loss or expense statistics, but which does not make filings.

“Affiliate” means an insurer that directly, or indirectly through common control with, the insurer making a filing.
**"AIP"** means the Automobile Insurance Plan which, prior to January 1, 1994, issued policies providing insurance coverage for personal private passenger automobiles in accordance with N.J.S.A. 17:29D-1.1*

"Base rate" means the rate inclusive of expense fee by coverage for basic limit of liability or $500.00 deductible collision or comprehensive for a single car adult pleasure risk.

"Case reserves" means the reserves for reported claims whether determined by judgment or set by formula.

"Consistent levels" means the same point in time, but not a future point in time.*

"Control" is as defined in N.J.S.A. 17:27A-1.

"External trend data" means trend data derived from experience other than on policies issued by the filer.

"Filer" means any insurer who makes an annual informational filing, flex rate filing or rate filing requiring prior approval pursuant to these rules.

"Group of coverages" means liability coverages (to include bodily injury liability, property damage liability, personal injury protection and uninsured/underinsured motorists) and physical damage coverages (to include collision and comprehensive).

"IBNR" or "incurred but not reported loss" means losses which have been incurred but have not yet been reported as of a specified date.

"Informational filing" means a filing made annually on July 1 in accordance with N.J.S.A. 17:29A-36.2b.

"Internal trend data" means trend data derived from the experience of the filer related to the policies it issues.

"Loss development triangle" means a display of losses showing accident year data by evaluation date*, with the same number of accident years shown at each evaluation date*. The accident years shall be shown vertically and the evaluation dates shown horizontally. The first evaluation date shall be three months after the end of the accident year; subsequent evaluations shall be at 12-month intervals. IBNR shall be shown as a separate number at the latest evaluation date for each year displayed.

"MTF" means the Market Transition Facility established pursuant to N.J.S.A. 17:33B-11.

"NJAFIU" means the New Jersey Automobile Full Insurance Underwriting Association established pursuant to N.J.S.A. 17:30E-1 et seq.

"Public Advocate" means the Division of Rate Counsel, New Jersey Department of the Public Advocate.

"Rating organization" means every person or persons, corporation, partnership, company, society, or association engaged in the business of ratemaking for two or more insurers.

"Rating system" means every schedule, class, classification, rule, guide, standard, manual, table or rating plan by whatever name described containing the rates and rules used by any insurer in determining or ascertaining a rate.

11:3-16.3 General requirements and filing format

(a) The data requirements set forth in this subchapter are minimal requirements. The filer may submit any other data it believes to be relevant in justifying proposed rate changes. If the filer has not collected portions of this information in the past, or has not collected it in a form so as to facilitate reporting, it is not required to compile it retrospectively. All filers shall begin collecting this information in a manner so as to facilitate reporting no later than January 1, 1991 and report data so collected on filings made or required to be made on or after April 1, 1992. If a filer has collected this information, it may be included on filings made or required to be made prior to April 1, 1992.

(b) Separate insurance companies that are affiliated by a parent-subsidiary or any group relationship and that choose to submit a single filing for the group shall provide the minimum data requirements set forth in N.J.A.C. 11:3-16.8 and 16.9, and make the rate level calculation set forth in N.J.A.C. 11:3-16.10, either:

1. Separately for each company with a different rate level or different underwriting guidelines; or

2. Combined for those companies of the group which use a common rating system, including both base rates and underwriting guidelines, or when the difference is based only on expense difference.

(c) Small filers need not provide all of the information required by N.J.A.C. 11:3-16.8(e) and (d); more limited requirements are set forth in those sections. Notwithstanding this, any filing by a small filer for a rate change shall include sufficient justification for a factors used.

(d) *(No change.)*

(e) *(A copy of all rate change filings submitted pursuant to N.J.S.A. 17:29A-14 or N.J.S.A. 17:29A-44 shall be submitted simultaneously to the Public Advocate at the following address:*

Department of the Public Advocate Division of Rate Counsel
*744 Broad Street
Newark, New Jersey 07102*
*31 Clinton Street
P.O. Box 46005
Newark, New Jersey 07101*

(f) *(No change.)*

(g) All filings shall be accompanied by the following certification signed by an officer of the filer: "I certify that I am authorized to execute this certification on behalf of the filer.*

(h) Each filer shall submit prior approval filings in loose leaf form inserted into standard three-ring binders. The loose leaf sheets used in the filing shall be eight and one-half inches wide and 11 inches long and punched for three hole standard binders. Only one side of the page shall be used. Each page shall be consecutively numbered.

(i) *(No change.)*

(j) *(Except for filers with less than 40,000 exposures in the prior year, after January 1, 1991, each flex rate filing when made, or other rate change filing when effective, shall be accompanied by a computer disk(s) that contains the rating system to be implemented.)*

- *(No change.)*

*(k) All data shall be reported on a direct basis exclusive of business credited to reinsurers or reinsurance assumed from other companies. Notwithstanding this provision, transactions with the UCFJ shall be reported as set forth in N.J.A.C. 11:16-3.1(d) and 11:3-16.9(a) and 11:3-16.10(c).)*

(l) *(Data submitted in any rate filing shall report only voluntary market experience and shall not include experience derived from risk insured through any assigned risk plan established pursuant to N.J.S.A. 17:29D-1. For the purpose of this subsection, "voluntary market" shall include risks insured by the filer in the voluntary market during any period of time certified by the Commissioner of the cessation of acceptance of applications or the issuance of new policies by the assigned risk plan pursuant to N.J.S.A. 17:29D-1d)*

11:3-16.4 Insurer informational filings due July 1 of each year

(a) *(Informational filings shall be made by all insurers transacting private passenger automobile insurance in the voluntary market pursuant to N.J.S.A. 17:29A-36.2b.)*

(b) *(The informational filing shall consist of the following documents:*

1. The insurer's Excess Profits Report for each company filed pursuant to N.J.A.C. 11:3-3 and the Financial Data Report for each company filed pursuant to N.J.A.C. 11:3-31. In lieu of providing copies, the filer may submit a certification of an officer that the reports have been filed and are incorporated by reference.

2. Such other *specific* information on a particular subject at a particular time as the Commissioner may *specifically* require by Order.

11:3-16.5 Insurer flex rating filings

(a) *(Any insurer that desires to increase its rates in accordance with the flex rate provisions of N.J.S.A. 17:29A-44 and applicable Order)*
The Commissioner issued pursuant to N.J.A.C. 11:3-16A shall provide the following information in support of its flex rate filing:

1. A cover letter notifying the Department of its intention to adjust rates according to the provisions of N.J.S.A. 17:29A-44 and applicable Orders of the Commissioner issued pursuant to N.J.A.C. 11:3-16A; a statement of the percentage and total dollar amount of increase in rates by coverage for each company included in the ing with subtotals by group of coverages and a grand total (including the variable portion plus expense fees but excluding the policy constant and RMEC) in the format of Exhibit E in the Appendix incorporated herein by reference; a statement containing the effective date of the change; and the name, telephone number and mailing address of the company officer familiar with the filing to whom inquiries about the filing may be directed;

2. A checklist that sets forth the information in Exhibit A1 in the appendix incorporated herein by reference;

3. The Excess Profits Report (required by N.J.A.C. 11:3-20) and e Financial Data Report (required by N.J.A.C. 11:3-31). In lieu of providing copies, the filer may submit a certification by an officer at the documents have been filed and are incorporated into the filing by reference; nevertheless, a complete copy of all documents required (including the Excess Profits Report and the Financial Data report) shall be provided to the Public Advocate pursuant to N.J.A.C. 11:3-16.3(e);

4. An exhibit that illustrates that the new rates are within the range permitted by Order of the Commissioner issued pursuant to N.J.A.C. 11:3-16A.

i. When coverages are combined (for example, bodily injury liability and property damage liability) the method of combining shall be shown.

ii. When bodily injury liability is combined with any other coverage or coverages, the method of combining shall be shown separately for each tort threshold.

5. The manual rating pages and computer disk(s) containing the x rate system to be implemented, accompanied by an explanatory emorandum showing the calculation of the new manual rates, using xe current manual rates as the starting point in the calculation. The emorandum shall also include the Department's file number and e effective date of use for the current rates.

1:3-16.6 Insurer filings for rates requiring prior approval

(a) Any insurer that desires to modify its rates or rating system in a manner other than that provided by N.J.S.A. 17:29A-44 and orders of the Commissioner issued pursuant to N.J.A.C. 11:3-16A, garding flex rates shall provide the following information in support of its application:

1. A cover letter notifying the Department of its intention to modify its rating system in a manner that requires prior approval, pursuant to N.J.S.A. 17:29A-14; a statement describing the proposed ranges, which shall include the percentage and total dollar amount of any change in rates for each company included in the filing with subtotals by groups of coverages and a grand total (including the variable portion plus expense fees, but excluding the policy constant and RMEC) by coverage and overall; and the name, telephone number and mailing address of the company officer familiar with the filing, to whom further inquiries about the filing may be directed;

2. A checklist that sets forth the information in Exhibit A1 in the appendix incorporated herein by reference;

3. A narrative overview that sets forth the contents of the filing, explains the reasons and procedures used to derive the rate range requested;

4. Data concerning the premiums, losses and loss adjustment expenses, as specified in N.J.A.C. 11:3-16.8;

5. Data concerning the expense and profit provisions, as set forth in N.J.A.C. 11:3-16.9;

6. Rate calculation, as set forth in N.J.A.C. 11:3-16.10; and

7. Data described in N.J.A.C. 11:3-16.8, 16.9 and 16.10 shall be submitted in written copy and, except for purely textual information, in an MS-DOS formatted disk(s). Filers with fewer than 20,000 exposures in the prior year are exempt from submitting the formatted disk. The disk(s) may be either 5.25 inch 360 KB or 3.5 inch 1.44MB.

He information shall be provided in a Lotus 1-2-3 or compatible spreadsheet. The left and top margins of each page shall indicate the row and column respectively of all data on the page. Each page of written copy shall also display in the bottom right corner the name of computer file and disk on which it is contained. All calculated values shall be given as a formula in the spreadsheet.

(b) All rate filers shall submit data in support of their application for approval of their proposed rating system based on their own loss experience to the extent it is credible (N.J.A.C. 11:3-16.8), their own expense and profit provisions (N.J.A.C. 11:3-16.9) and their own rate calculation (N.J.A.C. 11:3-16.10).

(c) Upon approval insurers shall file manual rating pages and computer disk(s) containing the rating system on or before the effective date of the rates.

11:3-16.7 Jointly developed historical data

(a) In connection with the dissemination of historical data by rating organizations or advisory organizations for ratemaking purposes, insurers shall comply with the following:

1. Historical data that may be compiled and disseminated by rating organizations or advisory organizations for use by insurers in ratemaking includes:

i. Written and earned premiums and exposures which may be adjusted to consistent levels;

ii. Losses paid;

iii. Reserves for reported claims (whether determined by judgment or set by formula by the insurers); and

iv. Claim counts.

2. For the purposes of this section, “compilation of historical data” includes:

i. Checking the data for accuracy and completeness and excluding data which is inaccurate or incomplete;

ii. Selection of experience (for example, type of business, type of vehicles, accident year or calendar year basis, and deductibles for physical damage);

iii. Selection of number of years;

iv. Calculation of claim cost and frequency, pure premiums, the combined paid and outstanding losses into incurred losses and the conversion of car months into car years;

v. Compiling losses on a basic and excess limits basis for liability and adjusting losses to a common deductible level for physical damage;

vi. The organization of or calculations on historical data according to classification detail such as territory, class, etc.

3. The following are not historical data and may not be disseminated for use in ratemaking:

i. Estimates of future values of any data compiled under (a)1 and 2 above;

ii. Reserves for claims which have been incurred but not reported (IBNR);

iii. Operating expenses and profit provisions, including unallocated loss adjustment expenses; and

iv. Trending.

4. Except for activities as a designated statistical agent or activities involved in the creation and maintenance of vehicle series rating systems for private passenger automobile collision and comprehensive coverages, the following are not historical data and may not be disseminated for use in ratemaking:

- Credibility *weights* that are to be used to project future values*;
- Loss smoothing *when used to project future values*;
- Selection of weights *when it is done to select future values*;
- Relativities and relativity analysis *when it is performed as part of a projection of future values*; and
- Final *trended* *pure premium* or “loss costs” *as calculated, based on data permitted to be exchanged*.

(b) For purposes of this section, “losses paid” and “reserves for reported claims” may include allocated loss adjustment expenses if “[they are also separately identified]” *it is indicated that allocated loss adjustment expenses are included* and *are* limited to the following expenses which can be allocated to a particular claim:

i. Attorneys fees for claims in suit; and

ii. Court and other specific items of expense such as: medical examinations to determine the extent of a company’s liability; expert,
medical or other testimony; laboratory, x-ray and autopsy; stenographic; witnesses and summoned; and copies of documents.

(c) For the purposes of this section, "allocated loss adjustment expenses" shall not include: salaries and traveling expenses of company employees other than amounts allocated as attorneys' fees for costs in suit; overhead; and fees paid to independent adjusters, or attorneys, for adjusting claims.

(d) For purposes of this section, "trending" includes all projections of future costs and any representation of past costs adjusted by a mathematical or non-mathematical process. It does not, however, include displays of historical average costs or frequency, or the display of historical data (e.g., for example, development triangles with historical link ratios) from which an insurer can independently calculate *future* loss development.

(e) Projections of the number and dollar value of incurred and/or paid known claims at future evaluation dates may not be disseminated.

(f) Data on the number and dollar value of claims which have been closed but are expected to reopen may not be disseminated.

(g) Projections of the increase in *claim costs* *number and dollar value of claims* due to changes in the judicial and regulatory environments, legislative changes and economic variables such as inflation may not be disseminated.

(h) Except as provided in (a) above, marketing data, rate data and rate manuals may not be exchanged.

(i) Insurers may continue to use symbol, vehicle series and model year rating programs for physical damage coverages for model years 1991 and 1992. Pursuant to this section, insurers may jointly develop symbol assignments, vehicle series and model year data and determine adjustments to the symbol assignment through model year 1992.

II: 3-16.8 Premium, loss and loss adjustment expense data

(a) Filers shall provide the following data regarding New Jersey premium, loss and loss adjustment expense:

1. For each coverage, or combined coverages when the premium is inseparable, calculate earned premium at present rates using either the extension of exposures or on level factor methodologies. Provide the rate level history. Provide the underlying calculations and indicate how such calculations were produced and supply supporting documentation for a sample of such calculations and justification of any factors used where the on level factor methodology is used. Provide the justification for the selected use of a particular method in calculating the rate level. Provide this information either at basic limits or at total limits.

2. For each coverage and each experience year used in setting the overall rate level, the following information either at basic limits or total limits whichever is consistent with the filer's methodology:
   i. Direct earned exposures measured in car years;
   ii. Incurred losses;
   iii. Applicable loss development factor (aged to ultimate);
   iv. Paid or incurred allocated loss adjustment expenses;
   v. Paid or incurred unallocated loss adjustment expenses;
   vi. Ultimate incurred losses and loss adjustment expenses;
   vii. Trend factor; and
   viii. Trended ultimate incurred losses and loss adjustment expenses.

3. Whenever New Jersey losses are separated into catastrophic and non-catastrophic losses, include a clear description and justification of the standard used to separate such losses. In determining a catastrophic loading, include as many years of data as available but at least 10 years. Provide an explanation if the data base from which the catastrophe loading is derived differs from that on which the rate level change is based.

4. Territorial rate calculations including earned premiums, earned exposures, incurred losses, and the number of claims by territory separately for each coverage and each of the years used to determine the territorial relativities, or for each of the last three years, whichever is greater.

5. All information related to the derivation of classification differentials contained in the filing. Include the following minimum information:

   i. All data and worksheets used and judgments made; and
   ii. A description of the methodology used to arrive at the differentials; and
   iii. A description of the application of the methodology to the filing.

6. For all incurred loss adjustment expense data contained in the filing, show the related incurred losses used to determine any loss adjustment expense loadings.

(b) Filers shall provide all information related to the derivation of credibility factors contained in the filing, specifically including the following information:

1. All data and worksheets used and judgments made;

2. A description of the methodology used to derive the factor and

3. A description of the application of the methodology to the filing.

(c) Each filer, except small filers, shall provide the data in (a) through (b). Small filers shall provide the data in (a), (b), (c)4, 5, at 6 below:

1. All information related to the derivation of loss development factors contained in the filing specifically including:
   i. All data and worksheets used and judgments made;
   ii. A description of the methodology used to derive the factor and
   iii. A description of the application of the methodology to the filing.

2. For each coverage, complete loss development triangles for the 10 latest available accident years at each and every annual evaluation date from 15 months to 123 months for basic Personal Injury Protection ("PIP") and Bodily Injury Liability ("BI"), 15 months to 1 months for Property Damage Liability ("PD") and uninsured/underinsured motorists, and 15 months to 51 months for collision or comprehensive if accident year data is used by the filer to develop its rate level indications for collision and comprehensive coverage.

Provide the corresponding nine-year, five-year and three-year average loss development factors derived from these triangles. (These are minimum requirements. The filer may present additional accident years, further evaluations and other average factors;)

3. The information in (c)2 above for total limits paid losses;

4. The information in (c)2 above for total limits incurred loss;

5. The information in (c)2 above for basic limits incurred loss if used by the filer to develop its rate level indications;

6. For liability coverages only, the information in (c)2 above for allocated loss adjustment expenses on a paid or incurred basis. Alternatively, if allocated loss adjustment expenses are not available separately, the filer shall provide incurred losses and allocated loss adjustment expenses combined *and so indicate on the filing*;

7. The information in (c)2 above for the number of paid claim;

8. The information in (c)2 above for the number of incurred claims; and

9. A statement regarding any changes in the filer's case loss reserving practices during the last five years.

(d) Each filer, except small filers, shall provide the following data regarding trend factors and their application:

1. All internal loss trend data on either a calendar year paid or incurred basis shown separately for frequency and severity for the latest available five calendar years on a quarterly year ending basis for all coverages on both a countrywide and New Jersey basis. Bodily injury liability and property damage liability trend data shall be given at basic or total limits, whichever is consistent with the filer's methodology. Basic personal injury protection ("PIP") data shall be given at a per person limit retained by the insurer according to N.J.S.A. 39:6-73.1* ($100,000 of insurer payments). Property damage coverages shall be shown on the basis of the $500.00 deductible or all deductibles combined adjusted to the $500.00 deductible basis. In the latter case the filer shall provide an explanation of the methodology for adjusting other than $500.00 deductible data to the $500.00 deductible level.

2. For all trend data described above, calculate annual trend factors along with "T" statistics and the coefficient of correlation. Th
all be done from a least-squares regression with time being the
dependent variable.

i. Include trend results calculations for *at least two of* the latest
  x, nine, 12, 16 and 20-period points;

ii. *A* **Include a** side-by-side comparison of the actual data
  and fitted data; and

iii. Include calculations on both an exponential and straight line
  basis.

3. All information related to the derivation of trend factors con-
  tained in the filing specifically including:

   i. All data used, worksheets used, and judgments made;

   ii. A description of the methodology used to derive the factors;

   iii. A description of the application of the methodology to this
       filing.

4. Information, including studies, analyses, and fact sheets regard-
   ing the effects (both countrywide and in New Jersey) of the items
   described in (d) through vi below if the filer has either compiled
   the information itself or relied upon outside information in the sup-
   port of the filing. If the effects of such studies, etc., have been
   incorporated into the rate filing, describe in detail the methodologies
   used. Provide this information for the following:

   i. Changes in seatbelt use;

   ii. Use of passive restraint systems, including air bags, and any
       safety or anti-theft devices including, but not limited to, anti-
       lock braking systems and automatic traction control systems;

   iii. Changes in the drinking age;

   iv. Changes in the price and amount of gasoline purchased;

   v. Changes in the average miles driven;

   vi. Other legislative, regulatory, social, or economic factors that
       have an impact on loss frequency or severity, including, but not
       limited to, the effects of the Fair Automobile Insurance Reform Act

(f) Each filer shall provide the following regarding changes in the
    New Jersey premium base and exposures:

1. Data on the mix of written exposures by different policy terms
   for the latest three years. Include both the number of written ex-
   posures and the amount of written premium for different policy
   terms;

2. Calculate the trend in the average model year and symbol rela-
   tivities for collision and comprehensive coverages separately during
   the most recent five calendar years. Explain how these trends were
   calculated and provide all intermediate calculations. Show the aver-
   age age/model year and average symbol relativity for each of the
   test five calendar years. Include the distributions of written ex-
   posures by age/model year and symbol for comprehensive and col-
   lision coverages separately for each of the last five calendar years;

3. The most recent five-year history of the distribution, by deduc-
   tible amount, of written exposures and premium of comprehensive
   collision coverages purchased.

(f) Filers shall provide the following regarding limitations appli-
    cable to the filing:

1. Limitations to losses and/or loss adjustment expenses included
   the statistical data used in the filing;

2. Limitations on the extent of the rate level change by coverage;

3. Limitations on the extent of territorial rate changes;

4. Limitations on the extent of classification rate changes; and

5. Any other limitations applied.

(g) Filers shall provide the following New Jersey calendar year
    data on a direct business basis by coverage and group of coverages:

1. The amount of earned premium, incurred losses, incurred al-
   located and unallocated loss adjustment expenses for each of the
   test five complete calendar years; and

2. The number of incurred claims (all limits *combined* and all
   deductibles *combined*) by coverage and allocated loss adjust-
   ments penses for each of the latest five complete calendar years.

*(d) Filers shall show the overall Statewide rate change indicated
by coverage.*

*(e) Filers shall provide any additional information specifically
requested by the Department which may be necessary to con-
stitute a proper rate filing.

11-3-16.9 Data requirements for expense and profit provisions

(a) Filers shall provide the data in (a1) through *3* below
    regarding expenses:

1. All information related to the derivation of expense provisions
   contained in the filing specifically including:

   i. All data and worksheets used and judgment made;

   ii. A complete description of the methodology used to derive the
       provisions; and

   iii. Details on the application of the methodology to this filing;

2. Average incurred expenses per exposure on a New Jersey basis
   (explain the basis of allocation) and on a countrywide basis for each
   of the last five complete calendar years for the following expense
   categories:

   i. Commission and brokerage;

   ii. Other acquisition expenses;

   iii. General expenses; and

   iv. Taxes, licenses and fees;

3. The derivation of the expense flattening as required by N.J.S.A.
   17:9-37. The expense flattening calculation shall exclude the UCJF
   assessment for the excess medical benefits reimbursed to insurers by
   that fund. The expense shall be applied by coverage;

4. All data shall be on a direct basis excluding AIRE assessments
   and reimbursements;

5. New Jersey private passenger automobile insurance expense data
   separately for the most recent three complete calendar years using
   the format of the Underwriting Investment Exhibit, Part 4—
   Expenses of the Statutory Annual Statement; and

6. AIRE assessment and reimbursements in dollars and as a per-
   cent of bodily injury liability paid losses for the most recent five
   complete accident years evaluated as of March 31 of the current year.

(b) Filers shall provide the following data regarding proposed
    rates:

1. Proposed rates for each territory and coverage together with
   their derivation;

2. Classification differentials, with descriptions, if any proposed
   changes are being made to the currently approved classification plan;

3. A. (No change.)

* (c) Filers shall provide the following data regarding investment
    earnings:

1. The amount of investment income earned on loss, loss adjust-
   ment expense and unearned premium reserves in relation to earned
   premium for private passenger automobile insurance in New Jersey shall be
   calculated for the latest two years and estimated for the current year
   and the two following years. Calculations should be provided in detail
   including the amount of the composite reserves of each type (that is,
   loss, loss adjustment expense and unearned premium) at the beginning
   and end of each of the specified years;

2. The cash flow pattern from policy inception date until receipt of
   premium. This shall be provided by coverage;

3. The cash flow pattern from policy inception date for commission
   and brokerage, other acquisition expenses, general expenses,
   assessments, premium taxes, licenses and fees and any other expense
   payments; and

4. The cash flow pattern from policy inception date for losses, al-
   located loss adjustment expenses, and unallocated loss adjustment
   expenses.*

* (d) Filers shall provide the following regarding identification
   and certification of statistical plans:

1. Identification of all statistical plans used or consulted in prepar-
   ing the filing; and

2. (No change.)

*(e) Filers shall provide the following information regarding
    investment earnings on capital and surplus:

* (f) Filers shall provide the following regarding investment
    earnings:

1. The amount of investment income earned on loss, loss adjust-
   ment expense and unearned premium reserves in relation to earned
   premium for private passenger automobile insurance in New Jersey shall be
   calculated for the latest two years and estimated for the current year
   and the two following years. Calculations should be provided in detail
   including the amount of the composite reserves of each type (that is,
   loss, loss adjustment expense and unearned premium) at the beginning
   and end of each of the specified years;

2. The cash flow pattern from policy inception date until receipt of
   premium. This shall be provided by coverage;

3. The cash flow pattern from policy inception date for commission
   and brokerage, other acquisition expenses, general expenses,
   assessments, premium taxes, licenses and fees and any other expense
   payments; and

4. The cash flow pattern from policy inception date for losses, al-
   located loss adjustment expenses, and unallocated loss adjustment
   expenses.*

* (g) Filers shall provide the following regarding identification
   and certification of statistical plans:

1. Identification of all statistical plans used or consulted in prepar-
   ing the filing; and

2. (No change.)

*(i) Filers shall provide the following information regarding
    investment earnings on capital and surplus:

1. The amount of investment income earned on loss, loss adjust-
   ment expense and unearned premium reserves in relation to earned
   premium for private passenger automobile insurance in New Jersey shall be
   calculated for the latest two years and estimated for the current year
   and the two following years. Calculations should be provided in detail
   including the amount of the composite reserves of each type (that is,
   loss, loss adjustment expense and unearned premium) at the beginning
   and end of each of the specified years;

2. The cash flow pattern from policy inception date until receipt of
   premium. This shall be provided by coverage;

3. The cash flow pattern from policy inception date for commission
   and brokerage, other acquisition expenses, general expenses,
   assessments, premium taxes, licenses and fees and any other expense
   payments; and

4. The cash flow pattern from policy inception date for losses, al-
   located loss adjustment expenses, and unallocated loss adjustment
   expenses.*

* (j) Filers shall provide the following regarding investment
    earnings:

1. The amount of investment income earned on loss, loss adjust-
   ment expense and unearned premium reserves in relation to earned
   premium for private passenger automobile insurance in New Jersey shall be
   calculated for the latest two years and estimated for the current year
   and the two following years. Calculations should be provided in detail
   including the amount of the composite reserves of each type (that is,
   loss, loss adjustment expense and unearned premium) at the beginning
   and end of each of the specified years;

2. The cash flow pattern from policy inception date until receipt of
   premium. This shall be provided by coverage;

3. The cash flow pattern from policy inception date for commission
   and brokerage, other acquisition expenses, general expenses,
   assessments, premium taxes, licenses and fees and any other expense
   payments; and

4. The cash flow pattern from policy inception date for losses, al-
   located loss adjustment expenses, and unallocated loss adjustment
   expenses.*

* (k) Filers shall provide the following regarding identification
   and certification of statistical plans:

1. Identification of all statistical plans used or consulted in prepar-
   ing the filing; and

2. (No change.)

*(l) Filers shall provide the following information regarding
    investment earnings on capital and surplus:

1. The amount of investment income earned on loss, loss adjust-
   ment expense and unearned premium reserves in relation to earned
   premium for private passenger automobile insurance in New Jersey shall be
   calculated for the latest two years and estimated for the current year
   and the two following years. Calculations should be provided in detail
   including the amount of the composite reserves of each type (that is,
   loss, loss adjustment expense and unearned premium) at the beginning
   and end of each of the specified years;

2. The cash flow pattern from policy inception date until receipt of
   premium. This shall be provided by coverage;

3. The cash flow pattern from policy inception date for commission
   and brokerage, other acquisition expenses, general expenses,
   assessments, premium taxes, licenses and fees and any other expense
   payments; and

4. The cash flow pattern from policy inception date for losses, al-
   located loss adjustment expenses, and unallocated loss adjustment
   expenses.*
INSURANCE

1. The amount of finance and other miscellaneous charges collected in New Jersey in connection with the sale of private passenger automobile insurance;
2. A description of all products and services supplied or received in transactions between the filer and a parent company, a wholly-owned subsidiary or an affiliated company; and
3. Any additional information specifically requested by the Commissioner which may be necessary to constitute a proper rate filing.

11:3-16.10 Rate calculation using standard ratemaking methodology
(a) Investment income shall be treated by group of coverages as follows:
   1. (No change.)
   2. No deductions shall be made for prepaid expenses unless there is specific documentation included in the filing that supports the prepayment of those expenses, which shall include the cash flow pattern from policy inception date for commission and brokerage, other acquisition expenses, general expenses, assessments, premium taxes, licenses and fees and any other expense payments.
   3. No deductions shall be made for the delayed remission in premiums unless there is specific supporting documentation in the filing verifying such delay in the remission of premiums, which shall include the cash flow pattern from policy inception date until receipt of premium.
   4. (No change.)
   5. The ratio of loss reserves to incurred losses shall be on a direct business basis derived from the appropriate line of business from Page 14 of the Statutory Annual Statement for New Jersey. The calculations shall be as follows:
      i. The average of the loss reserve (excluding the reserves for excess medical benefits claims over $75,000 *and AIP reserves*) at the beginning of the year and at the end of the year divided by the corresponding incurred losses during the year;
      ii. The ratio of these reserves to corresponding losses incurred shall be calculated for the most recent four calendar years; and
      iii. If there is a monotonic change in these ratios, either up or down, the most recent ratio shall be used in the calculation. If no such trend exists, the unweighted average of the four ratios shall be used in the calculation.
   6. The ratio of loss adjustment expense reserves to loss reserves shall be derived from the appropriate line of business from Part 3A—Unpaid Losses and Loss Adjustment Expenses of the Annual Statement. The calculations shall be as follows:
      i. The unpaid loss adjustment expense divided by the net losses unpaid excluding loss adjustment expense;
      ii. This ratio shall be calculated for the most recent four calendar years; and
      iii. If there is a monotonic change in these ratios, either up or down, the most recent ratio shall be used in the calculation. If no such trend exists, the unweighted average of the four ratios shall be used in the calculation.
   7. The expected loss and loss adjustment expense ratio shall be one minus the underwriting expense ratio, minus the underwriting profit and contingency ratio derived from the Clifford Formula.

8. The rate interest rate used in the calculation shall be a simple average of the most recent 12 monthly numbers for the Treasury constant three-year maturity rate as published in the Federal Reserve statistical release “Selected Interest Rates”:
(b) Underwriting expense provisions shall be determined as follows:
   1.-7. (No change.)
   8. The following expense items shall not be incorporated into the expense base for determining rates:
      i. Fines against the company;
      ii. Lobbying expenses;
      iii. Charitable contributions;
      iv. Political contributions;
      v. Awards against the company itself for punitive damages and for bad faith claims;
      vi. Advertising and other expenses incurred in connection with proposed changes in the regulation of insurance; and

(CITE 23 N.J.R. 526) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
1. The insurer's experience on all lines of its business in New Jersey, and in the case of insurers operating in an insurance holding company system, the experience of all of the lines of business of all affiliated companies in New Jersey, for a period of time over which an insurer could reasonably plan to earn a target rate of return;

2. Whether the insurer and its affiliates, if any, are reasonably efficient in their operations, including claims handling, subrogation and salvage, by comparison to insurers on a statewide and countrywide basis;

3. Whether the insurer and its affiliates, if any, have allocated expenses to New Jersey operations in a fair and equitable manner; and

4. The synergistic effect of mandated private passenger automobile insurance on the sale of other lines of insurance that the filer writes, including, but not limited to, higher premium volumes, lower operating costs and lower acquisition costs.

(e) Each filer shall present in its filing a formula it believes appropriate for determining the return required by relevant constitutional principles, with supporting analysis and data fully explaining why such formula should be utilized.

(f) The Commissioner may determine whether an insurer's rates are, as a result of the payment of the surtaxes and assessments, constitutionally adequate. In the event that the Commissioner determines that rate relief is deemed to be necessary, the Commissioner shall determine whether the rates should be adjusted immediately or over time, as may be appropriate.

11:3-16.12 (No change in text.)

11:3-16.13 Rate adjustments upon repayment of assessments

(a) At such time that the loans provided for in N.J.S.A. 17:30A-8(a)(10) from the Property-Liability Insurance Guaranty Association to the Automobile Insurance Guaranty Fund are repaid, the Guaranty Association shall determine the proportion of the repayment which is to be allocated to each insurer which paid assessments pursuant to N.J.S.A. 17:30A-8(a)(9).

(b) The Guaranty Association shall advise each insurer in writing of the amount of the repayment which is to be allocated to that insurer, and shall further advise the insurer that it must comply with the provisions of N.J.A.C. 11:3-16.13(c) before the funds will be remitted.

(c) Prior to receiving repayment of any funds attributable to the assessments paid to the Guaranty Association pursuant to N.J.S.A. 17:30A-8(a)(9), an insurer shall file a plan with the Commissioner for a reduction of rates commensurate with such repayment. Upon the Commissioner's review and approval of such plan, the Commissioner shall order the repayment of funds from the Guaranty Association to the insurer.

AGENCY NOTE: Repealed Exhibits AI, All and E are not reproduced herein, but may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-16 Appendix. The new text of these Exhibits follows.
EXHIBIT A I

FLEX RATE FILINGS

COMPANY: ____________________________

COMPANY FILE NO. ____________________

RATE FILING REQUIREMENTS:

(1) COVER LETTER NOTIFYING THE DEPARTMENT OF INTENTION TO INCREASE RATES IN ACCORDANCE WITH N.J.S.A. 17:29A-44

(2) STATEMENT OF PERCENT OF INCREASE BY COVERAGE (INCLUDING VARIABLE PORTION AND EXPENSE FEES EXCLUDING POLICY CONSTANT AND RMEC)

(3) STATEMENT OF DOLLAR AMOUNT OF INCREASE BY COVERAGE

(4) EFFECTIVE DATE OF CHANGE

(5) NAME, ADDRESS AND TELEPHONE NUMBER OF COMPANY OFFICER FAMILIAR WITH FILING

(6) MANUAL PAGES CONTAINING THE FLEX RATES

(7) A COPY OF THE FILING MUST BE SUBMITTED TO THE NEW JERSEY PUBLIC ADVOCATE'S OFFICE

(8) FORM AMB-10 MUST BE INCLUDED

(9) CERTIFICATION BY COMPANY OFFICER THAT FILING MEETS STATUTORY AND REGULATORY REQUIREMENTS AND INFORMATION IS ACCURATE AND TRUE

(10) FILER'S NAME SHOWN

FILER'S IDENTIFYING NUMBERS

GROUP NAIC #

(11) CERTIFICATION BY COMPANY OFFICER THAT EXCESS PROFITS REPORT REQUIRED BY N.J.A.C. 11:3-20 HAS BEEN FILED

(12) CERTIFICATION BY COMPANY OFFICER THAT FINANCIAL EXPERIENCE REPORT AS REQUIRED BY N.J.A.C. 11:3-31 HAS BEEN FILED

(13) CERTIFICATION BY COMPANY OFFICER THAT ANNUAL INFORMATION FILING AS REQUIRED BY N.J.A.C. 11:3-16.4 HAS BEEN FILED

(14) THE MOST RECENT FIVE COMPLETE CALENDAR YEAR HISTORY OF THE DISTRIBUTION, BY LIMIT OF LIABILITY OF WRITTEN EXPOSURES AND PREMIUMS FOR:

- BODILY INJURY LIABILITY
- PROPERTY DAMAGE LIABILITY
- COMBINED SINGLE LIMIT LIABILITY
- UNINSURED/UNDERINSURED MOTORISTS

(15) EXHIBIT SHOWING COVERAGE WEIGHTS AND CALCULATION OF NEW VARIABLE BASE RATES IF COVERAGE ARE COMBINED

(16) COMMISSION EQUALIZATION WORKSHEET

EXHIBIT A II

PRIOR APPROVAL FILINGS

COMPANY: ____________________________

COMPANY FILE NO. ____________________

RATE FILING DATA REQUIREMENTS:

(1) Cover Letter notifying department of intention to modify rates which requires prior approval.

Statement of % of change by coverage and overall by company (including variable portion and expense fees exc. policy constant and RMEC).

Statement of dollar amount of change by coverage and overall by company.

Proposed Date of the Change.

Name, address and telephone number of company officer familiar with filing.

An overview of the contents of filing and the reasons and procedures used to derive the rate change requested.

Manual pages on or before the effective date of the rates.

Computer Disk containing rating system if over 40,000 exposures.

Data Disk if over 20,000 exposures.

(2) The following data must be filed by:

PREMIUM DATA:

Earned premium at present rates for each coverage or combined coverages using extension of exposures or on level factors. A rate level history.

Explanation as to how calculations were produced and documentation for sample of such calculation and justification for factors used including the rate level history.

Justification for the selected method.

Data on a basic or total limits basis.

LOSS DATA:

For each coverage and each year used in calculating rate level loss data is provided on a basic or total limits basis.

Each year and each coverage includes:

- Earned Exposures
- Incurred Losses
- Loss Development Factor
- Unallocated Loss Adjustment Expense
- Allocated Loss Adjustment Expense
- Ultimate Incurred Losses and Loss Adjustment Expenses
- Trend Factor Expenses

If New Jersey losses are separated into catastrophic and non-catastrophic, a description of method used to separate losses.

If the number of years used to determine catastrophe loading is different than number of years available, an explanation is provided, at least 10 years needed.

Territorial Rate Calculations include earned premiums, earned exposures, incurred losses, and number of claims by territory for each coverage and each of the years used to determine territorial relativities or last three years, whichever is greater.

Provide the following information with regard to classification differentials:

- Data used, worksheets used and judgments made.
- Methodology used to arrive at differentials.
- Description of application of the methodology to this filing.

For loss adjustment expense data showing related incurred losses used to determine any loss adjustment expense loadings.

(3) DERIVATION OF CREDIBILITY FACTORS

Provide all data [*reviewed*] *used* and judgments made.

Provide description of methodology used to derive factors.
LOS DEVELOPMENT

All data used, worksheets used and judgments made.

Description of the methodology used to derive the loss development factors.

By coverage provide total limits paid loss development parallelograms for the latest 10 accident years at each annual evaluation date from 15 months to 123 months for PIP and BI, 15 months to 75 months for PD and Uninsured/Underinsured Motorist, 15 months to 51 months for collision and comprehensive if on an accident year basis.

Nine, five, and three year average loss development factors by coverage.

Loss Development Data must be provided by:

Total Limits Paid Losses
Total Limits Incurred Losses
Basic Limits Incurred Loss if used for rate level
Allocated Loss Adjustment Expenses
Incurred Losses Allocated Loss Adjustment Expenses
Number of Paid Claims
Number of Incurred Claims
Statement regarding any changes in loss reserving practices during last five years.

TREND FACTORS:

All internal loss trend data on either a calendar year paid or incurred basis for the latest five years on a quarterly year ending basis.

Bodily Injury Liability data on a basic or total limits basis (Frequency & Severity shown separately).

Property Damage Liability shown on a basic or total limits basis (Frequency & Severity shown separately).

Collision and Comprehensive shown on the basis of:

$500 Deductible or adjusted to $500 Deductible.

Calculate Annual Trend Factors, T-statistics, and coefficient of correlation using least squares regression for all trend data.

Calculations for at least 2 of 6, 9, 12, 16, 20 point periods on both exponential and straight line basis.

Side by side comparison of actual data, fitted data and differences.

All data used, worksheets used, and judgments made regarding trend.

Description of methodology used to derive factors.

Description of application of the methodology used to this filing.

If filler has included the effects of any studies, analyses, or fact sheets, describe in detail the methodologies used for the following:

Changes in seatbelt use.

Changes in use of passive restraint system.

Changes in drinking age.

Changes in price and amount of gasoline purchased.

Changes in average miles driven.

Legislative, regulatory, social or economic factors.

NEW JERSEY PREMIUM BASE AND EXPOSURES

a. Data on mix of written exposures by different policy terms for latest 3 years. Include both written exposures and amount of written premiums for different policy terms.

b. Calculation of trend showing all steps for average model year and symbol relativities for most recent 5 calendar years.

c. Actual model year and symbol written exposure and distribution for comprehensive and collision separately for each of the last 5 calendar years.

d. Five year history of distribution by written exposures and premium of comprehensive and collision by deductible amount.

LIMITS ON FILING

Limitations on losses and/or loss adjustment expenses included in statistical data used in filing.

Limitations on extent of rate level change by coverage.

Limitations on extent of territorial rate changes.

Limitations on extent of classification rate changes.

Limitations not provided for above.

BY COVERAGE AND GROUP OF COVERAGES.

Amount of Earned Premium, incurred losses, incurred allocated and unallocated loss adjustment expense for each of the latest 5 calendar years.

Number of claims incurred for all limits and deductibles by coverage.

Allocated loss adjustment expenses for each of last 5 calendar years.

EXPENSE AND PROFIT PROVISIONS

For each filler provide all information related to derivation of expense provisions including:

All data used, worksheets used, and judgments made.

Description of methodology used to derive provisions.

For each of the latest 5 calendar years provide:

Average Incurred Expenses per exposure on a New Jersey basis for:

Commission & Brokerage
Other Acquisition
General Expense
Taxes, Licenses, Fees
Explanation of Basis of Allocation Taxes
Average Incurred Expenses per exposure on a countrywide basis for:

Commission & Brokerage
Other Acquisition
General Expense
Taxes, Licenses, Fees
Provide Derivation of Expense Flattening (Exclude UCIF assessment for excess medical).

Three years New Jersey auto expenses as in Part 4.

Underwriting Investment Exhibit, Annual Statement.

Five years AIRE assessments and reimbursements.

DATA REGARDING PROPOSED RATES

Proposed rates for each territory and coverage with their deviation.

If classification plan is changed describe classification differentials.

Provide explanation of how classification rates are determined and provide a sample calculation.

Provide calculations showing how base rates are in compliance with N.J.S.A. 17:29A-36.

Base class not greater than 1.35 statewide average base rate (include expense fees).

Principal operator over 65 not greater than 13 times statewide average rate for principal operators over 65.

Comparison of average statewide variable rates and expense fees proposed and currently in use and # of exposures by coverage.

INVESTMENT EARNINGS:

Amount of investment income earned on loss, loss adjustment expense and unearned premiums reserve to earned premium for the latest 2 years, estimated for current and two following years.

Reserves at beginning and end of specified years:

Loss Reserve
Loss Adjustment Reserve
Unearned Premium Reserve

By coverage cash flow pattern from policy inception until premium received.
ASSOCIATES
by
and
corporate officer (meets statutory and regulatory
of
19, 1991
and
NJ data for taxes. licenses, fees.
Health Affiliates.
NJ data for taxes. licenses, fees.
Analysis of Operations by lines of business, page 5. 10 years.
Exhibit I, Part 1 and Part 2, pages 7 and 7A, 10 years.
(B) ADDITIONAL DATA AND CERTIFICATIONS
Estimated amounts of business in other lines because the insurer
writes private passenger automobile in New Jersey.
Title Insurance Affiliates
Operations and Investment Exhibit, page 4, 10 years.
Premiums Written, Schedule T, page 39, 10 years.
Liabilities, Surplus and Other Funds, page 3, 10 years.
Analysis of Operations by lines of business, page 5, 10 years.
Schedule of Key Performance Indicators in Exhibit G.
Corporation.
loans, advertising legal and expenses in connection with changes in regu-
ration of insurance [*premium by surcharge**], and assessments and sur-
taxes* are not included. Company must show dollar amount of expense ex-
cluded separately and by year.
Commission for BI for $0 and verbal threshold are equalized.

(TREND)
Separate determinations of loss severity and frequency trends. Adjustment for symbol drift and model year rating.

(TOTAL RATE OF RETURN)
Demonstrate reasonable rate of return from capital investment will result from proposed rates.

(ALTERNATIVE RATEMAKING METHODOLOGY)
Is one used?
If yes, provide: all data [*reviewed]* used, worksheets used, description of methodology to arrive at selective loading.
Details on application of methodology to this filing.
Overall statewide rate change and by coverage standard and alternate methodology.

(GENERAL AND FORMAT REQUIREMENTS)
Separate insurance companies make rate calculation separately and combined as a group if separate rate levels or underwriting guidelines are used.
Form AMB 10 must be included.
Certification by company officer (meets statutory and regulatory requirements).
Loose leaf binder, one side of page, consecutively numbered.
Filer's name shown.
Filer's identifying numbers.
Filer's NAIC 
Group NAIC 

(List of items the filer states are not included and the reason why.

(IF SURTAX AND GUARANTY [FUND] *ASSOCIATION ASSESSMENT* REFLECTED IN FILING:
Annual Statement, New Jersey, Page 14, for 10 years.
Annual Statement, Countrywide, Page 14 equivalent 10 years.

(EACH AFFILIATE, NEW JERSEY AND COUNTRYWIDE
PROPERTY AND CASUALTY

Annual Statement, New Jersey, Page 14, for 10 years.
Annual Statement, Countrywide, Page 14 equivalent 10 years.

(TITLE INSURANCE AFFILIATES
Operations and Investment Exhibit, page 4, 10 years.

(PREMIUMS WRITTEN: SCHEDULE T)

(ANNUAL STATEMENT)

(ESTIMATED NET INCOME: SCHEDULE G)

(ADDITIONAL DATA AND CERTIFICATIONS)

(CITE 23 N.J.R. 530)
3) DATA FOR EACH NEW JERSEY LINE OF BUSINESS:
   Number of insureds.
   Number of employees directly dedicated to business.
   Square feet of office space dedicated to line of business.
   Hours of data processing time.
   Number of exposures.
   Number of policies in force.
   Number of claims in each of 3 years requested.

4) ACCOUNTING REPORTS AND AUDITS
   Report by independent public accountant evaluating the insurer’s system of internal accounting controls.
   Listing of internal audits for New Jersey private passenger lines of business current year.
   Copies of all internal audits issued during the current year with management responses.

5) OTHER INFORMATION
   Why the assessment *[(17:30-8(9)*[(17:30A-8(9)* should be reflected in rates since it is a loan.
   "Formula filer believes appropriate for determining constitutional rate of return with supporting analysis and data*"

EXHIBIT E

<table>
<thead>
<tr>
<th>Percentage Change</th>
<th>Dollar Effect</th>
</tr>
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<tbody>
<tr>
<td>Bodily Injury</td>
<td></td>
</tr>
<tr>
<td>Verbal</td>
<td></td>
</tr>
<tr>
<td>Zero</td>
<td></td>
</tr>
<tr>
<td>Property Damage</td>
<td></td>
</tr>
<tr>
<td>Personal Injury Protection</td>
<td></td>
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<tr>
<td>Uninsured Motorists</td>
<td></td>
</tr>
<tr>
<td>Verbal</td>
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<tr>
<td>Zero</td>
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<tr>
<td>Total Liability</td>
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<tr>
<td>Comprehensive</td>
<td></td>
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<tr>
<td>Collision</td>
<td></td>
</tr>
<tr>
<td>Total <em>Physical Damage</em></td>
<td></td>
</tr>
<tr>
<td>Overall Total</td>
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</tr>
</tbody>
</table>

EXHIBIT F

The Chief Financial Officer and President must make the following representations regarding rate filing documents:

1. The schedule of operating expenses for the insurer’s New Jersey private passenger automobile lines of business (corresponding to columns 19.1 through 19.4 and in columns 21.1 and 21.2 of the insurance expense exhibit (IEE)). Include only those costs which were incurred to support the insurer’s New Jersey private passenger automobile insurance operations.

2. The allocation of expenses to each line of business on the insurance expense exhibit and the required schedule was made in accordance with the Instructions for Uniform Classifications of Expenses.

3. The allocation of corporate-wide (worldwide, countrywide and regionalwide) expenses to New Jersey lines of business represents only those corporate-wide costs that are properly allocable to New Jersey operations based on reasonable and prudent allocation methodologies.

4. The allocation methodologies used to allocate certain New Jersey general and administrative or indirect costs to New Jersey private passenger automobile lines of business were reasonable, adequately supportable, and did not result in costs being allocated which were incurred by reason of non-private passenger automobile insurance operations.

5. Allocation methodologies used were applied consistently from year to year or, if there were any changes in allocation methodologies, the insurer has stated the reasons for the changes and has quantified the effect of changing the methodologies.

6. The methodologies used to allocate indirect costs is consistent with the methodologies used to allocate indirect costs by the insurer’s internal reporting system and, if the company is also an NFAJUA/MTF servicing entity, the methodologies were consistent with those used in preparing the NFAJUA/MTF operating statement (Exhibit P).

7. If the insurer operated separate cost centers for its New Jersey private passenger automobile lines of business, but expenses for these cost centers were allocated rather than accounted for directly, the insurer has accurately quantified the effect of not accounting for such expenses directly. Also, reasons for not using direct costing for the separate New Jersey private passenger auto cost centers have been provided.

8. The methodologies used to allocate indirect costs to the New Jersey private passenger automobile lines of business are consistent with the methodologies used to allocate indirect costs to other New Jersey lines of business.

9. The total pool of allocated costs (before allocating to the various lines of business in each state) represents all and only such costs as are reflected in the insurer’s annual audited financial statements prepared under statutory accounting principles.

10. All paid allocated loss adjustment expenses reported for New Jersey private passenger automobile lines of business were incurred to settle specific claims and the guidelines used for determining these loss adjustment expenses are the same as those used for the insurer’s other lines of business.

11. A reasonable, prudent person would not determine that there are allocation methodologies which could have been used that would clearly have resulted in a more accurate allocation of operating expenses.

12. Financial information on the IEE properly reconciles with the insurer’s annual statements as reported to the Department.

13. The schedule provided for premiums, incurred losses and operating expenses (on a direct basis) by New Jersey lines of business properly reconciles to the insurer’s total premiums, incurred losses and operating expenses by line of business (on a net basis) as reported in the IEE.

14. Net direct written premiums reported in the current year for each New Jersey line of business were determined in the same manner as in the preceding two years.

15. The Insurance Expense Exhibits for the current and preceding two years and the required supporting schedules were prepared in conformity with statutory accounting principles.

16. Adequate provision has been made for all incurred losses in each of the periods reported.

17. There were no violations of laws or regulations during the periods reported whose effects have not been considered in the results of operations reported.

18. The accounting records underlying the financial information provided accurately and fairly reflect, in reasonable detail, the transactions of the insurer’s private passenger automobile and other lines of business.

19. The filer has complied with all aspects of contractual agreements that would have a material effect on the financial information provided in the event of noncompliance.

20. No events have occurred subsequent to the date of the most recent Insurance Expense Exhibit that would require adjustment to the financial information provided on the Insurance Expense Exhibits or to the financial information provided on the other schedules required.

21. There have been no:
   a. Irregularities involving management or employees who have significant roles in the internal control structure.
   b. Irregularities involving other employees that could have a material effect on the financial information provided.
   c. Communications from regulatory agents concerning noncompliance with, or deficiencies in, financial reporting practices that could have a material effect on the financial information provided.
DIVISION OF PROPERTY/LIABILITY

Standard/Non-Standard Rating Plans

Adopted Concurrent New Rules: N.J.A.C. 11:3-19

Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.
Filed: January 25, 1991 as R.1991, d.92, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 17:1-8; 17:1C-6(e); and 17:29A-45.
Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently reproposed on November 26, 1990 pursuant to N.J.S.A. 52:14B-4(e). The present adoption of the concurrent reproposed rules is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), except for the changes upon adoption, which are effective on the date of publication of this notice, February 19, 1991.

Summary of Public Comments and Agency Responses:

The Department of Insurance (Department) received 12 written comments from insurers and insurance trade associations.

Initially, the Department notes that these rules are closely related to other rules contemporaneously adopted concerning the definition of "eligible person," N.J.A.C. 11:3-34, nonrenewals, N.J.A.C. 11:3-8 and automobile insurance underwriting rules, N.J.A.C. 11:3-35. Recognizing this, some commenters addressed their comments generally to all of these rules and some duplicated their comments for all of them, while other commenters did not identify the specific rule being commented upon. Often, commenters addressed a particular rule, but their comment was similar to another comment on a different rule. In preparing adoption notices for all of these rules, the Department has, in some instances, combined similar comments and responses, and those that relate to more than one of these rules may appear only once. The Department believes that not only does this avoid duplication, but also promotes clarity and consistency. In other instances, the Department found that a more cogent response to various aspects of general comments could be made by addressing each aspect in connection with a particular rule to which it related. The reader is, therefore, urged to examine also the adoption notices concerning the other rules set forth above, which appear elsewhere in this issue of the New Jersey Register.

COMMENT: Many commenters restated comments previously made to this rule when first proposed on August 6, 1990 (see 22 N.J.R. 2231(a)); or stated simply that comments to that proposal were "incorporated by reference."

RESPONSE: These commenters are referred to the Department's responses set forth when these rules were reproposed (see 22 N.J.R 3804(a)). The Department notes, however, that many of the following comments and responses contain elements of previous comments regarding particular aspects of these rules. Some of the following responses may serve to promote a greater understanding of the Department's previous responses, when applicable.

COMMENT: Several commenters stated general objections to the provisions of the Fair Automobile Insurance Act of 1990, N.J.S.A. 17:33B-1 et seq., or provisions of statutes that are incorporated in these rules, including the requirement that insurers provide coverage for all eligible persons in their standard/non-standard rating plans after April 1, 1992.

RESPONSE: These provisions simply set forth standards required by the applicable statutes.

COMMENT: Many commenters inquired whether specific provision in a standard/non-standard rating plan would be permitted, or suggested new or modified language that would authorize or require particular provisions of such a plan to be approved.

RESPONSE: These rules set forth general requirements that all standard/non-standard rating plans must satisfy, and the general standard: for approval of such plans. The Department expects diversity among these plans with the parameters set forth in these rules. Whether a particular plan meets the general rule standards is better left to the approval process in which certain provisions, rules, rates and other aspects of the plan are considered together. It would be inappropriate to make these judgments based on a hypothetical question with limited information in the context of a response to a rule comment.

COMMENT: Several commenters objected to the provisions of N.J.A.C. 11:3-19.3(b), which requires that merit rating surcharges, permitted to be included in rating systems by N.J.S.A. 17:29A-35, must be incorporated into the nonstandard rates of a standard/non-standard rating plan. These commenters objected to the requirement that insurers must place certain business in the non-standard rate level and would rather place it at the standard rate level with a merit rating surcharge. Some commenters expressed concern that placing this business at the nonstandard rate level might result in the nonstandard market exceeding the statutory cap of 15 percent.

RESPONSE: The Department notes that this revision was made as the result of the review of comments previously received to a prior proposal (see 22 N.J.R. 3807). The Department believes that this method represents sound public policy, as it precludes double surcharges for the same behavior (that is, when a driver is placed in the non-standard rate level as the result of an accident, and then further is surcharged through a merit rating plan). The Department further notes that a driver with an at-fault accident is assessed five eligibility points; the commenter's position appears to be that persons with five automobile insurance eligibility points should be insured at the standard rate level. The Department believes that the Fair Act clearly provides that drivers with no recent motor vehicle violations or at-fault accidents be provided a preferred rate status. The Department believes these rules are consistent with this goal.

COMMENT: One commenter stated that the regulations governing the 135 percent rate differential need to be clarified. The commenter inquired whether the average non-standard rate refers to the base rate or the average premium charged, noting that the latter will constantly change based on the insurer's mix of business.

RESPONSE: The "135 percent rate differential" is set forth at N.J.A.C. 11:3-19.4(a), which provides a standard/non-standard rating plan shall be disapproved for certain reasons. When a standard/non-standard rating plan is approved, the rates are approved and are not thereafter affected by the mix of business.

COMMENT: Several insurers objected to the requirement in N.J.A.C. 11:3-19.3(a) that all insurers which write personal private passenger automobile insurance file a standard/non-standard rating plan. These insurers interpreted N.J.A.C. 17:29A-45(a) as making such plans optional.

RESPONSE: For a number of legal and policy reasons, the Department believes that the Commissioner has authority to require that all insurers file standard/non-standard rating plans and that it is desirable to do so.
COMMENT: One commenter suggested that the phrase “personal private passenger automobile” be defined, and included a suggested definition.

RESPONSE: The Department does not believe this definition is necessary; it further disagrees with certain aspects of the suggested definition.

COMMENT: Several commenters inquired whether “accident free discounts” could continue to be offered at the standard rate level. One suggested language that would amend N.J.A.C. 11:3-19.3(b) that would provide an additional graduated scale of non-standard rates based on accrued automobile insurance eligibility points.

RESPONSE: Nothing in these rules prohibit “accident free discounts” at the standard rate level. The Department notes, however, that at-fault accidents within the preceding three years result in an accumulation of automobile insurance eligibility points. The Department expects that individuals with five or more eligibility points would likely be insured at the non-standard rate level, and that the suggested language that the discount be removed appears superfluous and confusing. The Department, therefore, does not believe that this change is necessary or desirable.

COMMENT: Several commenters inquired about the provisions of N.J.A.C. 11:3-19.4(a)2, which requires an equitable graduated scale of non-standard rates based on accrued automobile insurance eligibility points.

RESPONSE: As stated above, these specific questions are better left to the approval process for standard/non-standard rating plans when all of the provisions of the plan are submitted for review.

COMMENT: Three commenters suggested that the rules be amended to include additional procedural provisions, including a provision that disapproval of a filing would establish a “contested case” requiring referral for a hearing.

RESPONSE: The Department is unwilling to add such procedural provisions to these rules at this time. It recognizes, of course, that if more complex procedures concerning the approval and disapproval of standard/non-standard rating plans are required, then a filing requirement, the Department prefers not to establish such procedures specifically at this time other than those set forth in N.J.A.C. 11:3-19.4(a)2. The Department will review these rules at an appropriate time in the future to determine whether additional procedural provisions should be added.

COMMENT: Several companies inquired whether multiple standard and non-standard tiers are permitted. One commenter referred to the Department’s responses to previous commenters (see 22 N.J.R. 3805-06). One stated “we are not clear whether this means different rate levels within a tier, or whether the reference is to the different rate levels already in the law (standard/non-standard rate differentiation).”

RESPONSE: These rules have substituted “rate level” for “tier” in reference to standard and non-standard rate levels. The Department also notes that N.J.A.C. 11:3-19.4(a)2 provides for an equitable graduated scale of non-standard rates. The Department further recognizes that approved rules may affect the premiums directly and indirectly. Beyond this, the Department believes that the provisions of a particular standard/non-standard rating plan should be addressed in the approval process.

COMMENT: One commenter inquired whether the rules permit placement of an insured in the non-standard rate level who is not an “eligible person,” but who operates a vehicle less than 10 percent of the time. Other insurers made similar inquiries concerning household members with eight or less eligibility points, but who purportedly account for less than 10 percent of the use of a vehicle.

RESPONSE: Placement of an insured and his or her vehicle at the non-standard rate level must be accomplished in accordance with the insurer’s underwriting rules, which are filed and approved as an element of the standard/non-standard rating plan. In connection with the adoption of rules addressing nonrenewals, N.J.A.C. 11:3-8, and insurer underwriting rules, N.J.A.C. 11:3-35 (see adoption notices elsewhere in this issue of the New Jersey Register), the Department has deleted N.J.A.C. 11:3-35.3(c)(10) and included all of its essential provisions at N.J.A.C. 11:3-8.4(a)2. The Department believes that this change not only improves understanding of the provisions concerning nonrenewals, but also accurately reflects the intent of the FAIR Act to provide coverage in the voluntary market to the vast majority of drivers who have no, or few, recent blemishes on their driving records. Importantly, N.J.A.C. 11:3-35.4(a) and (b) remain as part of those rules and confirm that insurer underwriting rules should provide for coverage of eligible persons in the voluntary market. Additionally, some provisions of the former N.J.A.C. 11:3-35.3(c) 10 have been included as a new subsection, N.J.A.C. 11:3-35.4(c) to provide this protection for new applicants after April 1, 1992, as well as renewals.

The FAIR Act also amends N.J.A.C. 17:29A-45 to provide authority to the Commissioner to define the non-standard market (N.J.S.A. 17:29A-45f), which these rules together with N.J.A.C. 11:3-35 are intended to accomplish. The Commissioner has determined that the non-standard market shall consist of those eligible persons and their vehicles who have accrued one or more eligibility points, calculated pursuant to N.J.A.C. 11:3-34. The standard market shall consist of those eligible persons and their vehicles who have accrued no eligibility points. Based on available data, the Department believes that this definition properly executes the provisions of the FAIR Act regarding the percentage of the market in each segment and lays a foundation for the implementation of N.J.S.A. 17:33B-32, which requires that automobile insurance rates be primarily based on driving record.

Consistent with this definition of the non-standard market, eligibility points of household members who are not the primary driver of an automobile may be used to rate an automobile they drive, regardless of the percentage of use, if not used to rate any other automobile in the household. A provision so stating has been included in the rules regarding underwriting rules for standard/non-standard rating plans at N.J.A.C. 11:3-35.5(d) to clarify what underwriting rules may be approved by the Department. This provision has been substituted upon adoption for the more restrictive and burdensome provision of N.J.A.C. 11:3-35.3(c)(10). It permits eligibility points of other household members to be used in connection with rating policies at the non-standard rate level without regard to the claimed amount of use. Since this added provision responses to the concerns expressed by these commenters and others, clarifies what the Commissioner may or may not approve, and further reduces, to a limited degree, the burden of compliance with these rules, it may be accomplished upon adoption without further notice and comment (see N.J.A.C. 11:30-4.3).

The specific underwriting rules and other elements of an insurer’s standard/non-standard rating plan will be addressed during the process for approval of these plans.

COMMENT: Several commenters inquired about various methods for monitoring the renewal of insureds at the proper rate level, pursuant to N.J.A.C. 11:3-19.5.

RESPONSE: The Department believes that these inquiries are better addressed in the standard/non-standard rating plan approval process, noting that N.J.A.C. 11:3-19.3(c)16 requires an insurer to submit with its filing a plan for determining upon renewal to which rate level a risk will be assigned.

COMMENT: A commenter requested clarification regarding the implementation data of the non-standard rating plan. It noted that these plans are to be filed by March 1, 1991 and asked if a company could choose any effective date.

RESPONSE: The plan cannot be implemented, of course, until approved. One Department anticipates that the filing and approval processes will establish the effective date.

COMMENT: One commenter requested clarification regarding the requirement of a graduated scale of non-standard rates based on accrued eligibility points in N.J.A.C. 11:3-19.4(a)2, asking whether the rates are to be graduated before application or a surcharge of if the surcharge can be built into the graduated rate scale.

RESPONSE: The Department anticipates that the surcharges will be built into the graduated rate scale; nevertheless, this may be addressed in the approval process.

COMMENT: One commenter reasserted its objection to the provisions of N.J.S.A. 17:29D-1(d) concerning the closing of the assigned risk plan when it reaches 10 percent of the market. It noted that this result would be extremely inequitable to good drivers and marginal drivers in the non-standard tier. In a subsequent comment, however, it also reasserted its objection to rate level placement by car rather than by policy, which it noted will require a systems change for most companies, stating that placement by policy seems more equitable, practical and better reflects the household exposure.

RESPONSE: The Department believes that rate level placement by automobile will reduce the likelihood that the assigned risk plan must be closed, and mitigate the inequity to good and marginal drivers.

COMMENT: One commenter inquired whether the State had, and would provide, data to establish the gradation of rates based on eligibility points.
RESPONSE: The Department has some data that it will use to review standard/non-standard rating plans submitted for approval. Insurers should, however, undertake to develop their own plans.

COMMENT: Several commenters stated that the provision requiring insurers to insure at the standard rate level all persons with no eligibility points over the last three years is an unauthorized attempt to establish a "take all comers" environment before April 1, 1992, as provided in N.J.S.A. 17:33B-15a.

RESPONSE: The Department disagrees; insurers are not required to accept new business from all eligible persons until April 1, 1992 and this is set forth in N.J.A.C. 11:3-35.4(b). Nevertheless, business that is accepted or written for persons with no eligibility points must be written at the standard rate level.

COMMENT: One commenter inquired how merit rating surcharges, which are to be applied uniformly on a Statewide basis, can be incorporated into non-standard rates, "and these rates be charged on a multiplicative basis."

RESPONSE: The Department anticipates that the non-standard rate level may include a graduated scale of rates, in fixed dollar amounts, reflecting various levels of eligibility points.

COMMENT: One commenter inquired how equitable gradations within the non-standard rate level would be displayed, noting that N.J.A.C. 11:3-19.3(c)(3) requires manual rate pages for each rate level. The commenter inquired whether two or nine sets of rate pages are required.

RESPONSE: The Department expects two sets of rate pages, one for the standard rate level and one for the non-standard rate level.

COMMENT: One commenter suggested that the notice of reassignment set forth in N.J.A.C. 11:3-19.5(a) should be deleted as superfluous, noting that the significant premium increase will be immediately apparent to the insured.

RESPONSE: The Department acknowledges that the premium increase will be apparent; the notice is intended to set forth the reason why.

COMMENT: A commenter requested that N.J.A.C. 11:3-19.5(b), which requires the policy declaration page to set forth the number of eligibility points used to rate the policy, be deleted. Alternatively, it suggests that an insurer be permitted to set forth eligibility points on some other writing accompanying the policy.

RESPONSE: While the Department believes the policy declarations page is the most appropriate place for this information, and that systems tracking eligibility points should be capable of providing this information on a policy declarations page, it has added language to permit some reasonable alternatives.

COMMENT: One commenter stated that the 135 percent differential between standard and non-standard rates should not be established by company, as this would be unfair to companies which have previously provided the lowest rates to standard insureds.

RESPONSE: The Department notes that the rules provide that the difference be established initially when the plan is approved. Future rate changes may affect that difference as initially established, based upon data submitted by the insurer when applying for a future rate change.

COMMENT: One commenter stated: "The rules should be amended to allow the 135 percent comparison to be made based upon data from a specific period of time and that such comparison, for rate making purposes, would remain in effect for another specified length of time. Otherwise, companies and the Department have a constantly shifting 'moving target,' which is impossible to hit!"

RESPONSE: The Department does not understand the comment. Rates are approved for an indeterminate time, until the next rate change is approved. Rates initially approved remain in effect until then.

COMMENT: One commenter inquired what information (policy detail, premium, etc.) will companies be required to report.

RESPONSE: The Department anticipates that information to be reported to its statistical agents may be modified; insurers will be notified of these changes by the statistical agents.

COMMENT: One commenter inquired what information must be filed to establish the standard/non-standard rating plan.

RESPONSE: An insurer should file the items set forth in N.J.A.C. 11:3-19.3(c). To the extent that other information may be necessary, the Department will request it as part of the approval process.

COMMENT: One commenter inquired whether extensions will be granted from the mandated March 1, 1991 filing date.

RESPONSE: The Department does not anticipate granting any extensions.

COMMENT: One insurer, who stated that it markets an integrated package policy which provides automobile, homeowners, seasonal dwell-
“Department” means the New Jersey Department of Insurance.

“Individual insurance company” means an insurance company separately licensed and authorized to transact private passenger automobile insurance business in New Jersey, regardless whether it is one of a group of affiliated companies.

“Insured” when used as a noun means a policyholder or other person insured under a policy of automobile insurance and not insured elsewhere.

“Insurer” includes a group of affiliated companies.

“Standard/non-standard rating plan” means a rating system used by an insurer that provides different [base]* rates for different risks to those insureds who qualify in accordance with the insurer’s approved underwriting rules.

“Public Advocate” means the Division of Rate Counsel of the New Jersey Department of the Public Advocate, established pursuant to N.J.S.A. 52:22E-16.

“Renew” means to issue and deliver at the end of the policy period a policy superseding a policy previously issued and delivered; or to issue and deliver a certificate or notice extending the term of a policy beyond its policy period or term, by the same individual insurance company, or by another of a group of affiliated companies pursuant to a standard/non-standard rating plan filed and approved in accordance with this subchapter.

“Risk” means the person or property exposed to loss or damage that is insured under an automobile insurance policy.

11:3-19.3 Filing requirements for standard/non-standard rating plans

(a) All insurers which write personal private passenger automobile insurance shall file standard/non-standard rating plans that provide different rates for risks separately described by the insurer’s approved underwriting rules. No insurer shall implement or use a standard/non-standard rating plan that has not been filed and approved in accordance with N.J.S.A. 17:29A-45 and this subchapter.

(b) Merit rating surcharges, which are permitted to be included in rating systems by N.J.S.A. 17:29A-35, shall be incorporated only into the non-standard rate level of the voluntary market.

(c) An insurer shall initially establish a standard/non-standard rating plan by filing with the Commissioner the following items:

i. A narrative description of the plan, which shall include:

   a. The percentage difference between the standard and non-standard rate levels;

   b. The variation of the difference by eligibility points;

   c. Any variation of the difference by coverage;

   d. The insurer’s plan for determining upon renewal to which rate level a risk will be assigned; and

   e. If the plan is submitted by a group of affiliated companies, the identity of all individual insurance companies in the group that transact private passenger automobile insurance business in New Jersey and the rate level to be used by each;

ii. A complete set of underwriting rules that set forth qualifications for each rate level, which rules shall conform to the standards set forth in N.J.A.C. 11:3-35; and

iii. Within 30 days of the date of approval of the underwriting rules or the effective date of the plan, whichever is later, manuaal rate pages for each rate level.

(d) A group of affiliated companies may file a standard/non-standard rating plan that provides that different individual insurance companies write risks at different rate levels.

11:3-19.4 Standards for disapproval or modification

(a) A standard/non-standard rating plan shall be disapproved for any of the following reasons:

1. If the average non-standard rate is in excess of 135 percent of the average of the combined standard and non-standard rates;

2. If the plan does not provide for an equitable graduated scale of non-standard rates based on accrued automobile insurance eligibility points;

3. If the plan does not provide that the insurer shall, after April 1, 1992, insure at either its standard or non-standard rate level all applicants and insureds defined as “eligible persons” in N.J.A.C. 11:3-34;

4. If the plan does not provide that the insurer shall insure at its standard rate level all insureds who have accrued no automobile insurance eligibility points during the previous three years;

5. If the underwriting rules do not meet the standards set forth in N.J.A.C. 11:3-35;

6. If the insurer fails to submit the items required for filing pursuant to N.J.A.C. 11:3-19.3; or

7. If the plan otherwise fails to meet any of the standards of this subchapter.

(b) The Commissioner may by rule or order direct an insurer with an approved standard/non-standard rating plan to modify its plan to conform to rules which may be adopted pursuant to N.J.S.A. 17:29A-45 that further define the non-standard voluntary market.

(c) A standard/non-standard rating plan may provide that any applicant who is not an “eligible person” as defined in N.J.A.C. 11:3-34 may be insured at the non-standard rate level during any period of time certified by the Commissioner for the cessation of applications or the issuance of new policies by the assigned risk plan, pursuant to N.J.S.A. 17:29D-1d.

11:3-19.5 Renewal of policy at proper rate level

(a) An insurer which has implemented a standard/non-standard rating plan shall issue and renew its policies at the appropriate rate level for which the risk qualifies in accordance with the insurer’s approved underwriting rules *based upon eligibility points accrued in the 36 month period ending 90 days prior to the expiration of the current policy.* The transfer of a risk from one rate level to another within an insurer’s standard/non-standard rating plan shall not be deemed to be a nonrenewal of the policy as provided by N.J.S.A. 39:6A-3 and N.J.A.C. 11:3-8 if the insurer complies with the provisions set forth below.

1. If the insurer qualifies for the standard rate level after having been insured at the non-standard rate level, the insurer shall renew the insured at the standard rate level in accordance with procedures set forth in N.J.A.C. 11:3-8.3(a) through (e)*.

2. If the insured qualifies for the non-standard rate level after having been insured at the standard rate level, the insurer shall renew the insured at the non-standard rate level in accordance with procedures set forth in N.J.A.C. 11:3-8.3(a) through (e)* after providing notice to the insured as follows:

i. Written notice shall be sent to the insured at least 30, but not more than 45, days before expiration of the policy;

ii. The written notice shall advise the insured that he or she no longer meets the insurer’s approved underwriting rules for the standard rate level;

iii. The notice shall set forth a summary of the provisions of the underwriting rules that applies to the insured and the specific facts upon which the insurer relies to determine that the insured no longer is qualified for the standard rate level, including the specific events that resulted in the accrual of automobile insurance eligibility points; and

iv. The notice shall advise the insured of his or her right to contact other insurers to determine whether comparable insurance can be purchased elsewhere at less cost.

(b) An insurer which has implemented a standard/non-standard rating plan shall state on the policy declaration page*, or some other writing accompanying the policy*, the number of eligibility points that were used to rate the policy.

11:3-19.6 Procedural provisions

(a) An individual insurance company operating pursuant to a rating plan approved on or before November 14, 1989 may initially file a standard/non-standard rating plan in which the modification is expressed as a percentage increase or decrease of the existing rate level.

(b) Contemporaneously with filing a standard/non-standard rating plan with the Department, an insurer operating pursuant to a rating plan approved on or before November 14, 1989, shall deliver a copy of the filing to the Public Advocate at the following address:
INSURANCE

Department of the Public Advocate
Division of Rate Counsel
*744 Broad Street
Newark, New Jersey 07102*
31 Clinton Street
P.O. Box 46005
Newark, New Jersey 07101*

1. The Public Advocate may intervene in the proceedings by filing notice with the Department within 10 days of date of receipt of the filing. A copy of the notice shall be contemporaneously sent to the insurer filing the plan.

2. The Public Advocate shall file with the Department its comments regarding the insurer's proposed rating plan and underwriting rules no later than 30 days after receipt of the filing. A copy of the comments shall be contemporaneously delivered to the insurer filing the plan.

3. The insurer may submit to the Department a response to the comments within 10 days of receipt. A copy shall be sent contemporaneously to the Public Advocate.

4. The decision of the Commissioner to approve or disapprove the rates and underwriting rules shall be based upon the documents submitted.

5. The Commissioner shall promptly notify the insurer whether the rating plan and underwriting rules have been approved or disapproved. A copy of the decision shall also be sent to the Public Advocate if it has filed a notice of its intention to intervene. Pursuant to N.J.S.A. 17:29A-45c, rates initially filed as a percentage increase or decrease of the existing rate level by an insurer which had rates approved on November 14, 1989, shall be deemed approved if not disapproved within 60 days.

(c) An individual insurance company which did not have a rating plan approved on or before November 14, 1989 may file a standard/non-standard rating plan by complying with the provisions of N.J.A.C. 11:3-19.3 and N.J.A.C. 11:3-16.5 (rate filing requirements for prior approval filings) even if it is one of a group of affiliated companies of which one or more companies has approved rates.

(d) All insurers which write personal private passenger automobile insurance shall file for approval on or before March 1, 1991 a standard/non-standard rating plan that meets the requirements of this subchapter.

11:3-19.7 Penalties
Failure to comply with the provisions of this subchapter shall subject the insurer to penalties as provided by N.J.S.A. 17:33-2.

DIVISION OF ADMINISTRATION

Medical Fee Schedules: Automobile Insurance
Personal Injury Protection Coverage
Adopted Concurrent New Rules: N.J.A.C. 11:3-29
Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.
Filed: January 25, 1991 as R.1991 c.9, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently repropose on November 26, 1990, pursuant to N.J.S.A. 52:14B-4(c). The present adoption of the concurrent repropose new rules is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-4(d)), except for the changes upon adoption, which are effective upon publication of this notice, February 19, 1991.

Summary of Public Comments and Agency Responses:
The Department of Insurance (Department) received 66 written comments from insurers, health care providers, health care facilities, trade associations and interested persons. Some of these comments will require research and study to determine whether recommended changes to the regulations are appropriate. These considerations will be addressed by the Department at such times as it proposes specific amendments resulting from its review. In many instances, as appropriate, the Department will also respond directly to commenters.

COMMENT: It is not clear how the proposed fee schedule will be applied to persons injured prior to January 1, 1991. It is our strong opinion that those persons injured before the proposed changes to PIP go into effect not be subject to any medical fee schedules. Prior to implementation of the FAIR Act, medical expenses were not capped, nor fees regulated. Individuals purchasing an automobile contract did so with the understanding that they would be guaranteed unlimited medical expense reimbursement with no provision for a cap or schedule of acceptable fees. Any disruption in services provided to persons with ongoing and already established medical needs could be devastating to both the victims and their families.
RESPONSE: The medical fee schedules apply to medical services and equipment provided on or after January 1, 1991, regardless of when the injury took place or when the auto insurance contract was purchased. Medical expense caps preceding or subsequent to the FAIR Act have no relevance to this question. There is no more justification for a health care provider, due to the existence of medical fee schedules, to disrupt services to patients injured prior to January 1, 1991, than there is to deny services to those injured after that date. To state or imply otherwise is to mislead the public and cause unwarranted concern and duress among accident victims and their families.

Application of the medical fee schedules protects insured victims of auto accidents against medical expenses incurred. The level of fees for medical services and equipment is not a matter of contractual commitment by auto insurers to insureds or to the injured individual. The rights of the insured are not being changed in any manner whatsoever. However, the charges for medical services and equipment provided after January 1, 1991, should reflect what is usual, customary and reasonable within the limits specified by these rules.

COMMENT: The reproposed rules will not reduce significantly the cost of delivery of auto insurance in New Jersey. First, the application of the fee schedule is, by law, directed only towards Personal Injury Protection (PIP) coverage. It does not impact medical costs related to bodily injury claims, other medical benefit coverage or health insurance even if the injury arose out of the use of a motor vehicle.
RESPONSE: Medical expenses payable under PIP coverage in auto insurance policies have been among the most rapidly increasing cost elements of auto insurance in New Jersey. It is a legitimate area of concern which the Legislature has specifically addressed to the end that medical care should be at reasonable levels and under control.

COMMENT: The definition of “provider” at N.J.A.C. 11:3-29.2 does not seem to include pharmaceutical supplies which are neither services or equipment provided by licensed professionals.
RESPONSE: The medical fee schedules do not include pharmaceutical supplies or drugs which are subject to the New Jersey Department of Health's Drug Utilization Review Council Formulary used in the implementation of New Jersey's Prescription Drug Price and Quality Stabilization Act. The purpose of the Formulary "is to assure quality medications at the most reasonable costs." It is intended that insurers will administer reimbursement of prescription drugs in such a manner that charges for medications will be reimbursed at their reasonable costs.

COMMENT: N.J.A.C. 11:3-29.4(c) provides that the "insurer's limit of liability for any medical expense benefit for any service or equipment not set forth in the fee schedules shall be a reasonable amount considering the fee schedule for similar services or equipment in the region where the service or equipment was provided."

This may be interpreted to mean that health care providers will be reimbursed on a usual, customary and reasonable basis for procedures not included in the proposed schedules. We believe that such procedures are exempt from the other provisions of the rules and that practitioners will be permitted to bill patients for the difference between their fee and the reimbursed amount.
RESPONSE: If a particular medical service or item of equipment is not included in the medical fee schedules, but a similar service or item of equipment is included, then a reasonable charge should be determined.
considering the fee assigned to the similar service or equipment. If no similar service or equipment is included in the schedules, then a charge based on the provider’s usual, customary and reasonable fee would be appropriate. Accordingly, the Department has added clarifying language to N.J.A.C. 11:3-29.4(e). In no event will the practice of balance billing be permitted.

COMMENT: As to services or equipment not set forth in the fee schedules, who is to determine what is usual, customary and reasonable for a given geographic area?

RESPONSE: As part of the claims paying process, auto insurers will determine in a given case, based on their cumulative experience whether the charge submitted represents the usual, customary and reasonable fee. Such charges shall not be subject to additional billings.” We are not aware of any “established practice” with respect to follow-up care and believe that more surgeons charge for follow-up care than those who do not. We oppose this provision.

COMMENT: Medical expenses for continuing care of a limited duration which are not reflected in the original charges have been reflected in the procedure codes set forth in the regulation. Many procedure codes do include follow-up care and expansion of the codes has helped to resolve this problem. Charges for extended periods of care following surgical procedures are not expected to be included in the original charges.

COMMENT: Proposed N.J.A.C. 11:3-29.5 prohibits balance billing in compliance with the express terms of the statute. The proposed rules are intended to have “a positive social impact” by controlling the cost of medical services and a positive “economic impact” by limiting the amount of medical expenses paid by individuals. These positive goals would be negated if medical providers were permitted to charge their patients (the victims of automobile accidents) more than allowed by the medical fee schedules. The proposed prohibition conforms to the intent of the Legislature by providing that health care providers may not bill their patients for any balance in excess of the fees allowed by the medical fee schedule.

RESPONSE: The Department agrees.

COMMENT: Banning balance billing will have no effect on the amount of the auto insurance premium. This is a matter between the patient and the physician and has nothing to do with insurance. By banning balance billing, patients are being told that they can utilize services as much as they want with no risk to them since their bill is going to be ‘paid in full.’

RESPONSE: The practice of “unbundling”, that is, making a series of separate charges for procedures which have been customarily combined with the result that any balance of fees, is to be discouraged in the reimbursement of providers’ charges.

COMMENT: Are there any plans to incorporate the use of modifiers into the schedule? In what format will the schedule be made available to insurers—computer file, tape or diskette, or hardcopy?

RESPONSE: The concept of modifiers is not applicable to levels of reimbursement under the medical fee schedules. At the present time, the format for the medical fee schedules is hardcopy as published from time to time originally in the New Jersey Register and codified in the New Jersey Administrative Code.

COMMENT: The proposed rules, unlike the Medicare system, do not require providers to indicate the corresponding code on the bill for services. However, the Department of Insurance has the power to compel medical care providers who would be reimbursed pursuant to New Jersey’s PIP coverage provision to include such a code.

RESPONSE: Insurers may condition payment of claims upon receipt of a properly completed claim form including references to the appropriate codes. This regulation does not prohibit development and use of such forms.

COMMENT: May insurers provide input at the scheduled intervals for re-evaluation of the CPT codes? Will there be procedures for such input? Will the annual revisions in CPT4 be promptly incorporated into the fee schedule? We request that the Department provide sufficient notice of review so that there may be a full and effective opportunity for comment.

RESPONSE: The Department will adhere to the normal regulatory process when amending and updating the medical fee schedules. The updating statute requires biannual review (meaning twice a year) by the Commissioner of Insurance. The process will include opportunity for interested persons to submit written comments on published proposals.

COMMENT: There is no indication as to how any possible revision resulting from bimonthly review will be communicated and when such revisions shall be effective. We would suggest that any such revisions be published in the first issue of the New Jersey Register during the months of January and July to be effective as of the first of those months.

RESPONSE: Revisions to the medical fee schedules will be effected through the rulemaking process, published in the New Jersey Register and will uniformly be effective within 30 days of the date of adoption publication.

COMMENT: Why has the Department separated chiropractic fees from other health care providers, that is, medical doctors and doctors of osteopathy? Why does the description of services for chiropractors not contain a CPT4 code for spinal manipulation or modalities? The legislative intent for the medical fee schedules was that there be a level playing field. Once again, it seems that either deliberately or by mistake chiropractors have been placed into a separate category which would be a violation of the “Insurance Equality Law of 1975.”

RESPONSE: The Department has deleted the separate schedule for chiropractors that first appeared in the medical fee schedules published in the December 17, 1990 issue of the New Jersey Register. The principal objective of the fee schedules is to reduce the level of medical expenses
The Department believes that chiropractic fees can be expected to come within the range of charges listed for medical practitioners generally. The amounts appearing on the fee schedule represent the upper limits permitted by law; however, a practitioner whose reasonable and customary fee is well below this limit will not be permitted to suddenly raise his or her fee to the maximum merely because of the existence of the higher amount on the schedule. Furthermore, effective cost controls will be best accomplished by conformance to the test of medical necessity. To that end, limits on the frequency and duration of services to those which are medically necessary are of prime importance.

COMMENT: The Department received many comments concerning codes and specific procedures omitted from the fee schedules. Providers said to be most affected by omissions included anesthesiologists, osteopaths, physical therapists, psychotherapists, radiologists, psychologists, urologists, emergency physicians, speech therapists and occupational therapists. Other comments addressed medical fee schedule limits—some said to be too high, others too low. Falling into this category were specific services performed by anesthesiologists, neurologists, radiologists and physiotherapists; items of equipment provided by medical expense suppliers; and fee limits generally relating to office visits and consultation.

RESPONSE: The Department is presently addressing all of these questions and will propose appropriate solutions in the form of amendments to the fee schedules as soon as possible. In many instances, expansion of the data base available to the Department may be necessary before certain codes may be added. In the interim, insurers are expected to apply levels of reimbursement which are based on what is usual, customary and reasonable.

The Department has deleted the signs ($) preceding some of the descriptions in the medical fee schedule for physicians' services since they have no present relevance. (These are not shown as deletions in this publication, but are simply not republished.) The Department has also deleted references to "default codes" for the same reason and certain other procedures that are not applicable to injuries caused by automobile accidents. In addition, the Department has adjusted certain dollar limits where such adjustments were deemed necessary and supported by supplemental data. Finally, the Department has included a limited number of new codes that were previously published but not adopted. The Department will continue to review the completeness and adequacy of the fee schedules.

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

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

11:3-29.1 Purpose and scope
(a) This subchapter implements the provisions of amended N.J.S.A. 39:6A-4a to establish medical fee schedules on a regional basis for the reimbursement of health care providers providing services or equipment for medical expense benefits for which payment is required to be made by automobile insurers under PIP coverage.
(b) This subchapter applies to all insurers that issue policies of automobile insurance containing PIP coverage.
(c) The fees set forth in the schedule for durable medical equipment described in the schedule is 10 percent of the purchase price.

11:3-29.2 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Basic Life Support" ("BLS") means volunteer ambulance services, whose personnel are not required to be Emergency Medical Technicians, and municipal and proprietary ambulance services whose personnel are required to be Emergency Medical Technicians. "CPT-4" means Physicians Current Procedural Terminology, 4th Edition, coding system and the description of medical services provided.

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

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


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

11:3-29.3 Regions
(a) Region I, as used in this subchapter, consists of the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester and Salem.
(b) Region II, as used in this subchapter, consists of the following counties in New Jersey: Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Somerset, Sussex and Warren.
(c) Region III, as used in this subchapter, consists of the following counties in New Jersey: Bergen, Essex, Hudson, Morris, Passaic and Union.

11:3-29.4 Application of Medical Fee Schedules
(a) Every policy of automobile insurance issued in this State shall provide that the automobile insurer's limit of liability for medically necessary expenses payable under PIP coverage is the fee set forth in this subchapter.

(1) The fees set forth in the schedule for durable medical equipment are retail prices which may include purchase prices for both new and used equipment, and/or monthly rentals.

1. The insurer's limit of liability for monthly rental of durable medical equipment described in the schedule is 10 percent of the amount of the purchase price.
2. The insurer's limit of liability for the rental of a single item of durable medical equipment set forth in the schedule is 15 times the monthly rental fee.

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

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

(CITE 23 N.J.R. 538)
orth in the fee schedules for the geographic region in which the insured resides.

(e) The insurer's limit of liability for any medical expense benefit or any service or equipment not set forth in the fee schedules shall be a reasonable amount considering the fee schedule. If similar services or equipment in the region where the service or equipment was provided or, in the case of elective services or equipment provided outside the State, the region in which the insured resides.

Where the fee schedule does not contain a reference to similar services or equipment as set forth in the preceding sentence, the insurer's limit of liability for any medical expense benefit or any service or equipment not set forth in the fee schedules shall not exceed the usual, customary and reasonable fee.

(f) When multiple procedures are performed in the same body region by the same provider at the same time, it is virtually never appropriate for the fee to be the sum of the fees for each procedure. The principal procedure at an operative session shall be paid at 100 percent of the eligible charge, the second procedure at 50 percent, and, if performed, any additional procedures at a total of 25 percent of the charge. However, if two or more providers in different specialties perform procedures or if one provider performs multiple procedures on different body regions, each individual provider, or each individual body region procedure may be reimbursed separately.

For purposes of such billing, the body shall be divided into: head (including skull and brain); face; neck; chest; abdomen; back; and pelvic regions. In addition, the extremities shall be subdivided into right and left, upper arm, elbow, forearm and hand; and thigh, knee, lower leg, ankle and foot. Nothing in this subchapter shall be construed to prevent PIP insurers from paying only reasonable and appropriate fees when multiple procedures are performed at the same time or multiple services provided during the same medical visit.

(g) Artificially separating or partitioning what is inherently one total procedure into subparts which are integral to the whole for the purpose of increasing medical fees is prohibited. Such practice is commonly referred to as "unbundling" or "fragmented" billing. For surgery and many other procedures, it is established practice to include follow-up care and visits as part of the basic procedure charge. Such charges shall not be subject to additional billings. The existence of a CPT-4 code, per se, does not imply the right to receive separate compensation for the procedure/subprocedure so described. If a procedure is judged to be part of the major or principal procedure, only the charges for the principal procedure are eligible.

11:3-29.5 Balance billing prohibited

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

11:3-29.6 Medical Fee Schedules

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

<table>
<thead>
<tr>
<th>CPT-4 Code</th>
<th>Description of Services</th>
<th>Region 1</th>
<th>Region 2</th>
<th>Region 3</th>
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**Notes:**
- Prices listed are in dollars.
- Codes marked with an asterisk (*) indicate additional charges applicable.
- Prices may vary depending on the specific provider and location.

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(CITE 23 N.J.R. 548) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
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**OPTIONS INSURANCE**

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For services and equipment not on the schedule, the limit of PIP liability is a reasonable amount considering the fee schedules for similar services or equipment in the region.

(b) The following is the Medical Fee Schedule for chiropractors' services:

**STATE OF NEW JERSEY**

**PERSONAL AUTO INJURY FEE SCHEDULE—CHIROPRACTORS' SERVICES**

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<tbody>
<tr>
<td>Fee</td>
<td>Fee</td>
<td>Fee</td>
<td></td>
</tr>
<tr>
<td>initial visit—with or without adjustment and/or PT modalities</td>
<td>79</td>
<td>81</td>
<td>85</td>
</tr>
<tr>
<td>Routine visit, incl. adjustment</td>
<td>32</td>
<td>36</td>
<td>36</td>
</tr>
<tr>
<td>Extended visit—including adjustment and phys therapy</td>
<td>53</td>
<td>52</td>
<td>52</td>
</tr>
<tr>
<td>Interim complete visit—eval’n to validate need for extd. addl trmt; w/wo adj &amp; PT modalities</td>
<td>69</td>
<td>71</td>
<td>76*</td>
</tr>
</tbody>
</table>
The following is the Medical Fee Schedule for nursing and allied professional health services:

**STATE OF NEW JERSEY**
**PERSONAL AUTO INJURY FEE SCHEDULE**
**NURSING AND ALLIED PROFESSIONAL HEALTH SERVICES**

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRIVATE NURSING CARE (PER HOUR)</td>
<td></td>
</tr>
<tr>
<td>Registered nurse</td>
<td>40.00</td>
</tr>
<tr>
<td>Licensed practical nurse</td>
<td>35.00</td>
</tr>
<tr>
<td>Home health aide</td>
<td>15.50</td>
</tr>
<tr>
<td>Live-in attendant (per 24-hour shift)</td>
<td>136.00</td>
</tr>
<tr>
<td>HOME HEALTH VISITS (PER VISIT)</td>
<td></td>
</tr>
<tr>
<td>Registered nurse</td>
<td>82.00</td>
</tr>
<tr>
<td>Licensed practical nurse</td>
<td>58.00</td>
</tr>
<tr>
<td>Physical therapist</td>
<td>77.00</td>
</tr>
<tr>
<td>Speech therapist</td>
<td>77.00</td>
</tr>
<tr>
<td>Occupational therapist</td>
<td>77.00</td>
</tr>
</tbody>
</table>

The following is the Medical Fee Schedule for ambulance services:

**STATE OF NEW JERSEY**
**PERSONAL AUTO INJURY FEE SCHEDULE**
**AMBULANCE SERVICES**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>A0010</td>
<td>Ambulance service basic life support (BLS), base rate, emergency transport, one way</td>
<td>110.00</td>
</tr>
<tr>
<td>A0020</td>
<td>Ambulance service (BLS) per mile, transport, one way</td>
<td>4.50</td>
</tr>
<tr>
<td>A0070</td>
<td>Ambulance service, oxygen administration and supplies life sustaining situation</td>
<td>30.00</td>
</tr>
<tr>
<td>Z0224</td>
<td>Cardiac monitoring during an ambulance trip</td>
<td>50.00</td>
</tr>
</tbody>
</table>

The following is the Medical Fee Schedule for durable medical equipment and prosthetic devices:

**STATE OF NEW JERSEY**
**PERSONAL AUTO INJURY FEE SCHEDULE**
**DURABLE MEDICAL EQUIPMENT AND PROSTHETIC DEVICES**
**CODES BEGINNING WITH ‘A’**

<table>
<thead>
<tr>
<th>HCPCS Code</th>
<th>Description</th>
<th>Fee for New Equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>A4214</td>
<td>Sterile saline or water, 30 cc vial</td>
<td>.81</td>
</tr>
<tr>
<td>A4310</td>
<td>Insertion tray without drainage bag and without catheter (accessories only)</td>
<td>6.61</td>
</tr>
<tr>
<td>A4311</td>
<td>Insertion tray without drainage bag with indwelling catheter, Foley type, two-way latex with coating (teflon, silicone, silicone elastomer, or hydrophilic, etc.)</td>
<td>8.34</td>
</tr>
<tr>
<td>A4312</td>
<td>Insertion tray without drainage bag with indwelling catheter, Foley type, two-way, all silicone</td>
<td>8.34</td>
</tr>
<tr>
<td>A4313</td>
<td>Insertion tray without drainage bag with indwelling catheter, Foley type, three-way, for continuous irrigation</td>
<td>8.34</td>
</tr>
<tr>
<td>A4314</td>
<td>Insertion tray with drainage bag with indwelling catheter, Foley type, two-way latex with coating (Teflon, silicone, silicone elastomer, or hydrophilic, etc.)</td>
<td>15.46</td>
</tr>
<tr>
<td>A4315</td>
<td>Insertion tray with drainage bag with indwelling catheter, Foley type, two-way, all silicone</td>
<td>15.46</td>
</tr>
<tr>
<td>A4316</td>
<td>Insertion tray with drainage bag with indwelling catheter, Foley type, three-way, for continuous irrigation</td>
<td>15.46</td>
</tr>
<tr>
<td>A4320</td>
<td>Irrigation tray for bladder irrigation with bulb or piston syringe</td>
<td>5.00</td>
</tr>
<tr>
<td>A4322</td>
<td>Irrigation syringe, bulb or piston</td>
<td>2.50</td>
</tr>
<tr>
<td>A4323</td>
<td>Sterile saline irrigation solution, 1000 ml</td>
<td>8.00</td>
</tr>
<tr>
<td>A4328</td>
<td>Female external urinary collection device; pouch, each</td>
<td>10.00</td>
</tr>
<tr>
<td>A4329</td>
<td>External catheter starter set, male/female, includes catheters/urinary collection device, bag/pouch and accessories (tubing, clamps, etc.) 7-day supply</td>
<td>39.95</td>
</tr>
<tr>
<td>A4338</td>
<td>Indwelling catheter: Foley type, two-way latex with coating (Teflon, silicone, silicone elastomer or hydrophilic, etc.)</td>
<td>8.14</td>
</tr>
<tr>
<td>A4340</td>
<td>Indwelling catheter; specialty type, (e.g., Coude, Mushroom, Wing, etc.)</td>
<td>10.00</td>
</tr>
<tr>
<td>A4344</td>
<td>Indwelling catheter, Foley type, two-way, all silicone</td>
<td>15.52</td>
</tr>
<tr>
<td>A4346</td>
<td>Indwelling catheter, Foley type, three-way, for continuous irrigation</td>
<td>10.34</td>
</tr>
<tr>
<td>A4347</td>
<td>Male external catheter with or without adhesive, with or without anti-reflux device; per dozen</td>
<td>30.51</td>
</tr>
<tr>
<td>A4351</td>
<td>Intermittent urinary catheter; straight tip</td>
<td>5.00</td>
</tr>
<tr>
<td>A4352</td>
<td>Intermittent urinary catheter; Coude (curved) tip</td>
<td>5.00</td>
</tr>
<tr>
<td>A4354</td>
<td>Insertion tray with drainage bag but without catheter</td>
<td>13.73</td>
</tr>
<tr>
<td>A4355</td>
<td>Irrigation tubing set for continuous bladder irrigation through a three-way indwelling Foley catheter</td>
<td>11.90</td>
</tr>
<tr>
<td>A4356</td>
<td>External urethral clamp or compression device (not to be used for catheter clamp)</td>
<td>37.03</td>
</tr>
<tr>
<td>A4357</td>
<td>Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube</td>
<td>7.93</td>
</tr>
<tr>
<td>A4358</td>
<td>Urinary leg bag; vinyl, with or without tube</td>
<td>7.12</td>
</tr>
<tr>
<td>A4359</td>
<td>Urinary suspensory; without leg bag</td>
<td>3.90</td>
</tr>
<tr>
<td>A4361</td>
<td>Ostomy faceplate</td>
<td>31.35</td>
</tr>
<tr>
<td>A4362</td>
<td>Skin barrier; solid, 4 x 4 or equivalent; each</td>
<td>5.03</td>
</tr>
<tr>
<td>A4363</td>
<td>Skin barrier; liquid (spray, brush, etc.) cement, powder or paste; per oz.</td>
<td>4.07</td>
</tr>
<tr>
<td>A4364</td>
<td>Adhesive for ostomy or catheter; liquid (spray, brush, etc.) cement, powder or paste; any composition (e.g., silicone, latex, etc.); per oz.</td>
<td>4.58</td>
</tr>
</tbody>
</table>

(CITE 23 N.J.R. 556) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
<table>
<thead>
<tr>
<th>Description</th>
<th>Fee For New Eqpt</th>
<th>Fee For Used Eqpt</th>
<th>Monthly Rental</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cane, includes canes of all materials, adjustable or fixed, with tip</td>
<td>14.44</td>
<td>11.18</td>
<td>1.44</td>
</tr>
<tr>
<td>Cane, quad or three prong, includes canes of all materials, adjustable or fixed, with tips</td>
<td>38.07</td>
<td>27.89</td>
<td>3.81</td>
</tr>
<tr>
<td>Crutches, forearm, includes crutches of various materials, adjustable or fixed, with tips</td>
<td>55.85</td>
<td>41.88</td>
<td>5.59</td>
</tr>
<tr>
<td>Crutch forearm, includes crutches of various materials, adjustable or fixed, pair, complete with tips and handgrips</td>
<td>63.10</td>
<td>47.33</td>
<td>6.31</td>
</tr>
<tr>
<td>Crutches, forearm, wood, adjustable or fixed, pair, with pads, tips and handgrips</td>
<td>45.77</td>
<td>34.33</td>
<td>4.58</td>
</tr>
<tr>
<td>Crutch, forearm, wood, adjustable or fixed, each, with pad, tip and handgrip</td>
<td>18.81</td>
<td>14.10</td>
<td>1.88</td>
</tr>
<tr>
<td>Crutches, forearm, aluminum, adjustable or fixed, pair with pads, tips and handgrips</td>
<td>66.11</td>
<td>49.58</td>
<td>6.61</td>
</tr>
<tr>
<td>Walker, rigid (pickup), adjustable or fixed height</td>
<td>18.31</td>
<td>13.73</td>
<td>1.83</td>
</tr>
<tr>
<td>Walker, folding (pickup), adjustable or fixed height</td>
<td>53.94</td>
<td>40.42</td>
<td>5.39</td>
</tr>
<tr>
<td>Walker, wheeled, without seat</td>
<td>57.31</td>
<td>42.08</td>
<td>5.73</td>
</tr>
<tr>
<td>Walker, wheeled, with seat</td>
<td>92.44</td>
<td>69.33</td>
<td>9.24</td>
</tr>
<tr>
<td><strong>Codes Beginning With 'E'</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>INSURANCE</td>
<td>ADOPTION</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------</td>
<td>----------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO142 Rigid walker, wheeled, with seat</td>
<td>331.54 248.66 33.15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO143 Folding walker, wheeled, without seat</td>
<td>105.16 78.87 10.52</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO145 Walker, wheeled, with seat and crutch attachments</td>
<td>170.30 127.72 17.02</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO146 Walker, wheeled, with seat</td>
<td>306.88 230.16 30.65</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO147 Heavy duty, multiple breaking system, variable wheel resistance walker</td>
<td>193.13 140.50 19.93</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO150 Underarm pad, crutch, replacement, each</td>
<td>10.07 7.55 1.01</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO151 Handgrip, cane, crutch, or walker replacement, each</td>
<td>2.44 1.83 .24</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO152 Tip, cane or crutch, walker replacement, each</td>
<td>1.67 1.25 .17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO153 Platform attachment, forearm crutch, each</td>
<td>53.39 40.04 5.34</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO154 Platform attachment, walker, each</td>
<td>66.11 49.58 6.61</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO155 Wheel attachment, rigid pick-up walker attachments</td>
<td>24.71 18.53 2.47</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO156 Wheel attachment, walker, each</td>
<td>20.34 15.26 2.03</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO157 Crutch attachment, walker, each</td>
<td>53.39 40.04 5.34</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO158 Leg extensions for a walker</td>
<td>32.54 24.41 3.25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO160 Sitz type bath, portable, fits over commode seat</td>
<td>9.16 6.87 .92</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO161 Sitz type bath, portable, fits over commode seat, with faucet attachments</td>
<td>50.85 38.14 5.09</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO163 Commode chair, stationary, with fixed arms</td>
<td>85.98 59.22 8.60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO164 Commode chair, mobile, with fixed arms</td>
<td>203.40 66.39 20.34</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO165 Commode chair, stationary with detachable arms</td>
<td>174.55 157.90 17.46</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO166 Commode chair, mobile with detachable arms</td>
<td>255.88 191.90 25.55</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO167 Pail or pan for use with commode chair</td>
<td>9.83 7.37 .98</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO175 Foot rest, for use with commode chair, each</td>
<td>42.30 31.88 4.25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO180 Pressure pad, alternating with pump</td>
<td>231.86 181.22 23.19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO181 Pressure pad, alternating with pump, heavy duty</td>
<td>254.32 181.53 25.43</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO182 Pump for alternating pressure pad</td>
<td>280.69 155.60 28.07</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO183 Floation pad, for wheelchair</td>
<td>85.46 64.10 8.55</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO184 Floation mattress, dry</td>
<td>66.11 49.58 6.61</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO185 Decubitus care pad, flotation or gel pad with foam leveling pad (mattress size)</td>
<td>60.00 60.00 6.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO186 Synthetic sheepsink pad</td>
<td>20.34 15.26 2.03</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO187 Sheepskin pad, any size</td>
<td>20.34 15.26 2.03</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO188 Decubitus care mattress, includes flotation or gel mattress</td>
<td>241.87 203.19 24.19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO191 Heel or elbow protector, each</td>
<td>9.97 7.48 1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO192 Low pressure and positioning pad for wheelchair</td>
<td>315.00 236.25 31.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO193 Powered air flotation bed (low air loss therapy)</td>
<td>7113.92 5335.44 711.39</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO195 Replacement pad for use with medically necessary alternating pressure pad owned by the patient</td>
<td>46.03 34.52 4.60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO200 Heat lamp, without stand (table model), includes bulb, or infrared element</td>
<td>35.60 26.70 3.56</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO205 Heat lamp, with stand, includes bulb, or infrared element</td>
<td>35.60 26.70 3.56</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO210 Electric heat pad, standard</td>
<td>25.11 18.83 2.51</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO215 Electric heat pad, moist</td>
<td>34.60 25.95 3.46</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO225 Hydrocollator unit, includes pads</td>
<td>30.51 22.88 3.05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO235 Paraffin bath unit, portable</td>
<td>187.44 139.94 18.74</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO238 Non-electric heat pad moist</td>
<td>30.51 22.88 3.05</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO249 Pad for water circulating heat unit</td>
<td>120.00 90.00 12.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO250 Hospital bed, with side rails, fixed height, with mattress</td>
<td>849.97 749.97 85.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO251 Hospital bed, with side rails, fixed height, without mattress</td>
<td>648.34 548.34 64.83</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO252 Hospital bed, fixed height, with mattress</td>
<td>1045.98 935.33 104.60</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO255 Hospital bed, with side rails, variable height, Hi-Lo, with mattress</td>
<td>929.80 864.32 92.98</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO260 Hospital bed, with side rails, semi-electric, head and foot adjustment, with mattress</td>
<td>1487.23 1217.35 148.72</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO265 Hospital bed, total electric with side rails (head, foot and height adjustments, with mattress)</td>
<td>1841.08 1450.45 184.11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO266 Hospital bed, with side rails, total electric head, foot, and height adjustments without mattress</td>
<td>1871.28 1403.46 187.13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO271 Mattress, innerspring</td>
<td>162.52 121.89 16.25</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO272 Mattress, foam rubber</td>
<td>150.00 150.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO275 Bed pan, standard, metal or plastic</td>
<td>15.26 11.41 1.53</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO276 Bed pan, fracture, metal or plastic</td>
<td>12.15 9.12 1.22</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO280 Bed, cradle, any type</td>
<td>28.48 21.36 2.85</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO305 Bed side rails, half length</td>
<td>138.64 103.98 13.86</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO310 Bed side rails, full length</td>
<td>158.86 119.15 15.89</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO325 Urinal: male, jug type, any material</td>
<td>6.30 4.73 .63</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO326 Urinal: female, jug type, any material</td>
<td>8.95 6.71 .90</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO450 Volume ventilator; stationary</td>
<td>10170.00 7627.50 1017.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO451 Volume ventilator; portable (includes battery, battery charger, and battery cables)</td>
<td>552.34 4143.26 552.43</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO456 Chest shell (cuirass)</td>
<td>400.00 400.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO458 Negative pressure pump</td>
<td>4803.99 4800.40</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO459 Chest Wrap</td>
<td>520.00 52.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO461 Negative pressure ventilator; stationary (e.g., Iron-lung)</td>
<td>1830.60 1372.95 183.06</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EO480 Percussor, electric or pneumatic, home model</td>
<td>269.50 171.81 26.95</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(CITE 23 N.J.R. 558) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Price</th>
<th>Cost</th>
<th>Profit</th>
</tr>
</thead>
<tbody>
<tr>
<td>E0500</td>
<td>IPPB machines with manual valves, external power source, includes cylinder regulator, built-in nebulization</td>
<td>452.57</td>
<td>339.42</td>
<td>45.26</td>
</tr>
<tr>
<td>E0505</td>
<td>IPPB machines with manual valves, electrically driven with internal power source, includes cylinder regulator, built-in nebulization</td>
<td>661.05</td>
<td>495.79</td>
<td>66.11</td>
</tr>
<tr>
<td>E0510</td>
<td>IPPB machines with automatic valves, external power source includes cylinder regulator, built-in nebulization</td>
<td>661.05</td>
<td>495.79</td>
<td>66.11</td>
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<tr>
<td>E0515</td>
<td>IPPB machines with automatic valves, electrically driven with internal compressor, built-in nebulization</td>
<td>452.57</td>
<td>339.43</td>
<td>45.26</td>
</tr>
<tr>
<td>E0550</td>
<td>Humidifier, durable for extensive supplemental humidification during IPPB treatment or oxygen delivery; e.g., Cascade</td>
<td>304.08</td>
<td>228.06</td>
<td>30.41</td>
</tr>
<tr>
<td>E0560</td>
<td>Humidifier, durable for supplemental humidification during IPPB treatment or oxygen delivery; e.g., Cascade Jr.</td>
<td>62.33</td>
<td>46.75</td>
<td>6.23</td>
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<tr>
<td>E0565</td>
<td>Compressor, air power source for equipment which is not self-contained or cylinder driven</td>
<td>488.01</td>
<td>291.75</td>
<td>48.80</td>
</tr>
<tr>
<td>E0570</td>
<td>Nebulizer, with compressor; e.g., DeVilbiss Pulmo-Aid</td>
<td>160.26</td>
<td>114.29</td>
<td>16.03</td>
</tr>
<tr>
<td>E0575</td>
<td>Nebulizer, self-contained, ultrasonic</td>
<td>706.82</td>
<td>530.12</td>
<td>70.68</td>
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<tr>
<td>E0580</td>
<td>Nebulizer, durable, glass or autoclavable plastic bottle type, for use with regulator or flowmeter</td>
<td>116.96</td>
<td>87.72</td>
<td>11.70</td>
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<tr>
<td>E0585</td>
<td>Nebulizer, with compressor and heater</td>
<td>116.96</td>
<td>87.72</td>
<td>11.70</td>
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<tr>
<td>E0600</td>
<td>Suction pump, home model, portable</td>
<td>395.10</td>
<td>296.33</td>
<td>39.51</td>
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<tr>
<td>E0601</td>
<td>Nasal continuous airway pressure (CPAP) device</td>
<td>1017.00</td>
<td>762.75</td>
<td>101.70</td>
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<tr>
<td>E0605</td>
<td>Vaporizer, room type</td>
<td>29.49</td>
<td>22.12</td>
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<tr>
<td>E0606</td>
<td>Postural drainage board</td>
<td>152.55</td>
<td>114.41</td>
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<tr>
<td>E0607</td>
<td>Home blood glucose monitor</td>
<td>150.91</td>
<td>113.18</td>
<td>15.09</td>
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<tr>
<td>E0608</td>
<td>Blood glucose monitor with special features (e.g., voice synthesizers, automatic timers, etc.)</td>
<td>488.16</td>
<td>366.12</td>
<td>48.82</td>
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<tr>
<td>E0610</td>
<td>Pacemaker monitor self-contained, (checks battery depletion, includes audible and visible check systems)</td>
<td>324.42</td>
<td>243.32</td>
<td>32.44</td>
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<tr>
<td>E0615</td>
<td>Pacemaker monitor self-contained, (checks battery depletion and other pacemaker components, includes digital/visible check systems)</td>
<td>324.42</td>
<td>243.32</td>
<td>32.44</td>
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<tr>
<td>E0620</td>
<td>Seat lift chair, motorized to assist patient in standing and sitting</td>
<td>799.31</td>
<td>530.37</td>
<td>79.93</td>
</tr>
<tr>
<td>E0621</td>
<td>Sling or seat, patient lift, canvas or nylon</td>
<td>61.10</td>
<td>45.83</td>
<td>6.11</td>
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<tr>
<td>E0630</td>
<td>Patient lift, hydraulic, with seat or sling</td>
<td>899.38</td>
<td>690.50</td>
<td>89.94</td>
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<tr>
<td>E0635</td>
<td>Patient lift, electric with seat or sling</td>
<td>742.67</td>
<td>411.70</td>
<td>74.27</td>
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<tr>
<td>E0650</td>
<td>Pneumatic compressor, non-segmental home model, (lymphedema pump)</td>
<td>503.42</td>
<td>377.57</td>
<td>50.34</td>
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<tr>
<td>E0651</td>
<td>Pneumatic compressor, segmental home model (lymphedema pump) without calibrated gradient pressure</td>
<td>706.82</td>
<td>530.12</td>
<td>70.68</td>
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<tr>
<td>E0652</td>
<td>Pneumatic compressor, segmental home model (lymphedema pump) with calibrated gradient pressure</td>
<td>3254.40</td>
<td>2644.20</td>
<td>324.44</td>
</tr>
<tr>
<td>E0655</td>
<td>Pneumatic appliance for use with pneumatic compressor, half arm</td>
<td>80.44</td>
<td>60.33</td>
<td>8.04</td>
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<tr>
<td>E0660</td>
<td>Pneumatic appliance for use with pneumatic compressor, full leg</td>
<td>132.21</td>
<td>84.95</td>
<td>13.22</td>
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<tr>
<td>E0665</td>
<td>Pneumatic appliance for use with pneumatic compressor, full arm</td>
<td>86.55</td>
<td>54.91</td>
<td>8.66</td>
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<tr>
<td>E0666</td>
<td>Pneumatic appliance for use with pneumatic compressor, half leg</td>
<td>127.13</td>
<td>75.35</td>
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<tr>
<td>E0667</td>
<td>Pneumatic appliance for use with segmental pneumatic compressor, leg</td>
<td>249.17</td>
<td>186.87</td>
<td>24.92</td>
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<tr>
<td>E0668</td>
<td>Pneumatic appliance for use with segmental pneumatic compressor, arm</td>
<td>218.66</td>
<td>171.62</td>
<td>21.87</td>
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<tr>
<td>E0700</td>
<td>TENS, two lead, localized stimulation</td>
<td>531.79</td>
<td>402.50</td>
<td>53.18</td>
</tr>
<tr>
<td>E0701</td>
<td>TENS, four lead, larger area/multiple nerve stimulation</td>
<td>527.15</td>
<td>395.32</td>
<td>52.72</td>
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<tr>
<td>E0740</td>
<td>Replacement batteries for medically necessary TENS owned by the patient</td>
<td>2.74</td>
<td>.27</td>
<td>.27</td>
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<tr>
<td>E0744</td>
<td>Neuromuscular stimulator for scoliosis</td>
<td>995.00</td>
<td>746.25</td>
<td>99.50</td>
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<tr>
<td>E0745</td>
<td>Neuromuscular stimulator, electronic shock unit</td>
<td>1011.92</td>
<td>758.94</td>
<td>101.19</td>
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<tr>
<td>E0746</td>
<td>Electromyography (EMG), biofeedback device</td>
<td>670.00</td>
<td>502.50</td>
<td>67.00</td>
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<tr>
<td>E0747</td>
<td>Osteogenesis stimulator (non-invasive)</td>
<td>2644.20</td>
<td>2644.20</td>
<td>264.42</td>
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<td>E0776</td>
<td>RV pole</td>
<td>89.66</td>
<td>67.25</td>
<td>8.97</td>
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<tr>
<td>E0781</td>
<td>Ambulatory infusion pump with administrative equipment, worn by patient</td>
<td>608.46</td>
<td>456.35</td>
<td>60.85</td>
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<tr>
<td>E0791</td>
<td>Parenteral infusion pump, stationary</td>
<td>1895.00</td>
<td>1421.25</td>
<td>189.50</td>
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<tr>
<td>E0840</td>
<td>Traction frame, attached to headboard, simple cervical traction</td>
<td>35.60</td>
<td>26.70</td>
<td>3.56</td>
</tr>
<tr>
<td>E0850</td>
<td>Traction stand, free standing, simple cervical traction</td>
<td>35.60</td>
<td>26.70</td>
<td>3.56</td>
</tr>
<tr>
<td>E0860</td>
<td>Traction equipment, overdoor, cervical</td>
<td>26.20</td>
<td>19.65</td>
<td>2.62</td>
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<tr>
<td>E0870</td>
<td>Traction frame, attached to footboard, simple extremity traction (e.g., Buck's)</td>
<td>80.85</td>
<td>60.64</td>
<td>8.09</td>
</tr>
<tr>
<td>E0880</td>
<td>Traction stand, free standing, simple extremity traction (e.g., Buck's)</td>
<td>66.11</td>
<td>49.58</td>
<td>6.61</td>
</tr>
<tr>
<td>E0890</td>
<td>Traction frame, attached to footboard, simple pelvic traction</td>
<td>77.60</td>
<td>58.20</td>
<td>7.76</td>
</tr>
<tr>
<td>E0900</td>
<td>Traction stand, free standing, simple pelvic traction (e.g., Buck's)</td>
<td>77.60</td>
<td>58.20</td>
<td>7.76</td>
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<tr>
<td>E0910</td>
<td>Trapeze bars, A/K/A patient helper, attached to bed, with grab bar</td>
<td>157.90</td>
<td>126.32</td>
<td>15.79</td>
</tr>
<tr>
<td>E0920</td>
<td>Fracture frame, attached to bed, includes weights</td>
<td>300.36</td>
<td>225.27</td>
<td>30.04</td>
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<tr>
<td>E0930</td>
<td>Fracture frame, free standing, includes weights</td>
<td>300.36</td>
<td>225.27</td>
<td>30.04</td>
</tr>
<tr>
<td>E0940</td>
<td>Fracture bar, free standing, complete with grab bar</td>
<td>303.55</td>
<td>231.32</td>
<td>30.36</td>
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<tr>
<td>E0941</td>
<td>Gravity assisted traction device, any type</td>
<td>371.21</td>
<td>278.41</td>
<td>37.12</td>
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<tr>
<td>E0942</td>
<td>Cervical head harness/halter</td>
<td>15.26</td>
<td>11.45</td>
<td>1.53</td>
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<tr>
<td>E0943</td>
<td>Cervical pillow</td>
<td>40.00</td>
<td>30.00</td>
<td>4.00</td>
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<tr>
<td>E0944</td>
<td>Pelvic belt/harness/boot</td>
<td>35.60</td>
<td>26.70</td>
<td>3.56</td>
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<tr>
<td>E0945</td>
<td>Extremity belt/harness</td>
<td>35.60</td>
<td>26.70</td>
<td>3.56</td>
</tr>
<tr>
<td>Code</td>
<td>Item Description</td>
<td>Price 1</td>
<td>Price 2</td>
<td>Price 3</td>
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<td>---------</td>
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</tr>
<tr>
<td>E0946</td>
<td>Fracture, frame, dual with cross bars, attached to bed, (e.g., Balken, 4 poster)</td>
<td>862.42</td>
<td>646.82</td>
<td>86.24</td>
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<tr>
<td>E0950</td>
<td>Tray</td>
<td>80.00</td>
<td>60.00</td>
<td>8.00</td>
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<tr>
<td>E0951</td>
<td>Loop heel, each</td>
<td>14.50</td>
<td>10.88</td>
<td>1.45</td>
</tr>
<tr>
<td>E0952</td>
<td>Loop toe, each</td>
<td>14.50</td>
<td>10.88</td>
<td>1.45</td>
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<tr>
<td>E0953</td>
<td>Pneumatic tire, each</td>
<td>89.29</td>
<td>66.97</td>
<td>8.93</td>
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<tr>
<td>E0954</td>
<td>Semi-pneumatic caster, each</td>
<td>45.77</td>
<td>34.33</td>
<td>5.48</td>
</tr>
<tr>
<td>E0958</td>
<td>Wheelchair attachment to convert any wheelchair to one arm drive</td>
<td>406.29</td>
<td>260.86</td>
<td>40.63</td>
</tr>
<tr>
<td>E0959</td>
<td>Amputee adapter (device used to compensate for transfer of weight due to lost</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>limbs to maintain proper balance)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>E0961</td>
<td>Brake extension, for wheelchair</td>
<td>71.19</td>
<td>53.39</td>
<td>7.12</td>
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<tr>
<td>E0962</td>
<td>1&quot; cushion, for wheelchair</td>
<td>45.77</td>
<td>34.33</td>
<td>4.58</td>
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<tr>
<td>E0963</td>
<td>2&quot; cushion, for wheelchair</td>
<td>58.99</td>
<td>44.24</td>
<td>5.90</td>
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<tr>
<td>E0964</td>
<td>3&quot; cushion, for wheelchair</td>
<td>68.14</td>
<td>51.11</td>
<td>6.81</td>
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<tr>
<td>E0965</td>
<td>4&quot; cushion, for wheelchair</td>
<td>76.28</td>
<td>57.21</td>
<td>7.63</td>
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<tr>
<td>E0966</td>
<td>Hook on head rest extension</td>
<td>49.83</td>
<td>37.37</td>
<td>4.98</td>
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<tr>
<td>E0967</td>
<td>Wheelchair hand rims with 8 vertical rubber tipped projection, pair</td>
<td>101.70</td>
<td>76.28</td>
<td>10.17</td>
</tr>
<tr>
<td>E0968</td>
<td>Commode seat, wheelchair</td>
<td>174.92</td>
<td>131.19</td>
<td>17.49</td>
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<tr>
<td>E0970</td>
<td>No. 2 footplates, except for elevating legrest</td>
<td>91.53</td>
<td>68.65</td>
<td>9.15</td>
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<tr>
<td>E0971</td>
<td>Anti-tipping device wheelchairs</td>
<td>48.49</td>
<td>36.37</td>
<td>4.85</td>
</tr>
<tr>
<td>E0973</td>
<td>Adjustable height detachable arms, desk or full length, wheelchair</td>
<td>88.48</td>
<td>66.36</td>
<td>8.85</td>
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<td>E0974</td>
<td>“Grade-Aid” (device to prevent rolling back on an incline) for wheelchair</td>
<td>66.11</td>
<td>49.58</td>
<td>6.61</td>
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<tr>
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<td>Reinforced seat upholstery, wheelchair</td>
<td>53.90</td>
<td>40.43</td>
<td>5.39</td>
</tr>
<tr>
<td>E0976</td>
<td>Reinforced back upholstery, wheelchair</td>
<td>53.90</td>
<td>40.43</td>
<td>5.39</td>
</tr>
<tr>
<td>E0977</td>
<td>Wedge cushion, wheelchair</td>
<td>47.80</td>
<td>35.85</td>
<td>4.78</td>
</tr>
<tr>
<td>E0978</td>
<td>Belt, safety with airplane buckle, wheelchair</td>
<td>35.60</td>
<td>26.70</td>
<td>3.56</td>
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<td>E0979</td>
<td>Belt, safety with velcro closure, wheelchair</td>
<td>25.00</td>
<td>18.43</td>
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<tr>
<td>E0980</td>
<td>Wheelchair hand rims with 8 vertical rubber tipped projection, pair</td>
<td>40.69</td>
<td>30.51</td>
<td>4.08</td>
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<tr>
<td>E0981</td>
<td>Elevating legrest, each</td>
<td>74.39</td>
<td>55.79</td>
<td>7.44</td>
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<tr>
<td>E0982</td>
<td>Upholstery seat</td>
<td>35.60</td>
<td>26.70</td>
<td>3.56</td>
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<tr>
<td>E0983</td>
<td>Solid seat insert</td>
<td>41.94</td>
<td>31.46</td>
<td>4.19</td>
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<tr>
<td>E0984</td>
<td>Back, upholstery</td>
<td>26.97</td>
<td>20.23</td>
<td>2.70</td>
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<tr>
<td>E0985</td>
<td>Arm rest, each</td>
<td>12.94</td>
<td>9.71</td>
<td>1.29</td>
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<tr>
<td>E0986</td>
<td>Calf rest, each</td>
<td>20.34</td>
<td>15.26</td>
<td>2.03</td>
</tr>
<tr>
<td>E0987</td>
<td>Tire, solid, each</td>
<td>22.25</td>
<td>16.69</td>
<td>2.23</td>
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<tr>
<td>E0988</td>
<td>Caster with a fork</td>
<td>54.92</td>
<td>41.91</td>
<td>5.49</td>
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<tr>
<td>E0989</td>
<td>Caster without fork</td>
<td>30.51</td>
<td>22.88</td>
<td>3.05</td>
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<tr>
<td>E0990</td>
<td>Elevating legrest, each</td>
<td>47.80</td>
<td>35.85</td>
<td>4.78</td>
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<tr>
<td>E0991</td>
<td>Wheel, single</td>
<td>89.50</td>
<td>67.13</td>
<td>8.95</td>
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<tr>
<td>E0992</td>
<td>Replacement, batteries for medically necessary electric wheelchair owned by the</td>
<td>73.34</td>
<td>55.00</td>
<td>7.33</td>
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<tr>
<td>E0993</td>
<td>Fully-reclining wheelchair, fixed full length arms, swing away detachable</td>
<td>1178.91</td>
<td>653.52</td>
<td>117.89</td>
</tr>
<tr>
<td></td>
<td>elevating legrests</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>E0994</td>
<td>Fully-reclining wheelchair, detachable arms, desk or full length, swing away</td>
<td>1178.91</td>
<td>658.06</td>
<td>117.89</td>
</tr>
<tr>
<td></td>
<td>detachable elevating legrests</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>E0995</td>
<td>Power attachment (to convert any wheelchair to motorized wheelchair; e.g., Solo)</td>
<td>2318.76</td>
<td>1739.07</td>
<td>231.88</td>
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<tr>
<td>E0996</td>
<td>Battery charger</td>
<td>233.91</td>
<td>175.43</td>
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<tr>
<td>E0997</td>
<td>Deep cycle battery</td>
<td>89.67</td>
<td>67.25</td>
<td>8.97</td>
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<tr>
<td>E1010</td>
<td>Fully-reclining wheelchair, detachable arms, desk or full length, swing away</td>
<td>877.16</td>
<td>648.34</td>
<td>87.72</td>
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<tr>
<td></td>
<td>detachable footrest</td>
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<td></td>
</tr>
<tr>
<td>E1011</td>
<td>Hemi-wheelchair, fixed full length arms, swing away detachable elevating legrest</td>
<td>406.29</td>
<td>260.86</td>
<td>40.63</td>
</tr>
<tr>
<td>E1012</td>
<td>Hemi-wheelchair, detachable arms desk or full length, swing away detachable</td>
<td>1011.85</td>
<td>759.70</td>
<td>101.19</td>
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<tr>
<td></td>
<td>elevating legrests</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>E1013</td>
<td>Hemi-wheelchair, fixed full length arms, swing away detachable foot rests</td>
<td>799.62</td>
<td>742.06</td>
<td>79.96</td>
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<tr>
<td>E1014</td>
<td>Hemi-wheelchair, detachable arms desk or full length, swing away detachable</td>
<td>1065.97</td>
<td>635.38</td>
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<td>footrests</td>
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<td>E1015</td>
<td>High strength lightweight wheelchair, fixed full length arms, swing away</td>
<td>1111.58</td>
<td>747.53</td>
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<td>detachable elevating legrests</td>
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<td>E1018</td>
<td>High strength lightweight wheelchair, detachable arms desk or full length, swing</td>
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<td>801.35</td>
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<td>E1019</td>
<td>Youth wheelchair, any type</td>
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<td>965.64</td>
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<td>E1020</td>
<td>Wide heavy duty wheelchair, detachable arms, desk or full length, swingaway</td>
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<td>E1021</td>
<td>Wide heavy duty wheelchair, detachable arms, desk or full length, swingaway</td>
<td>1210.23</td>
<td>907.67</td>
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(CITE 23 N.J.R. 560) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
DOPTIONS

100 Semi-reclining wheelchair, fixed full length arms, swing away detachable elevating legrests: 1017.00
130 Standard wheelchair, fixed full length arms, fixed or swing-away detachable footrests: 409.34
1140 Wheelchair, detachable arms, desk or full length, swing-away detachable footrests: 672.38
1150 Wheelchair, detachable arms, desk or full length, swing-away detachable elevating legrests: 748.81
1160 Wheelchair, fixed full length arms, swing-away detachable elevating legrests: 580.09
1170 Amputee wheelchair, fixed full length arms, swing-away detachable elevating legrests: 1137.61
1171 Amputee wheelchair, fixed full length arms, without footrests or legrests: 658.00
1180 Amputee wheelchair, detachable arms (desk or full length), swing-away detachable footrests: 846.14
1190 Amputee wheelchair, detachable arms (desk or full length), swingaway detachable elevating legrests: 904.45
1195 Heavy duty wheelchair, fixed full length arms, swingaway detachable elevating legrests: 1044.97
1200 Amputee wheelchair, fixed full length arms, swing-away detachable footrest: 992.39
1210 Motorized wheelchair, fixed full length arms, swing-away detachable elevating legrests: 3516.58
1211 Motorized wheelchair, detachable arms, desk or full length, swingaway detachable footrest: 3152.70
1212 Motorized wheelchair, detachable arms, desk or full length, swingaway detachable elevating legrest: 2809.97
1230 Power-operated vehicle (3-wheel non-highway), indicate brand name & model number: 1566.18
1240 Lightweight wheelchair, detachable arms (desk or full length), swingaway detachable elevating legrest: 1019.42
1250 Lightweight wheelchair, fixed full length arms, swingaway detachable footrest: 608.17
1260 Lightweight wheelchair, detachable arms (desk or full length), swingaway detachable footrest: 839.74
1270 Lightweight wheelchair, fixed full length arms, swingaway detachable elevating legrest: 701.73
1280 Heavy duty wheelchair, detachable arms (desk or full length), elevating legrests: 1226.65
1285 Heavy duty wheelchair, fixed full length arms, swingaway detachable footrest: 963.99
1290 Heavy duty wheelchair, detachable arms (desk or full length), swingaway detachable footrest: 1336.79
1295 Heavy duty wheelchair, fixed full length arms, elevating legrest: 909.40
1296 Special wheelchair seat height from floor: 272.56
1297 Special wheelchair seat depth, by upholstery: 58.99
1298 Special wheelchair seat depth and/or width, by construction: 293.91
1310 Whirlpool, non-portable (built-in type): 3152.70
1355 Stand/rack: 45.00
1372 Immersion external heater for nebulizer: 172.89
1375 Nebulizer portable with small compressor, with limited flow: 167.81

CODES BEGINNING WITH 'L'

ICPCS Description Fee for New Equipment

.L00 Cervical, craniostenosis, helmet molded to patient model: 279.68
.L01 Cervical, craniostenosis, helmet, non-molded: 76.28
.L02 Cervical, flexible, non-adjustable (foam collar): 14.03
.L03 Cervical, flexible, thermoplastic collar, molded to patient: 66.11
.L04 Cervical, semi-rigid, adjustable (plastic collar): 30.51
.L05 Cervical, semi-rigid, adjustable molded chin up (plastic collar with mandibular/occipital piece): 93.97
.L06 Cervical, semi-rigid, wire frame occipital/mandibular support: 127.13
.L07 Cervical, collar, molded to patient model: 274.59
.L08 Cervical, collar, semi-rigid, thermoplastic foam, two-piece: 85.43
.L09 Cervical, collar, semi-rigid, thermoplastic foam, two-piece with thoracic extension: 142.38
.L10 Cervical, multiple post collar, occipital/mandibular supports, adjustable: 208.23
.L11 Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars (SOMI, Guilford, Taylor types): 305.10
.L12 Cervical, multiple post collar, occipital/mandibular supports, adjustable cervical bars, and thoracic extension: 249.17
.L13 Thoracic, rib belt, custom fitted: 14.05
.L14 Thoracic, rib belt, custom fabricated: 30.51

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 561)
Addition to TLSO (low profile), lumbar derotation pad
Addition to TLSO (low profile), Milwaukee type superstructure
Addition to CTLSO or scoliosis orthosis, outrigger, bilateral with vertical extensions
Addition to CTLSO or scoliosis orthosis, thoracic pad
Addition to CTLSO or scoliosis orthosis, outrigger, bilateral with vertical extensions
Addition to CTLSO or scoliosis orthosis, lumbar derotation pad
Addition to CTLSO or scoliosis orthosis, ring flange, plastic or leather
Addition to CTLSO or scoliosis orthosis, ring flange, plastic or leather, molded to patient model
Addition to CTLSO or scoliosis orthosis, cover for upright, each
Addition to TLSO (low profile), lateral thoracic extension
Addition to TLSO (low profile), anterior thoracic extension
Addition to TLSO (low profile), Milwaukee type superstructure
Addition to TLSO (low profile), lumbar derotation pad
Addition to TLSO (low profile), anterior axis pad
Addition to TLSO (low profile), anterior thoracic derotation pad
Addition to TLSO (low profile), abdominal pad

(CITE 23 N.J.R. 562) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
**DOPTIONS INSURANCE**

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<td>THKAO, standing frame</td>
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<td>HO, abduction control of hip joints, flexible, frejka cover only</td>
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<td>HO, abduction control of hip joints, flexible, Pavlik harness</td>
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<td>HO, abduction control of hip joints, semi-flexible (Von Rosen type)</td>
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<td>HO, abduction control of hip joints, static pelvic band or spreader bar, thigh cuffs</td>
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<td>HO, abduction control of hip joints, static, adjustable, custom fitted (lifted type)</td>
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<td>HO, abduction control fo hip joint, post-operative hip abduction type, custom fabricated</td>
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<td>Legg Perthes orthosis, Scottish Rite type</td>
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<td>Legg Perthes orthosis, patten bottom type</td>
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<td>1815</td>
<td>KO, elastic with condylar pads</td>
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<td>KO, adjustable knee joints, positional orthosis, rigid support, custom fitted</td>
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<td>KO, double upright, thigh and calf, with adjustable flexion and extension joint, medial-lateral and rotation control, molded to patient model</td>
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<td>KO, molded plastic, thigh and calf sections, with double upright knee joints, molded to patient model</td>
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<td>KO, molded plastic, polycentric knee joints, pneumatic knee pads (CTL)</td>
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<td>KO, modification of supracondylar prothetic socket, molded to patient model (SK)</td>
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<td>KO, double upright, thigh and calf lasers, molded to patient model with knee joints</td>
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<td>KO, double upright, non-molded thigh and calf cuffs/laces with knee joints</td>
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<td>AFO, molded ankle gaunlet, molded to patient model</td>
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<td>1906</td>
<td>AFO, multiligamentus ankle support</td>
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<td>AFO, posterior, single bar, clasp attachment to shoe counter</td>
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<td>1920</td>
<td>AFO, single upright with static or adjustable stop, (Phelps or Peristein type)</td>
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<td>AFO, custom fitted, plastic</td>
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<td>1940</td>
<td>AFO, molded to patient model, plastic</td>
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<td>AFO, molded to patient model, plastic, rigid anterior tibial section (floor reaction)</td>
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<td>1950</td>
<td>AFO, spiral, molded to patient model, (IRM type), plastic</td>
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<td>AFO, posterior, solid ankle, molded to patient model, plastic</td>
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<td>Addition to lower extremity, dorsiflexion assist, (plantar flexion resist), each joint</td>
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<td>Addition to lower extremity, split flat caliper stirrups and plate attachment</td>
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<td>Addition to lower extremity, varus/valgus correction (&quot;T&quot;) strap, padded/lined or malleolus pad</td>
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<tr>
<td>L2350</td>
<td>Addition to lower extremity, prosthesis type &quot;BK&quot; socket, molded to patient model (used for &quot;PTB&quot; &quot;AFO&quot; orthosis)</td>
<td>559.35</td>
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<tr>
<td>L2360</td>
<td>Addition to lower extremity, extended steel shank</td>
<td>45.22</td>
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<td>L2370</td>
<td>Addition to lower extremity, pattern bottom</td>
<td>228.93</td>
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<td>L2375</td>
<td>Addition to lower extremity, torsion control, ankle joint and half solid stirrup</td>
<td>116.96</td>
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<td>L2380</td>
<td>Addition to lower extremity, torsion control, straight knee joint, each joint</td>
<td>40.00</td>
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<td>L2385</td>
<td>Addition to lower extremity, straight knee joint, heavy duty, each joint</td>
<td>66.11</td>
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<td>L2390</td>
<td>Addition to lower extremity, offset knee joint, each joint</td>
<td>101.45</td>
</tr>
<tr>
<td>L2395</td>
<td>Addition to lower extremity, offset knee joint, heavy duty, each joint</td>
<td>91.53</td>
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<tr>
<td>L2405</td>
<td>Addition to knee joint, drop lock, each joint</td>
<td>30.51</td>
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<td>L2415</td>
<td>Addition to knee joint, cam lock (Swiss, French, Bail types), each joint</td>
<td>127.13</td>
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<td>L2425</td>
<td>Addition to knee joint, disc or dial lock for adjustable knee flexion, each joint</td>
<td>142.38</td>
</tr>
<tr>
<td>L2435</td>
<td>Addition to knee joint, polycentric joint, each joint</td>
<td>122.04</td>
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<td>L2492</td>
<td>Addition to knee joint, lift loop for drop lock ring</td>
<td>101.70</td>
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<td>L2500</td>
<td>Addition to lower extremity, thigh/weight bearing, gluteal/ischial weight bearing, ring</td>
<td>149.50</td>
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<td>L2510</td>
<td>Addition to lower extremity, thigh/weight bearing, quadrilateral brim, molded to patient model</td>
<td>762.75</td>
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<td>L2520</td>
<td>Addition to lower extremity, thigh/weight bearing, quadrilateral brim, custom fitted</td>
<td>427.14</td>
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<td>Addition to lower extremity, thigh/weight bearing, ischial containment/narrow M-L. brim, molded to patient model</td>
<td>825.00</td>
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<td>L2526</td>
<td>Addition to lower extremity, thigh/weight bearing, ischial containment/narrow M-L. brim, custom fitted</td>
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<td>Addition to lower extremity, thigh/weight bearing, lacer, non-molded</td>
<td>183.06</td>
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<td>Addition to lower extremity, thigh/weight bearing, lacer, molded to patient model</td>
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<td>Addition to lower extremity, thigh/weight bearing, high roll cuff</td>
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<td>Addition to lower extremity, pelvic control, hip joint, clevis type, two position hip joint, each</td>
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<td>Addition to lower extremity, pelvic control, pelvic sling</td>
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<td>Addition to lower extremity, pelvic control, hip joint, clevis type or thrust bearing, free, each</td>
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<td>Addition to lower extremity, pelvic control, hip joint, clevis type or thrust bearing, lock, each</td>
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<td>Addition to lower extremity, pelvic control, hip joint, heavy duty, each</td>
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<td>Addition to lower extremity, pelvic control, hip joint, adjustable flexion, each</td>
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<td>Addition to lower extremity, pelvic control, hip joint, adjustable flexion, extension, abduction control, each</td>
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<td>Addition to lower extremity, pelvic control, plastic, molded to patient model, reciprocating hip joint and cables</td>
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<tr>
<td>L2628</td>
<td>Addition to lower extremity, pelvic control, metal frame, reciprocating hip joint and cables</td>
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<tr>
<td>Code</td>
<td>Description</td>
<td>Cost</td>
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<tr>
<td>L2630</td>
<td>Addition to lower extremity, pelvic control, band and belt unilateral</td>
<td>225.77</td>
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<td>L2640</td>
<td>Addition to lower extremity, pelvic control, band and belt bilateral</td>
<td>256.28</td>
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<td>Addition to lower extremity, pelvic and thoracic control, gluteal pad, each</td>
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<td>Addition to lower extremity, thoracic control, thoracic band</td>
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<td>Addition to lower extremity, thoracic control, paraspinal uprights</td>
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</tr>
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<td>L2680</td>
<td>Addition to lower extremity, thoracic control, lateral support uprights</td>
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<td>L2750</td>
<td>Addition to lower extremity orthosis, platting chrome or nickle, per bar</td>
<td>65.11</td>
</tr>
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<td>L2760</td>
<td>Addition to lower extremity orthosis, extension, per extension, per bar</td>
<td>40.68</td>
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<tr>
<td>L2770</td>
<td>Addition to lower extremity orthosis, stainless steel, per bar or joint</td>
<td>81.36</td>
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<tr>
<td>L2780</td>
<td>Addition to lower extremity orthosis, non-corrosive finish, per bar</td>
<td>50.85</td>
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<td>L2785</td>
<td>Addition to lower extremity orthosis, drop lock retention, each</td>
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<td>L2795</td>
<td>Addition to lower extremity orthosis, knee control, full knee cap</td>
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<td>Addition to lower extremity orthosis, knee control, knee cap, medial or lateral pull</td>
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<td>Addition to lower extremity orthosis, knee control, condyolar pad</td>
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<td>Addition to lower extremity orthosis, soft interface for molded plastic, below knee section</td>
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<tr>
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<td>Addition to lower extremity orthosis, soft interface for molded plastic, above knee section</td>
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<td>Addition to lower extremity orthosis, femoral length sock, fracture or equal each</td>
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<td>Addition to lower extremity orthosis, femoral length sock, fracture or equal each</td>
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<tr>
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<td>Lift-elevation, heel, tapered to metatarsals, per inch</td>
<td>36.61</td>
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<td>Lift-elevation, heel and sole, neoprene, per inch</td>
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<td>Lift-elevation, heel and sole, cork, per inch</td>
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<td>Lift-elevation, metal extension (skate)</td>
<td>81.36</td>
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<td>Lift-elevation, heel, per inch</td>
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<td>Heel wedge, Sach</td>
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<td>Heel wedge</td>
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<tr>
<td>L3360</td>
<td>Sole wedge—outside sole</td>
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<tr>
<td>L3370</td>
<td>Sole wedge—between sole</td>
<td>34.58</td>
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<td>L3380</td>
<td>Clubfoot wedge</td>
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<td>Outflare wedge</td>
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<td>Metatarsal bar wedge—rocker</td>
<td>20.34</td>
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<tr>
<td>L3410</td>
<td>Metatarsal bar wedge—between sole</td>
<td>35.60</td>
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<td>Full sole and heel wedge—between sole</td>
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<td>L3580</td>
<td>Miscellaneous shoe addition, convert instep to velcro closure</td>
<td>24.41</td>
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<tr>
<td>L3600</td>
<td>Transfer of an orthosis from one shoe to another, caliper plate existing</td>
<td>61.02</td>
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<td>Transfer of an orthosis from one shoe to another, caliper plate new</td>
<td>96.62</td>
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<td>Transfer of an orthosis from one shoe to another, solid stirrup existing</td>
<td>45.00</td>
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<tr>
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<td>Transfer of an orthosis from one shoe to another, Dennis Browne splint (Riveton), both shoes</td>
<td>35.60</td>
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<td>Shoulder orthosis (SO), figure of “8” design abduction restrainer</td>
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<td>SO figure of “8” design abduction restrainer, canvas and webbing</td>
<td>76.28</td>
</tr>
<tr>
<td>L3670</td>
<td>SO, acromio/clavicular (canvas and webbing type)</td>
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<td>L3700</td>
<td>Elbow orthosis (EO), elastic with stays</td>
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<tr>
<td>L3710</td>
<td>EO, elastic with metal joints</td>
<td>76.28</td>
</tr>
<tr>
<td>L3720</td>
<td>EO, double upright with forearm/arm cuffs, free motion</td>
<td>655.97</td>
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<tr>
<td>L3730</td>
<td>EO, double upright with forearm/arm cuffs, extension/flexion assist</td>
<td>793.26</td>
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<td>EO, double upright with forearm/arm cuffs, adjustable position lock with active control</td>
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<tr>
<td>L3800</td>
<td>Wrist-hand-finger-orthosis (WHFO) short opponens, no attachments</td>
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</tr>
<tr>
<td>L3805</td>
<td>WHFO, long opponens, no attachment</td>
<td>254.25</td>
</tr>
<tr>
<td>L3810</td>
<td>WHFO, addition to short and long opponens, thumb abduction “C” bar</td>
<td>35.60</td>
</tr>
<tr>
<td>L3815</td>
<td>WHFO, addition to short and long opponens, second M. P. abduction assist</td>
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</tr>
<tr>
<td>L3820</td>
<td>WHFO, addition to short and long opponens, I.P. extension assist with M. P. extension stop</td>
<td>76.28</td>
</tr>
<tr>
<td>L3825</td>
<td>WHFO, addition to short and long opponens, M. P. extension stop</td>
<td>35.60</td>
</tr>
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<td>L3830</td>
<td>WHFO, addition to short and long opponens, M. P. extension assist</td>
<td>55.94</td>
</tr>
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<td>L3835</td>
<td>WHFO, addition to short and long opponens, M. P. spring extension assist</td>
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<td>L3840</td>
<td>WHFO, addition to short and long opponens, spring swivel thumb</td>
<td>40.68</td>
</tr>
<tr>
<td>L3845</td>
<td>WHFO, addition to short and long opponens, thumb I.P. extension assist, with M. P. stop</td>
<td>45.77</td>
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<tr>
<td>L3850</td>
<td>WHFO, addition to short and long opponens, action wrist with dorsiflexion assist</td>
<td>81.36</td>
</tr>
<tr>
<td>L3855</td>
<td>WHFO, addition to short and long opponens, adjustable M. P. flexion control</td>
<td>101.70</td>
</tr>
<tr>
<td>L3860</td>
<td>WHFO, addition to short and long opponens, adjustable H.P. flexion control and I.P.</td>
<td>152.55</td>
</tr>
<tr>
<td>L3900</td>
<td>WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, wrist or finger driven</td>
<td>1017.00</td>
</tr>
<tr>
<td>L3901</td>
<td>WHFO, dynamic flexor hinge; reciprocal wrist extension/flexion, finger flexion/extension, cable driven</td>
<td>1123.79</td>
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<tr>
<td>L3902</td>
<td>WHFO, external powered, compressed gas</td>
<td>1118.70</td>
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<tr>
<td>L3904</td>
<td>WHFO, external powered, electric</td>
<td>788.18</td>
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<tr>
<td>L3906</td>
<td>WHFO, wrist gauntlet, molded to patient model</td>
<td>462.74</td>
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<tr>
<td>L3907</td>
<td>WHFO, wrist gauntlet with thumb spica, molded to patient model</td>
<td>355.95</td>
</tr>
<tr>
<td>L3908</td>
<td>WHFO, wrist extension control-cook-up, canvas or leather design, non-molded</td>
<td>91.36</td>
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<tr>
<td>L3910</td>
<td>WHFO, Swanson design</td>
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<td>L3912</td>
<td>WHFO, flexion glove with elastic finger control</td>
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<tr>
<td>L3914</td>
<td>WHFO, wrist extension control-cook-up</td>
<td>76.28</td>
</tr>
<tr>
<td>L3916</td>
<td>WHFO, wrist extension control-cook-up, with outrigger</td>
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</tr>
<tr>
<td>L3918</td>
<td>WHFO, knuckle bender</td>
<td>66.11</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
<td>Price</td>
</tr>
<tr>
<td>------</td>
<td>------------------------------------------------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>L3920</td>
<td>WHFO, knuckle bender, with outrigger</td>
<td>76.28</td>
</tr>
<tr>
<td>L3922</td>
<td>WHFO, knuckle bender, two segment to flex joints</td>
<td>81.36</td>
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<tr>
<td>L3924</td>
<td>WHFO, Oppenheimer</td>
<td>76.28</td>
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<td>L3926</td>
<td>WHFO, Thomas suspension</td>
<td>81.36</td>
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<td>L3928</td>
<td>WHFO, finger extension with clock spring</td>
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<td>L3930</td>
<td>WHFO, finger extension, with wrist support</td>
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<tr>
<td>L3932</td>
<td>WHFO, safety pin, spring wire</td>
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<td>L3934</td>
<td>WHFO, safety pin, modified</td>
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<td>WHFO, Palmer</td>
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<tr>
<td>L3938</td>
<td>WHFO, dorsal wrist</td>
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</tr>
<tr>
<td>L3940</td>
<td>WHFO, dorsal wrist, with outrigger attachment</td>
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<tr>
<td>L3942</td>
<td>WHFO, reverse knuckle bender</td>
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<td>L3944</td>
<td>WHFO, reverse knuckle bender, with outrigger</td>
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<td>WHFO, composite elastic</td>
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<td>WHFO, finger knuckle bender</td>
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<td>WHFO, combination Oppenheimer, with knuckle bender and two attachments</td>
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<tr>
<td>L3952</td>
<td>WHFO, combination Oppenheimer, with reverse knuckle bender and two attachments</td>
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</tr>
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<td>L3954</td>
<td>WHFO, spreading hand</td>
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<td>Shoulder-elbow-wrist-hand orthosis SEWHO, abduction positioning, airplane design</td>
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<td>L3962</td>
<td>SEWHO, abduction positioning, Erbs Palsey design</td>
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<td>L3963</td>
<td>SEWHO, molded shoulder, arm, forearm, and wrist, with articulating elbow joint</td>
<td>864.45</td>
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<td>L3964</td>
<td>SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, adjustable</td>
<td>661.05</td>
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<tr>
<td>L3965</td>
<td>SEWHO, radial arm support attached to wheelchair, balanced and fitted to patient, adjustable Rancho type</td>
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<td>L3966</td>
<td>SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, reclining</td>
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<td>L3968</td>
<td>SEWHO, mobile arm support attached to wheelchair, balanced and fitted to patient, friction arm support, (friction dampening to proximal and distal joints)</td>
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<td>L3969</td>
<td>SEWHO, mobile arm support, monosuspension arm and hand support, overhead elbow forearm hand sling support, yoke type arm suspension support</td>
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<tr>
<td>L3970</td>
<td>SEWHO, addition to mobile arm support, elevating proximal arm</td>
<td>254.25</td>
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<tr>
<td>L3972</td>
<td>SEWHO, addition to mobile arm support, offset or lateral rocker arm with elastic balance control</td>
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<td>L3974</td>
<td>SEWHO, addition to mobile arm support, supinator</td>
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<tr>
<td>L3980</td>
<td>Upper extremity fracture orthosis, humeral</td>
<td>325.44</td>
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<tr>
<td>L3982</td>
<td>Upper extremity fracture orthosis, radius/ulnar</td>
<td>406.80</td>
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<td>L3984</td>
<td>Upper extremity fracture orthosis, wrist</td>
<td>406.80</td>
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<tr>
<td>L3985</td>
<td>Upper extremity fracture orthosis, forearm, hand with wrist hinge</td>
<td>457.65</td>
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<td>Upper extremity fracture orthosis, combination of humeral, radius/ulnar, wrist, (example—Colles fracture)</td>
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<td>Addition to upper extremity orthosis, sock, fracture or equal, each</td>
<td>18.50</td>
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<td>L4000</td>
<td>Replace girdle for Milwaukee orthosis</td>
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<td>L4010</td>
<td>Replace trilateral socket brim</td>
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<tr>
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<td>Replace quadrilateral socket brim, molded to patient model</td>
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<td>Replace quadrilateral socket brim, custom fitted</td>
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<td>L4040</td>
<td>Replace molded thigh lacer</td>
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<td>Replace non-molded thigh lacer</td>
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<td>Replace molded calf lacer</td>
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<td>Replace non-molded calf lacer</td>
<td>76.28</td>
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<tr>
<td>L4060</td>
<td>Replace high roll cuff</td>
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</tr>
<tr>
<td>L4070</td>
<td>Replace proximal and distal upright for “AKO”</td>
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</tr>
<tr>
<td>L4080</td>
<td>Replace metal bands “KAFO”, proximal thigh</td>
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<tr>
<td>L4090</td>
<td>Replace metal bands “KAFO-AFO”, calf or distal thigh</td>
<td>53.90</td>
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<tr>
<td>L4100</td>
<td>Replace leather cuff “KAFO”, proximal thigh</td>
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<tr>
<td>L4110</td>
<td>Replace leather cuff “KAFO-AFO”, calf or distal thigh</td>
<td>66.11</td>
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<tr>
<td>L4130</td>
<td>Replace prefetial shell</td>
<td>279.68</td>
</tr>
<tr>
<td>L4310</td>
<td>Multi-Podus or equal orthotic preparatory management system for lower extremities</td>
<td>250.00</td>
</tr>
<tr>
<td>L4320</td>
<td>Addition to AFO, Multi-Podus (or equal) orthotic preparatory management system for lower extremities, flexible foot positioner w/soft interface for AFO, with velcro closure, custom fitted</td>
<td>90.00</td>
</tr>
<tr>
<td>L4350</td>
<td>Pneumatic ankle control splint (Aircast or equal)</td>
<td>65.00</td>
</tr>
<tr>
<td>L4360</td>
<td>Pneumatic walking splint (aircast or equal)</td>
<td>200.00</td>
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<tr>
<td>L4370</td>
<td>Pneumatic full leg splint (aircast or equal)</td>
<td>110.00</td>
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<tr>
<td>L4380</td>
<td>Pneumatic knee splint (Aircast or equal)</td>
<td>70.00</td>
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<tr>
<td>L5000</td>
<td>Partial foot, shoe insert with longitudinal arch, toe filler</td>
<td>491.95</td>
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<tr>
<td>L5010</td>
<td>Partial foot, molded socket, ankle height, with toe filler</td>
<td>864.45</td>
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<tr>
<td>L5020</td>
<td>Partial foot, molded socket, tibial tubercle height, with toe filler</td>
<td>1,322.10</td>
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<tr>
<td>L5050</td>
<td>Ankle Symes, molded socket, Sach foot</td>
<td>1,278.90</td>
</tr>
<tr>
<td>L5060</td>
<td>Ankle Symes, metal frame, molded leather socket, articulated ankle/foot</td>
<td>2,542.50</td>
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<tr>
<td>L5100</td>
<td>Below knee, molded socket, shin, Sach foot</td>
<td>1,223.14</td>
</tr>
<tr>
<td>L5105</td>
<td>Below knee, plastic socket, joints and thigh lacer, Sach foot</td>
<td>2,500.00</td>
</tr>
<tr>
<td>L5150</td>
<td>Knee disarticulation (or through knee), molded socket, external knee joints, shin, Sach foot</td>
<td>3,457.80</td>
</tr>
<tr>
<td>L5160</td>
<td>Knee disarticulation (or through knee), molded socket, bent knee configuration, external knee joints, shin, Sach foot</td>
<td>3,457.80</td>
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<tr>
<td>L5200</td>
<td>Above knee, molded socket, single axis constant friction knee, shin, Sach foot</td>
<td>1,528.10</td>
</tr>
<tr>
<td>L5210</td>
<td>Above knee, short prosthesis, no knee joint (&quot;stubbies&quot;), with foot blocks, no ankle joints, each</td>
<td>1,322.10</td>
</tr>
</tbody>
</table>
ADDITIONS

L5220 Above knee, short prosthesis, no knee joint ("stubbies"), with articulated ankle/foot, dynamically aligned, each
L5230 Above knee, for proximal femoral focal deficiency, constant friction knee, shin, Sach foot
L5250 Hip disarticulation, Canadian type: molded socket, hip joint, single axis constant friction knee, Sach foot
L5300 Below knee, molded socket, Sach foot, endoskeletal system including soft cover and finishing
L5310 Knee disarticulation (or through knee), molded socket, Sach foot endoskeletal system, including soft cover and finishing
L5320 Above knee, molded socket, open end, Sach foot, endoskeletal system, single axis knee, including soft cover and finishing
L5330 Hip disarticulation, Canadian type: molded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing
L5340 Hemipelvectomy, Canadian type: molded socket, endoskeletal system, single axis knee, hip joint, Sach foot, including soft cover and finishing
L5400 Immediate post surgical or early fitting, application of initial rigid dressing including fitting, alignment, suspension, and one cast change, below knee
L5410 Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, below knee, each additional cast change and realignment
L5420 Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension and one cast change "AK" or knee disarticulation
L5430 Immediate post surgical or early fitting, application of initial rigid dressing, including fitting, alignment and suspension, "AK" or knee disarticulation, each cast change and realignment
L5450 Immediate post surgical or early fitting, application of non-weight bearing rigid dressing, below knee
L5460 Immediate post surgical or early fitting, application of non-weight bearing rigid dressing, above knee
L5500 Initial, below knee "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, direct formed
L5505 Initial, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, direct formed
L5510 Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, plaster cover, molded to model
L5520 Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed
L5530 Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, molded to model
L5535 Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated, adjustable open end socket
L5540 Preparatory, below knee, "PTB" type socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model
L5560 Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, plaster socket, molded to model
L5570 Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, direct formed
L5580 Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, thermoplastic or equal, molded to model
L5585 Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, prefabricated adjustable open end socket
L5590 Preparatory, above knee-knee disarticulation, ischial level socket, "USMC" or equal pylon, no cover, Sach foot, laminated socket, molded to model
L5595 Preparatory, hip disarticulation-hemipelvectomy, pylon, no cover, Sach foot, thermoplastic or equal, molded to patient model
L5600 Preparatory, hip disarticulation-hemipelvectomy, pylon, no cover, Sach foot, laminated socket, molded to patient model
L5611 Addition to lower extremity, above knee-knee disarticulation, "OHC" 4-bar linkage, with friction swing phase control
L5613 Addition to lower extremity, above knee-knee disarticulation, "OHC" 4-bar linkage, with hydraulic swing phase control
L5616 Addition to lower extremity, above knee, universal multiplex system, friction swing phase control
L5618 Addition to lower extremity, test socket, Symes
L5620 Addition to lower extremity, test socket, below knee
L5622 Addition to lower extremity, test socket, knee disarticulation
L5624 Addition to lower extremity, test socket, below knee
L5626 Addition to lower extremity, test socket, hip disarticulation
L5628 Addition to lower extremity, test socket, hemipelvectomy
L5629 Addition to lower extremity, below knee, acrylic socket
L5630 Addition to lower extremity, Symes type, expandable wall socket
L5631 Addition to lower extremity, above knee or knee disarticulation, acrylic socket
L5632 Addition to lower extremity, Symes type, "PTB" trim design socket
L5634 Addition to lower extremity, Symes type, posterior opening (Canadian) socket
L5636 Addition to lower extremity, Symes type, medial opening socket
L5637 Addition to lower extremity, below knee, total contact
L5638 Addition to lower extremity, below knee, leather socket
L5639 Addition to lower extremity, below knee, wood socket
L5640 Addition to lower extremity, knee disarticulation, leather socket

INSURANCE

2,135.70
2,008.58
3,864.60
1,700.14
3,559.50
1,983.02
3,559.50
5,085.00
894.96
1,322.10
915.30
457.65
254.25
305.10
923.70
1,228.03
923.70
1,220.40
1,423.80
1,250.00
1,260.84
1,423.80
1,525.50
1,678.05
1,561.10
1,475.29
2,650.00
2,800.00
960.00
1,550.00
915.30
203.40
234.04
305.10
301.98
381.38
432.23
350.00
355.95
400.00
177.98
330.53
559.35
200.00
406.80
750.00
508.50

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 567)
<table>
<thead>
<tr>
<th>INSURANCE</th>
<th>ADOPTIONS</th>
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<tbody>
<tr>
<td>L5642</td>
<td>Addition to lower extremity, above knee, leather socket 508.50</td>
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<tr>
<td>L5643</td>
<td>Addition to lower extremity, hip disarticulation, flexible inner socket, external frame 864.45</td>
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<tr>
<td>L5644</td>
<td>Addition to lower extremity, above knee, wood socket 508.50</td>
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<tr>
<td>L5645</td>
<td>Addition to lower extremity, below knee, flexible inner socket, external frame 406.80</td>
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<tr>
<td>L5646</td>
<td>Addition to lower extremity, below knee, air cushion socket 330.53</td>
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<tr>
<td>L5647</td>
<td>Addition to lower extremity, below knee, socket suction 279.68</td>
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<tr>
<td>L5648</td>
<td>Addition to lower extremity, above knee, air cushion socket 381.38</td>
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<tr>
<td>L5649</td>
<td>Addition to lower extremity, ischial containment/narrow M-L socket 1,423.80</td>
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<tr>
<td>L5650</td>
<td>Addition to lower extremity, total contact, above knee or knee disarticulation socket 472.81</td>
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<td>L5651</td>
<td>Addition to lower extremity, above knee, flexible inner socket, external frame 661.05</td>
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<td>L5652</td>
<td>Addition to lower extremity, suction suspension, above knee or knee disarticulation, socket 515.13</td>
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<td>L5653</td>
<td>Addition to lower extremity, knee disarticulation, expandable wall socket 610.20</td>
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<td>L5654</td>
<td>Addition to lower extremity, socket insert, Symes (Kemblo, Pelite, Aliplast, Plastazote or equal) 330.53</td>
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<tr>
<td>L5655</td>
<td>Addition to lower extremity, socket insert, below knee (Kemblo, Pelite, Aliplast, Plastazote or equal) 217.57</td>
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<tr>
<td>L5656</td>
<td>Addition to lower extremity, socket insert, knee disarticulation (Kemblo, Pelite, Aliplast, Plastazote or equal) 347.05</td>
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<tr>
<td>L5657</td>
<td>Addition to lower extremity, socket insert, above knee (Kemblo, Pelite, Aliplast, Plastazote or equal) 331.03</td>
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<tr>
<td>L5658</td>
<td>Addition to lower extremity, below knee, corn sleeve suspension, each 406.80</td>
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<tr>
<td>L5659</td>
<td>Addition to lower extremity, socket insert, multi-durometer, Symes 432.23</td>
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<tr>
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<td>Addition to lower extremity, socket insert, below knee, silicone gel or equal 381.38</td>
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<td>Addition to lower extremity, socket insert, knee disarticulation, silicone gel or equal 483.08</td>
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<tr>
<td>L5662</td>
<td>Addition to lower extremity, socket insert, below knee, silicone gel or equal 483.08</td>
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<tr>
<td>L5663</td>
<td>Addition to lower extremity, socket insert, multi-durometer, below knee 279.68</td>
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<tr>
<td>L5664</td>
<td>Addition to lower extremity, below knee, cuff suspension 48.67</td>
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<td>Addition to lower extremity, below knee, molded distal cushion 75.95</td>
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<td>L5666</td>
<td>Addition to lower extremity, below knee, molded proximal suspension (&quot;PTS&quot; or similar) 255.77</td>
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<td>L5667</td>
<td>Addition to lower extremity, below knee, removable medial brim suspension 279.68</td>
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<td>L5668</td>
<td>Addition to lower extremity, below knee, latex sleeve suspension, each 59.67</td>
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<tr>
<td>L5669</td>
<td>Addition to lower extremity, below knee, latex sleeve suspension or equal, heavy duty, each 50.85</td>
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<td>L5670</td>
<td>Addition to lower extremity, below knee, pelvic control belt, light 87.97</td>
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<tr>
<td>L5671</td>
<td>Addition to lower extremity, below knee, pelvic control belt, padded and lined 105.08</td>
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<tr>
<td>L5672</td>
<td>Addition to lower extremity, below knee, pelvic control belt, each 146.35</td>
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<tr>
<td>L5673</td>
<td>Addition to lower extremity, below knee, pelvic control, sleeve suspension, neoprene or equal, each 125.00</td>
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<td>L5674</td>
<td>Addition to lower extremity, above knee or knee disarticulation, pelvic joint 145.50</td>
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<td>L5675</td>
<td>Addition to lower extremity, above knee or knee disarticulation, pelvic band 40.47</td>
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<td>L5676</td>
<td>Addition to lower extremity, above knee or knee disarticulation, silesian bandage 83.99</td>
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<tr>
<td>L5677</td>
<td>Addition to lower extremity, above knee or knee disarticulation, shoulder strap 144.16</td>
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<td>Addition to lower extremity, above knee or knee disarticulation, shoulder harness 211.09</td>
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<td>L5679</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, manual lock 355.95</td>
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<tr>
<td>L5680</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, manual lock, ultra-light material 282.37</td>
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<tr>
<td>L5681</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, variable friction swing and stance phase control (safety knee) 355.95</td>
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<tr>
<td>L5682</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, pneumatic swing phase control 282.37</td>
</tr>
<tr>
<td>L5683</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, pneumatic friction swing phase control 282.37</td>
</tr>
<tr>
<td>L5684</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, pneumatic swing, friction stance phase control 381.38</td>
</tr>
<tr>
<td>L5685</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, pneumatic swing and stance phase control (safety knee) 282.37</td>
</tr>
<tr>
<td>L5686</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, pneumatic friction swing phase control 282.37</td>
</tr>
<tr>
<td>L5687</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, pneumatic swing and stance phase control (safety knee) 282.37</td>
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<tr>
<td>L5688</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, pneumatics, friction swing phase control 282.37</td>
</tr>
<tr>
<td>L5689</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, pneumatics, friction swing and stance phase control 282.37</td>
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<tr>
<td>L5690</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, ultra-light material (Titanium, carbon fiber or equal) 381.38</td>
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<tr>
<td>L5691</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, ultra-light material (Titanium, carbon fiber or equal) 381.38</td>
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<tr>
<td>L5692</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, ultra-light material (Titanium, carbon fiber or equal) 381.38</td>
</tr>
<tr>
<td>L5693</td>
<td>Addition to lower extremity, above knee or knee disarticulation, single axis, ultra-light material (Titanium, carbon fiber or equal) 381.38</td>
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<tr>
<td>L5694</td>
<td>Addition to lower extremity, above knee or hip disarticulation, knee extension assist 30.85</td>
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<tr>
<td>L5695</td>
<td>Addition to lower extremity, below knee, alignable system 342.00</td>
</tr>
<tr>
<td>L5696</td>
<td>Addition to lower extremity, above knee or hip disarticulation, alignable system 350.00</td>
</tr>
</tbody>
</table>
ADDITIONS

L5940 Addition, endoskeletal system, below knee, ultra-light material (Titanium, carbon fiber or equal) 279.68
L5950 Addition, endoskeletal system, above knee, ultra-light material (Titanium, carbon fiber or equal) 331.03
L5960 Addition, endoskeletal system, hip disarticulation, ultra-light material (Titanium, carbon fiber or equal) 584.78
L5970 All lower extremity prosthesis, foot, external keel, Sack foot 97.83
L5972 All lower extremity prosthesis, flexible keel foot (Safe, Sten, Bock Dynamic or equal) 152.55
L5974 All lower extremity prosthesis, foot, single axis ankle/foot 136.76
L5976 All lower extremity prosthesis, energy storing foot (Seattle Carbon Copy II or equal) 355.95
L5978 All lower extremity prosthesis, foot, multi-axial ankle/foot (Greissinger or equal) 159.18
L5980 All lower extremity prosthesis, flex foot system 2,542.50
L5982 All exoskeletal lower extremity prosthesis, axial rotation unit 508.50
L5984 All endoskeletal lower extremity prosthesis, axial rotation unit 381.38
L5986 All lower extremity prosthesis, multi-axial rotation unit ("MCP" or equal) 381.38
L6010 Partial hand, Robin-Aids, little and/or ring finger remaining (or equal) 1,271.25
L6050 Wrist disarticulation, molded socket, flexible elbow hinges, triceps pad 1,423.80
L6055 Wrist disarticulation, molded socket with expandable interface, flexible elbow hinges, triceps pad 1,983.15
L6100 Below elbow, molded socket, flexible elbow hinge, triceps pad 1,423.80
L6110 Below elbow, molded socket (Muenster or Northwestern suspension types) 1,805.18
L6120 Below elbow, molded double wall split socket, step-up hinges, half cuff 1,932.30
L6130 Below elbow, molded double wall split socket, stump activated locking hinge, half cuff 2,542.50
L6200 Elbow disarticulation, molded socket, outside locking hinge, forearm 1,830.60
L6205 Elbow disarticulation, molded socket with expandable interface, outside locking hinge, forearm 3,152.70
L6250 Above elbow, molded double wall socket, internal locking elbow, forearm 2,008.58
L6300 Shoulder disarticulation, molded socket, shoulder bulkhead, humeral section, internal locking elbow, forearm 2,695.05
L6310 Shoulder disarticulation, passive restoration (complete prosthesis) 2,339.10
L6320 Shoulder disarticulation, passive restoration (shoulder cap only) 1,525.50
L6350 Interscapular thoracic, molded socket, shoulder bulkhead, humeral section internal locking elbow, forearm 3,025.58
L6360 Interscapular thoracic, passive restoration (complete prosthesis) 1,932.30
L6370 Interscapular thoracic, passive restoration (shoulder cap only) 1,779.75
L6380 Immediate post surgical or early fitting, application of initial rigid dressing, including fitting alignment and suspension of components and one cast change, wrist disarticulation or below elbow 864.45
L6382 Immediate post surgical or early fitting, application of initial rigid dressing including fitting alignment and suspension of components and one cast change, elbow disarticulation or above elbow 1,017.00
L6384 Immediate post surgical or early fitting, application of initial rigid dressing, including fitting alignment and suspension of components, and one cast change, shoulder disarticulation or 1,220.40
L6386 Immediate post surgical or early fitting, each additional cast change and realignment 279.68
L6388 Immediate post surgical or early fitting, application of rigid dressing only 254.25
L5400 Below elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping 1,505.16
L5450 Elbow disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue shaping 1,627.20
L6500 Above elbow, molded socket, endoskeletal system, including soft prosthetic tissue shaping 1,922.13
L6550 Shoulder disarticulation, molded socket, endoskeletal system, including soft prosthetic tissue shaping 2,237.40
L6570 Interscapular thoracic, molded socket, endoskeletal system, including soft prosthetic tissue shaping 2,745.90
L6580 Preparatory, wrist disarticulation or below elbow, single wall plastic socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowden cable control, USMC or equal pylons, no cover, molded to patient model 1,017.00
L6582 Preparatory, wrist disarticulation or below elbow, single wall socket, friction wrist, flexible elbow hinges, figure of eight harness, humeral cuff, Bowden cable control, USMC or equal pylons, no cover, direct formed 864.45
L6584 Preparatory, elbow disarticulation or below elbow, single wall plastic socket, friction wrist, locking elbow, figure of eight harness, fair lead cable control, USMC or equal pylons, no cover, molded to patient model 1,449.23
L6586 Preparatory, elbow disarticulation or above elbow, single wall socket, friction wrist, locking elbow, figure of eight harness, fair lead cable control, USMC or equal pylons, no cover, direct formed 1,245.83
L6588 Preparatory shoulder disarticulation or interscapular thoracic, single wall plastic socket, should joint, locking elbow, friction wrist, chest strap, fair lead cable control, USMC or equal pylons, no cover, molded to patient model 2,166.21
L6590 Preparatory, shoulder disarticulation or interscapular thoracic, single wall socket, should joint, locking elbow, friction wrist, chest strap, fair lead cable control, USMC or equal pylons, no cover, direct formed 1,983.15
L6600 Upper extremity additions, polycentric hinge, pair 122.04
L6605 Upper extremity additions, single pivot hinge, pair 147.47
L6610 Upper extremity additions, flexible metal hinge, pair 132.21
L6615 Upper extremity addition, disconnect locking wrist unit 76.28
L6616 Upper extremity addition, additional disconnect insert for locking wrist unit, each 75.00
L6620 Upper extremity addition, flexible-friction wrist unit 315.27
L6623 Upper extremity addition, spring assisted rotational wrist unit with latch release 483.08
L6625 Upper extremity addition, rotation wrist unit with cable lock 200.90
L6628 Upper extremity addition, quick disconnect hook adapter, Otto Bock or equal 355.95
L6630 Upper extremity addition, stainless steel, any wrist 86.45
L6632 Upper extremity addition, latex suspension sleeve, each 40.48
L6635 Upper extremity addition, lift assist for elbow 152.55
L6637 Upper extremity addition, nudge control elbow lock 371.21
L6640 Upper extremity additions, shoulder abduction joint, pair 162.72
L6641 Upper extremity addition, excursion amplifier, pulley type 122.04
L6642 Upper extremity addition, excursion amplifier, lever type 172.89
Upper extremity addition, shoulder flexion-abduction joint, each

193.23

Upper extremity addition, shoulder universal joint, each

190.00

Upper extremity addition, standard control cable, each

71.19

Upper extremity addition, heavy duty control cable

50.85

Upper extremity addition, teflon or equal, cable lining

30.51

Upper extremity addition, hook to hand, cable adapter

61.02

Upper extremity addition, harness, chest or shoulder, saddle type

133.70

Upper extremity addition, harness, figure of "S" type, for single control

111.87

Upper extremity addition, harness, figure of "S" type, for dual control

142.38

Upper extremity addition, test socket, wrist disarticulation or below elbow

210.43

Upper extremity addition, test socket, elbow disarticulation or above elbow

228.83

Upper extremity addition, test socket, shoulder disarticulation or interscapular thoracic

185.15

Upper extremity addition, suction socket

508.50

Upper extremity addition, frame type socket, below elbow or wrist disarticulation

305.10

Upper extremity addition, frame type socket, above elbow or elbow disarticulation

355.95

Lower extremity addition, frame type socket, shoulder disarticulation

406.80

Upper extremity addition, frame type socket, interscapular thoracic

457.65

Upper extremity addition, removable insert, each

300.00

Upper extremity addition, silicone gel insert or equal, each

269.51

Upper extremity addition, frame type socket, below elbow or wrist disarticulation

185.15

Upper extremity addition, frame type socket, shoulder disarticulation

84.80

Upper extremity addition, frame type socket, interscapular thoracic

701.73

Upper extremity addition, modifier, wrist flexion unit

234.93

Upper extremity addition, hook, TRS grip, VC

1,169.55

Upper extremity addition, hook, TRS adept, child, VC

889.88

Upper extremity addition, hook, TRS adept, infant, VC

737.33

Upper extremity addition, hook, TRS Super Sport, passive

244.08

Upper extremity addition, hook, pincher tool, Otto Bock or equal

127.13

Upper extremity addition, hand, dorrance, VO

355.95

Upper extremity addition, hand, APRIL VC or equal

986.50

Upper extremity addition, hand, Sierra, VO

864.45

Upper extremity addition, hand, Robin-Aids, VO soft

508.50

Upper extremity addition, hand, passive hand

213.57

Upper extremity addition, hand, Detroit infant hand, (mechanical)

762.75

Upper extremity addition, hand, Passive infant hand, (Steeper, Hosmer or equal)

152.55

Upper extremity addition, hand, NYU child hand

711.90

Upper extremity addition, hand, mechanical infant hand, Steeper or equal

203.40

Upper extremity addition, hand, Bock, VC

686.48

Upper extremity addition, hand, Bock, VO

406.80

Upper extremity addition, glove for above hands, production glove

106.79

Upper extremity addition, glove for above hands, custom glove

376.29

Hand restoration (cast, shading and measurements included), partial hand, with glove, thumb or one finger remaining

1,271.25

Hand restoration (casts, shading and measurements included), partial hand, with glove, multiple fingers remaining

1,271.25

Hand restoration (cast, shading and measurements included), partial hand, with glove, no fingers remaining

1,271.25

Hand restoration (shading, and measurements included), replacement glove for above

460.80

Electronic hand, Otto Bock, Steeper or equal switch controlled

1,728.90

Electronic hand, Systemtechnik, Variety Village or equal switch controlled

3,966.30

Electronic Greifer, Otto Bock or equal switch controlled

2,440.80

Electronic Greifer, Otto Bock or equal, myoelectronically controlled

2,339.10

Electronic hand, Sytemtechnik, Variety Village or equal, myoelectronically controlled

2,339.10

Electronic Greifer, Otto Bock or equal, myoelectronically controlled

4,068.00

Prehensile actuator, Hosmer or equal, switch controlled

1,830.60

Electronic hook, child, Michigan or equal, switch controlled

889.88

Electronic elbow, Hosmer or equal, switch controlled

3,712.05

Electronic elbow, child, Variety Village or equal, switch controlled

6,000.00

Electronic elbow, child, Variety Village or equal, myoelectronically controlled

6,340.00

Electronic wrist rotator, Otto Bock or equal

1,678.05

Electronic wrist rotator, for Utah arm

3,051.00

Servo control, Steeper or equal

610.20

Analogue control, UNB or equal

1,423.80
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<th>HCPCS Code</th>
<th>Description</th>
<th>Fee for New Eqpt</th>
<th>Fee for Used Eqpt</th>
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<td>Oxygen concentrator high humidity</td>
<td>287.90</td>
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<td>Q0042</td>
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NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 571)
DIVISION OF ADMINISTRATION

Eligible Persons Qualifications and Automobile Insurance Eligibility Points Schedule

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


Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Filed: January 25, 1991 as R.1991 d.93, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Expiration Date: January 4, 1996.


The commenters note that the reproposed definition, which added the statement: "...be an owner or registrant and hold a New Jersey driver's license."

The commenters note that this definition is provided, in pertinent part, by N.J.S.A. 17:33B-13. The Department notes, however, that many of the following comments and responses contain elements of previous comments regarding particular aspects of these rules. Some of the following responses may address each aspect in connection with the particular rule to which it related. The reader is therefore urged to examine also the adoption notices concerning the other rules set forth above for a more complete understanding of these rules (see adoption notices for N.J.A.C. 11:3-3, 11:3-19 and 11:3-35 appearing elsewhere in this issue of the New Jersey Register.)

Several commenters reiterated their suggestion that the eligibility points be assigned to households. These commenters generally suggested that total household points be added together to determine eligibility of all residents of the same household and urge that this is proper and authorized construction of N.J.S.A. 17:33B-14.

The Department disagrees that this is authorized by the statute which, among other things, seeks to promote appropriate individual treatment based upon an individual's driving history. Moreover, the Department does not believe that establishing "household points" would be wise. Declaring all members of a household ineligible as a result of the driving behavior of some of them would substantially increase the number of persons required to be insured in the residual market.

Some commenters requested that the provision concerning accrual of eligibility points for motor vehicle violations, N.J.A.C. 11:3-34.5(b), be amended to provide that points for convictions of motor vehicle violations be accrued when the insurer obtains "internal documentation received from reliable sources." These insurers stated that some times motor vehicle violations do not appear on Division of Motor Vehicle (DMV) abstracts of driving records. One commenter stated that "the problem here is that an insurer may learn of convictions or instances of being illegally uninsured that are not in DMV records." Another commenter stated that DMV records may become less accurate in the future "since insureds will be more reluctant to report accidents in order to avoid eligibility points."

One commenter stated it was unclear whether eligibility points assessed in accordance with Schedule I and based on the past three years driving status were to accrue based on a DMV abstract.

The Department does not find that such a change is warranted at this time. First, the Department notes that accrual of eligibility points for motor vehicle violations requires conviction in accordance with law. Convictions in New Jersey are routinely reported by municipal courts to the DMV, and recorded in DMV records. Although the conviction itself may be delayed (for example, when a municipal court conviction is appealed), the Department is not convinced that any significant number of actual motor vehicle violations convictions do not appear on DMV records. The Department is, however, willing to review this matter if there is evidence that DMV records are inadequate with respect to motor vehicle convictions.

Secondly, with respect to motor vehicle accidents, the Department notes that points for at-fault accidents accrue when payment by the insurer equals or exceeds $500.00. Points for at-fault accidents accrue as stated regardless of whether the accident is reported to the DMV or appears on a DMV abstract.

Finally, with respect to the accrual of points based on driving status during the last three years, the Department notes that the basis for assessment of these points is not the DMV abstract, but the retrospective view of the individual's driving status from the time that application for insurance is made. To the extent necessary to clarify that points so assessed are based neither on an at-fault accident (accrued pursuant to...
N.J.A.C. 11:3-34.5(b)(1) or a specific motor vehicle violation (accrued pursuant to N.J.A.C. 11:3-34.5(b)(2), the Department has added a new provision, N.J.A.C. 11:3-34.5(b), that these points "accrue" on the date of application for insurance.

COMMENT: Several commenters objected to the accrual of eligibility points for at-fault accidents when total payment by the insurer equals or exceeds $500.00. Some commenters expressed concern that information about at-fault accidents may not be forthcoming from other insurers, or that the information received from others may be incorrect. Some commenters stated that the use of the accident payment date is inconsistent with their present systems, which would be expensive to modify. One commenter suggested that the rule be amended to provide insurers the option of using the event date, although not actually assessing points until payment was made. An appropriate provision has been added at N.J.A.C. 11:3-34.5(b)(1) on adoption to provide insurers with this option.

The Department fully expects that insurers will cooperate with one another and exchange necessary information. If, however, the Department determines that there exists among the industry a serious problem concerning exchange of such information, it would consider promulgating a rule to compel specific methods of exchange.

COMMENT: One commenter suggested a "graduated point schedule" for at-fault accidents, as a "fair approach for consumers, especially long standing insureds.

RESPONSE: The commenter neither suggested a scale, nor provided any information about how it would work. The Department generally believes that such an approach would make administration much more difficult.

COMMENT: Several commenters suggested that the schedule include eligibility points for license suspensions of less than one year.

RESPONSE: The Department does not believe this is necessary. First, the Department believe that eligibility points for license suspension are to be assessed only when the suspension is court-imposed. (Any person who is currently suspended by either a court or the DMV Director is not an eligible person pursuant to N.J.A.C 11:3-34.2(a)(3).) Additional eligibility points for court-imposed license suspensions of less than one year are not necessary, since points accrue for the convictions themselves. The provision of Schedule 1 that provides three points for each year of court-imposed driver's license suspension within the preceding three years is intended to prevent the immediate eligibility for insurance at standard rates when a driver that was subject to a long-term suspension is relicensed.

COMMENT: Several insurers suggested that point values for some violations be changed. Many suggested higher point values for some of the serious moving violations; others suggested different point values for Schedule 2, which sets forth the DMV point schedule.

RESPONSE: The Department believes that the use of DMV points on Schedule 2 is not only reasonable, but will improve efficiency, reduce error and avoid confusion. The Department further believes that the point values assigned in Schedule 1 are likewise reasonable; none of the commenters provided compelling reasons for making a change upon readoption.

COMMENT: Several commenters suggested that the Schedule 1 points for inexperience (that is, one point for each full year within the immediately preceding three years that a person has not held a driver's license) be amended to require not only licensure, but operation of a motor vehicle.

RESPONSE: The Department disagrees, noting that the commenters suggest neither an appropriate "threshold" of the amount of operation required, nor how such a requirement could be reasonably administered.

COMMENT: Two commenters suggested that these rules should include the language of the nonrenewal rule, N.J.A.C. 11:3-8.3, which provides that points are to be considered for nonrenewal if they accrue in the 36 month period ending three months before the date the policy is to be renewed.

RESPONSE: The Department notes that these rules primarily define "eligible person" and set forth the eligibility point schedule. The rules concerning nonrenewal, N.J.A.C. 11:3-8.1, rules concerning standards/ non-standard rating plans (N.J.A.C. 11:3-19) and rules concerning automobile insurance underwriting rules (N.J.A.C. 11:3-35) apply the "eligible person" standard to the market. Eligibility points are only significant when application for insurance is made, or upon renewal. At these times, the insurer may review the new or renewal applicant’s driving record for the past three years, and determine whether the applicant is eligible for the voluntary market and, if so, at what rate level. For new applicants, the three year period immediately precedes the date of application. Therefore, the change suggested by the commenter would not be appropriate as to new applicants.

For renewals, the three year period is fixed so as to end three months before the date of renewal in order to provide insurers with the time necessary to provide notice of nonrenewal in accordance with N.J.A.C. 11:3-8.3(f), which requires the notice be sent 60-90 days prior to the renewal date. The Department believes that including appropriate provision in the rules concerning application of the points is adequate. The Department will, however, add a similar provision to the rules concerning standard/non-standard rating plans, since assignment to a particular rate level is also accomplished upon renewal.

COMMENT: One commenter suggested that the Department delete the list of "no-fault" accidents set forth in N.J.A.C. 11:3-34.3.

RESPONSE: These were included as the result of a comment from a previous proposal (see 22 N.J.R. 3847) and set forth circumstances in which fault has not traditionally been found.

COMMENT: A consumer reiterated his comment concerning the alleged "retroactivity" of the point schedule, in that violations and accidents occurring prior to the effective date of the rules may result in eligibility points.

RESPONSE: This comment was addressed when these rules were reproposed (see 22 N.J.R. 3849). The language of the rule tracks the provisions of N.J.S.A. 11:33B:13 and 14 which direct that points be assessed for incidents in the previous three years.

COMMENT: Two commenters stated that the eligibility threshold of eight points is too high. These commenters stated that, in their view, a person with eight eligibility points is a bad driver that should be insured in the residual market.

RESPONSE: The Department believes that, based on available information, approximately 90 percent of the drivers in New Jersey are "eligible persons" as defined in these rules. Because N.J.S.A. 17:29D-1 limits the residual market (assigned risk plan) to 10 percent of the total market, the Department believes these rules are reasonable and appropriate. Should the Department’s estimates prove incorrect, or should new data suggest a different threshold, the Department would consider amending the rules at that time.

COMMENT: One commenter stated that it foresees a problem regarding the date of accrual of motor vehicle violations based on abstracts from other states, which may show only the dates of the violation and conviction. The commenter suggested the rules state the conviction date is the date that should be used.

RESPONSE: Conviction dates do not appear on New Jersey DMV abstracts which include the "event date" and the "posting date." Because the event date may be significantly before the date of conviction, the Department has determined to use the posting date, which is when an inquiring insurer would be able to obtain notice or confirmation of the offense.

Because information on driving record abstracts may vary widely among the 50 states, it would be unworkable to set forth in this rule standards for every state. If the posting date is not shown on another state’s abstract, then the conviction date may be used.

COMMENT: One commenter questioned the Department’s response at 22 N.J.R. 3832 regarding an out-of-State conviction for driving under the influence. The commenter had inquired whether such a conviction would be used to assess nine points in accordance with Schedule 1, or two points in accordance with Schedule 2. The Department responded that the offense should be assigned nine points under Schedule 1. The commenter suggested the Department “expand and clarify” its position by amending N.J.A.C. 11:3-34.5(c) to provide that out-of-State offenses generally shall
accrete the greater of two points or the number of points on Schedules 1 or 2.

RESPONSE: A person convicted of driving under the influence in another state is not eligible for three years after conviction, pursuant to N.J.A.C. 11:3-34.2(a), which includes not only convictions of New Jersey statutes, but also an "offense of a substantially similar nature committed in another jurisdiction." Because this offense is specifically mentioned in that provision of the rules (in accordance with N.J.S.A. 17:33B-13), it is appropriate that the nine points on Schedule 1 be applied, rather than the "catch-all" two points on Schedule 2. This likewise applies to "refusal to submit to a chemical test," in violation of N.J.S.A. 39:4-50.4. For all other offenses, however, a moving violation out-of-State is assessed two points.

COMMENT: Several commenters addressed the eligibility of persons applying for insurance who could not demonstrate continuous coverage. One suggested assignment of eligibility points regardless of whether the person was ever convicted of driving without insurance; another suggested that such persons should be deemed ineligible in accordance with N.J.S.A. 17:33B-13g, as possessing "such other risk factors as determined by regulation of the Commissioner."

RESPONSE: The Department will not amend its definition of "eligible person" at this time to exclude persons who cannot demonstrate continuous coverage. In such circumstances there is no "conviction" of an offense as set forth in N.J.S.A. 17:33B-14.

COMMENT: One commenter inquired whether the phrase "when the event is recorded in the agency's records as evidenced by an abstract" in N.J.A.C. 11:3-34.5(b)2 meant the "offense date," "conviction date," or the date the offense is posted on the driver's DMV record.

RESPONSE: The date the offense is "recorded in the agency's records" is when it is posted. The Department believes that this provides insurers with the ability to confirm convictions for motor vehicle violations.

COMMENT: One commenter requested clarification of N.J.A.C. 11:3-34.5(c), which provides that eligibility points are cumulative.

RESPONSE: The word "cumulative" refers to multiple convictions, or accidents and convictions, which arise out of the same set of circumstances. For example, a driver may be convicted of reckless driving (five points) and failure to stop for a traffic light (two points) as a result of a continuous episode of driving behavior. The points are totaled and the driver accrues seven points. Similarly, a person responsible for an at-fault accident which resulted in a payment by the insurer of at least $500.00 (five points) who is also convicted of careless driving as a result of the accident (two points) would have accrued seven points. Additionally, if the accident involved a death, and the driver was determined to be subject to sanction by the Director of the Division of Motor Vehicles (NFTL), two points, the driver would have accrued nine points as the result of this one incident.

COMMENT: One insurer suggested an amendment to Schedule I of N.J.A.C. 11:3-34 regarding "inexperience points." The commenter stated that it does not reunderwrite or reprice policies in the middle of the year to reflect the newly licensed driver. The commenter stated that midterm rating and midterm reunderwriting are illegal.

The commenter suggested that the phrase to the language in Schedule I "with any remaining fraction thereof being counted as a full year." With this addition, it suggested, a newly licensed driver would receive points for each of the three years anticipated by the rule.

RESPONSE: The Department does not believe this change is necessary, since insurers may reprice a policy when a new driver is added.

Summary of Agency-Initiated Changes

The Department has made some minor editorial changes to Schedule I. First, it has added the phrase "if applicable" to the N.J.S.A. section number and DMV event identifiers, in recognition of the fact that certain items on the Schedule have neither. Second, an N.J.S.A. section number has been added to better define the offense "misrepresentation of insurance coverage." Thirdly, "DMV" has been deleted from "event description" since it does not apply to "at-fault" accidents and points imposed based on driver's license status in the preceding three years.

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

CITE 23 N.J.R. 574

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991

SUBCHAPTER 34 ELIGIBLE PERSONS QUALIFICATIONS AND AUTOMOBILE INSURANCE ELIGIBILITY POINTS SCHEDULE

11:3-34.1 Purpose

The purpose of this subchapter is to set forth the requirements for determining who can qualify as an "eligible person," and to provide the schedule for "automobile insurance eligibility points" pursuant to P.L. 1990, c.8 (N.J.S.A. 17:33B-13 and 14).

11:3-34.2 Scope

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

11:3-34.3 Definitions

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

"At-fault accident" is any accident involving a driver insured under the policy which resulted in a payment by the insurer of at least $300.00, and for which the driver is at least proportionately responsible based on the number of vehicles involved. A driver is proportionately responsible if 50 percent responsible for an accident involving two drivers; if 33 percent responsible for an accident involving three drivers; etc. An at-fault accident shall not include the following:

1. Involvement in an accident in which the motor vehicle owned or operated by the insured or other driver insured under the policy was lawfully parked;
2. Involvement in an accident in which the motor vehicle was struck by a hit and run driver, if such accident was reported to the proper authorities within 24 hours;
3. Involvement in an accident in connection with which neither the named insured nor any other driver insured under the policy was convicted of a moving traffic violation and the owner or operator of another vehicle involved in such accident was so convicted;
4. For physical damage losses other than collision;
5. For an accident in which the motor vehicle was struck in the rear by another vehicle and a driver insured under the policy has not been convicted of a moving violation in connection with the accident; or
6. For an accident occurring as a result of operation of any motor vehicle in response to an emergency if the operator at the time of the accident was responding to the call to duty as a paid or volunteer member of any police or fire department, first aid squad or any law enforcement agency.


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

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

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

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

"State" means the State of New Jersey.

11:3-34.4 Eligible person qualifications

(a) An "eligible person" is a person who is an owner or registrant of an automobile registered and principally garaged in this State or who is resident and holds a valid New Jersey driver's license to operate an automobile, but does not include any person:
1. Who, during the three-year period immediately preceding application for, or renewal of, an automobile insurance policy has been convicted pursuant to N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.4a or for an offense of a substantially similar nature committed in another jurisdiction;

(CITE 23 N.J.R. 574)
2. Who has been convicted of a crime of the first, second or third degree resulting from the use of a motor vehicle; or has been convicted of theft of a motor vehicle;
3. Whose driver's license to operate an automobile is under suspension or revocation;
4. Who has been convicted, within the five-year period immediately preceding application for or renewal of a policy of automobile insurance, of fraud or intent to defraud involving an insurance claim for an application for insurance;
5. Who has been successfully denied, within the immediately preceding five years, payment by an insurer of a claim in excess of $1,000 under an automobile insurance policy, if there was evidence of fraud or intent to defraud involving the automobile insurance claim or application. For the purpose of this section:
   i. If the claim has been subject to litigation between the insurer and the insured in which the insurer defended against payment of the claim in whole or in part on grounds of fraud, it shall be conclusively presumed that the claim was successfully denied if judgment was entered for the insured; and conclusively presumed that the claim was not successfully denied if judgment was entered for the insurer in the litigation; and conclusively presumed that the claim was not successfully denied if judgment was entered for the insured;
   ii. If the claim has not been subject to litigation between the insurer and the insured, but the insurer denied the claim without payment by reason of fraud, it shall be presumed that the claim was successfully denied. This presumption may be overcome in an administrative proceeding pursuant to N.J.A.C. 11:3-33;
   iii. If the incident was not reported to the New Jersey Department of Insurance, Fraud Division pursuant to N.J.S.A. 17:33A-9 it shall be presumed that there was no evidence of fraud or intent to defraud;
6. Whose automobile insurance policy has been cancelled for non-payment of premiums, or financed premium with a lapse of coverage, within the immediately preceding two-year period, unless the premium due on a policy for which application has been made is paid in full before issuance or renewal of the policy. For the purpose of this section, "paid in full" shall not include any transaction in which a lender obtains authority from an insured to cancel the policy and receive a refund from the insurer in the event the insured defaults on a loan used to pay the premium;
7. Who fails to obtain or maintain membership or qualification for membership in a club, group, or organization, if membership is a uniform requirement of the insurer as a condition of providing insurance, and if the dues or charges, if any, or other conditions for membership or qualifications for membership are applied uniformly throughout this State, are not expressed as a percentage of the insurance premium, and do not vary with respect to the rating classification of the member or potential member except for the purpose of offering a membership fee to family units. Membership fees, if applicable, may vary in accordance with the amount or type of coverage if the purchase of additional coverage, either as to type or amount, is not a condition for reduction of dues or fees; or
8. Whose driving record for the three year period immediately preceding the application for or renewal of a policy of automobile insurance has an accumulation of nine or more automobile insurance eligibility points as determined in N.J.A.C. 11:3-34.5.

11:3-34.5 Automobile insurance eligibility points
   (a) Automobile insurance eligibility points shall be accumulated as a result of convictions, suspensions, revocations and determinations of responsibility for civil infractions in accordance with the schedule set forth in the Appendix to this subchapter herein incorporated by reference.
   (b) Automobile insurance eligibility points shall be deemed to accrue as follows:
   1. Points for an at-fault accident shall accrue on the date that total payment by the insurer equals or exceeds $500.00. *An insurer may, at its option, use the date of the accident or date of first payment provided, however, that the insurer shall not underwrite or rate any policy based on the accident until total payment by the insurer equals or exceeds $500.00; and further provided that the insurer shall use the optional date consistently in all cases.*
   2. Points for conviction of motor vehicle violations and other events that are set forth on an abstract of drivers license records available from the New Jersey Division of Motor Vehicles, or comparable agency of another state, shall accrue when the event is recorded in the agency's records as evidenced by an abstract.
   *3. Points for each full year of court-imposed driver's license suspension within the preceding three years and points for each full year within the immediately preceding three years that a person has not held a driver's license shall accrue on the date of application for insurance.*
   (c) Automobile insurance eligibility points are cumulative and accrue for all offenses set forth on Schedules 1 and 2, except as noted on Schedule 1.
   (d) Automobile insurance eligibility points set forth on Schedule 2 of the Appendix represent motor vehicle points established by the New Jersey Division of Motor Vehicles by rule, N.J.A.C. 13:19-10.1, which is hereby incorporated by reference. Any additions, deletions or modifications to N.J.A.C. 13:19-10.1 shall likewise be incorporated as of the effective date of amendment. Schedule 2 is included in the Appendix for convenience.
### Appendix

#### Schedule of Automobile Insurance Eligibility Points

**Schedule 1**

<table>
<thead>
<tr>
<th>N.J.S.A. Section Number</th>
<th><em>If applicable</em></th>
<th>EVENT</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>39:4-50</td>
<td>0450; 3261</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>39:4-50.4</td>
<td>4504</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>2C:II-2</td>
<td>C115</td>
<td>9</td>
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<tr>
<td>39:3-40</td>
<td>0340</td>
<td>9</td>
<td></td>
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<tr>
<td>39:6B-2</td>
<td>06B2</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>39:6A-15*</td>
<td>6A15</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>39:3-37</td>
<td>EFTL; NFTL</td>
<td>4</td>
<td></td>
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<tr>
<td>39:3-38</td>
<td>0338</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>39:3-38.1</td>
<td>3381</td>
<td>5</td>
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<tr>
<td>39:3-37</td>
<td>FVIA</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>

*Points for failure to hold a driver’s license in the previous three years are not cumulative to points for driver’s license suspension.*

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**Schedule 2**

<table>
<thead>
<tr>
<th>N.J.S.A. Section Number</th>
<th>EVENT</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>27:23-29</td>
<td>Moving against traffic—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway</td>
<td>2</td>
</tr>
<tr>
<td>27:23-29</td>
<td>Improper passing—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway</td>
<td>4</td>
</tr>
<tr>
<td>27:23-29</td>
<td>Unlawful use of median strip—New Jersey Turnpike, Garden State Parkway, and Atlantic City Expressway</td>
<td>2</td>
</tr>
<tr>
<td>39:3-20</td>
<td>Operating constructor vehicle in excess of 30 mph</td>
<td>3</td>
</tr>
<tr>
<td>39:3-76.7 &amp; 39:4-14.3q</td>
<td>Operating motorcycle or motorized bicycle without protective helmet</td>
<td>2</td>
</tr>
<tr>
<td>39:4-14.3d</td>
<td>Operating motorized bicycle on a restricted highway</td>
<td>2</td>
</tr>
<tr>
<td>39:4-35</td>
<td>Failure to yield to pedestrian in crosswalk</td>
<td>2</td>
</tr>
<tr>
<td>39:4-36</td>
<td>Failure to yield to pedestrian in crosswalk; passing a vehicle yielding to pedestrian in crosswalk</td>
<td>2</td>
</tr>
<tr>
<td>39:4-41</td>
<td>Driving through a safety zone</td>
<td>2</td>
</tr>
<tr>
<td>39:4-51 &amp; 39:4-91</td>
<td>Operating motorcycle or motorized bicycle without protective helmet</td>
<td>3</td>
</tr>
<tr>
<td>39:4-92</td>
<td>Failure to yield to emergency vehicles</td>
<td>3</td>
</tr>
<tr>
<td>39:4-93</td>
<td>Reckless driving</td>
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<tr>
<td>39:4-94</td>
<td>Careless driving</td>
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<tr>
<td>39:4-95</td>
<td>Destruction of agricultural or recreational property</td>
<td>3</td>
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<tr>
<td>39:4-96</td>
<td>Slow speed blocking traffic</td>
<td>3</td>
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<tr>
<td>39:4-97</td>
<td>Exceeding maximum speed 1-14 mph over limit</td>
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<tr>
<td>39:4-98</td>
<td>Exceeding maximum speed 15-29 mph over limit</td>
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<tr>
<td>39:4-99</td>
<td>Exceeding maximum speed 30 mph or more over limit</td>
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</tr>
<tr>
<td>39:4-105</td>
<td>Failure to stop for traffic light</td>
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</tr>
<tr>
<td>39:4-115</td>
<td>Improper turn at traffic light</td>
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</tr>
<tr>
<td>39:4-119</td>
<td>Failure to stop at flashing red signal</td>
<td>3</td>
</tr>
<tr>
<td>39:4-122</td>
<td>Failure to stop for police whistle</td>
<td>3</td>
</tr>
<tr>
<td>39:4-123</td>
<td>Improper right or left turn</td>
<td>3</td>
</tr>
<tr>
<td>39:4-124</td>
<td>Improper turn from approved turning course</td>
<td>3</td>
</tr>
<tr>
<td>39:4-125</td>
<td>Improper turn “U” turn</td>
<td>3</td>
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<tr>
<td>39:4-126</td>
<td>Failure to give proper signal</td>
<td>3</td>
</tr>
<tr>
<td>39:4-127</td>
<td>Improper backing or turning in street</td>
<td>3</td>
</tr>
<tr>
<td>39:4-127.1</td>
<td>Improper crossing of railroad grade crossing</td>
<td>3</td>
</tr>
<tr>
<td>39:4-127.2</td>
<td>Improper crossing of bridge</td>
<td>3</td>
</tr>
<tr>
<td>39:4-128</td>
<td>Improper crossing of railroad grade crossing by certain vehicles</td>
<td>3</td>
</tr>
<tr>
<td>39:4-128.1</td>
<td>Improper passing of school bus</td>
<td>3</td>
</tr>
</tbody>
</table>
ACTIONS INSURANCE

9-4-129 Improper passing of a frozen desert truck 4
9-4-129 Leaving the scene of an accident 2
9-4-129 No personal injury 2
9-4-144 Personal injury 8
9-4-144 Failure to observe "stop" or "yield" signs 2
9-5D-4 Moving violation out-of-state 2

(a) JUDICIAL PROPERTY/ LIABILITY

Private Passenger Automobile Insurance

Underwriting Rules

Adopted Concurrent New Rules: N.J.A.C. 11:3-35

*Proposed: December 17, 1990 at 22 N.J.R. 3856(a).
Adopted: January 25, 1991 by Jasper J. Jackson, Acting
Commissioner, Department of Insurance.

Filed: January 25, 1991 d.94 with substantive and
technical changes not requiring additional public notice and
comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1; 17:1C-6e; 17:22-6.14(a); 17:29A-46,

Effective Date: January 25, 1991, Readoption of Emergency New
Rules February 19, 1991, Changes upon Adoption.

Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently
reproposed on November 26, 1990 pursuant to N.J.S.A. 32:41B-4(c) (see
22 N.J.R. 3856(a)). The present adoption of these concurrent reproposed
rules is effective upon acceptance for filing at the Office of Administrative
Law (see N.J.A.C. 1:30-4.4(d)), except for the changes upon adoption,
which are effective upon publication of this notice, February 19, 1991.

Summary of Public Comments and Agency Responses:

Six timely comments were received from insurers and an
insurance trade association.

Initially, the Department of Insurance (Department) notes that these
rules are closely related to other rules contemporaneously adopted
concerning the definition of "eligible person," N.J.A.C. 11:3-34; automobile
insurance nonrenewals, N.J.A.C. 11:3-8; and standard/nonstandard rat­
ing plans, N.J.A.C. 11:3-19 (see notices of adoption elsewhere in this issue
of the New Jersey Register.) Recognizing this, some commenters ad­
dressed comments generally to all of these rules and some duplicated their
comments, while other commenters did not identify the specific rule being
commented upon. Often, commenters addressed a particular rule but their
comment was similar to another comment on a different rule. In prepar­
ing adoption notices for all of these rules, the Department has in some
instances combined similar comments and responses, and those that relate
to more than one of these rules may appear only once. The Department
believes that not only does this avoid duplication, but it also promotes
clarity and consistency. In other instances the Department found that a
more cogent response could be provided to general comments by address­
ing each aspect in connection with the particular rule to which it related.

The reader is therefore urged to read also the adoption notices for the
other related rules indicated above.

COMMENT: Many commenters restated comments previously made
to this rule when proposed on August 6, 1990 (see 22 N.J.R. 2233(a)),
or stated simply that comments to that proposal were "incorporated by
reference."

RESPONSE: These commenters are referred to the Department's
responses set forth when these rules were reproposed (see 22 N.J.R.
3856-59). The Department notes, however, that many of the following
comments and responses contain elements of previous comments regard­ing
particular aspects of these rules. Some of the following responses may
serve to promote a better understanding of the Department's previous
responses, when applicable.

COMMENT: One commenter objected to N.J.A.C. 11:3-35.3(a), which
requires all insurers to file their underwriting rules for approval. The
commenter expressed its interpretation of N.J.S.A. 17:29A-46, which it
stated requires only those insurers that file standard/nonstandard rating
plans to file underwriting rules for approval.

RESPONSE: The commenter is referred to the Department's previous
response to a similar comment, set forth at 22 N.J.R. 3856. Additionally,
the Department notes that N.J.A.C. 11:3-19, adopted elsewhere in this
issue of the New Jersey Register, requires all personal automobile insurers
to file standard/nonstandard rating plans. COMMENT: One commenter stated that the term "personal private
passenger automobile insurance" should be defined, and suggested a
specific definition.

RESPONSE: The Department does not believe a definition is necessary
for clarity, noting that the word "personal" in the phrase was inserted in
response to a prior comment to distinguish the applicability of these
rules from "commercial" insurance. "Personal" and "commercial" lines of
insurance are sufficiently distinct in that each is subject to a completely
separate rat­ing system. Moreover, the Department disagrees with the
definition supplied by the commenter which excludes "fleets" and personal
lines, noting that some insurers issue personal lines "fleet poli­
cies" to individuals who, for example, collect automobiles as a hobby.

COMMENT: One commenter suggested that the word "demonstrable"
be deleted from N.J.A.C. 11:3-35.3(c)(2), which requires that underwriting
rules be based upon "reasonable and demonstrable" relationships. The
commenter stated that the word was unnecessary and may imply that
underwriting rules must be actuarially justified.

RESPONSE: The commenter is referred to the Department's response
to a similar comment made previously (see 22 N.J.R. 3857). The Depart­
ment further notes that, in appropriate instances, the Department may
require some actuarial justification of proposed underwriting rules as a
part of the approval process.

COMMENT: Two commenters objected to N.J.A.C. 11:3-35.3(c)(5),
which prohibits underwriting rules based on whether an insured was
previously insured by a residual market mechanism, or terminated by
another insurer. One commenter stated that this provision would "im­
permissibly restrict" the application of N.J.S.A. 17:33B-12, which permits
insurers to charge Market Transition Facility (MTF) rates to insureds
deposited from the MTF. Another commenter opined that previous insurance
through a residual market mechanism was a valid measure of risk.

RESPONSE: The Department does not believe any change is war­
ganted. First, the Department notes that this rule does not prohibit an
insurer from charging MTF rates as permitted by N.J.S.A. 17:33B-12.
This subchapter addresses underwriting rules used to accept or reject new
or renewal business and to assign a risk to the standard or non-standard
rate level of an insurer's approved rating plan. Secondly, the Depart­
ment notes that these rules prohibit an insurer from considering previous
coverage in a residual market mechanism but do not prohibit considering
the driving behavior from which that coverage resulted.

COMMENT: Several commenters strongly objected to the provisions of
N.J.A.C. 11:3-35(c)(10), which prohibits underwriting rules based upon
the driving record of a member of a household which does not account
for 10 percent or more of the use of any vehicle in the household. These
commenters uniformly recommend "household" underwriting, by which
the driving behavior of one "not-eligible" household member would be
attributable to all. The commenters stated that this method of treating
households would prevent fraud and avoid improper subsidies of the
"bad" drivers by the "good" drivers.

RESPONSE: The Department disagrees with these commenters, noting
that the "household" underwriting suggested by them is likely to result
in the residual market (assigned risk plan) becoming quickly filled with
drivers whose only reason for being so placed is the driving behavior of one
"not-eligible" household members. The Department notes that when the assigned
risk plan exceeds 10 percent of the entire market, the Commissioner is
directed by N.J.S.A. 17:29D-1d to close it to further applications and
renewals. In that event the voluntary market must provide insurance for
"not-eligible" drivers. The Department believes that it is preferable to
limit the assigned risk plan to the "not-eligible" drivers in the first instance.

Nevertheless, the Department has decided to delete this provision from
N.J.A.C. 11:3-35.3(c), in favor of including it in N.J.A.C. 11:3-8.4 regard­ing
nonrenewals of eligible persons and in N.J.A.C. 11:3-35 concerning
underwriting rules applicable to eligible persons on or after April 1, 1992.
In doing so, the Department notes that the change to N.J.A.C. 11:3-35
is not substantial, in that N.J.A.C. 11:3-35(a) and (b) require insurers to
include the "eligible person" definition of N.J.A.C. 11:3-34 in their
underwriting rules, as provided by N.J.S.A. 17:33B-15.

The Department further has provided additional language at N.J.A.C.
11:3-35(d) regarding the use of eligibility points for rating automobiles
in the non-standard market to clarify what underwriting rules may be
approved by the Department. This provision has been substituted upon

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 577)
adoption for the move restrictive provision of N.J.A.C. 11:3-35.3(c)(10). It permits eligibility points of other household members to be used in connection with rating policies at the non-standard rate level without regard to the claimed amount of use. As applied it will address the potential problems of fraud and subsidies cited by the commenters. Since this new provision responds to the concerns expressed by these commenters in a manner that results in a reduction, to a limited degree, in the burden of compliance with these rules, it may be accomplished as an amendment upon adoption without additional notice and public comment (see N.J.A.C. 1:30-4.3).

COMMENT: Four commenters objected to the provisions of N.J.A.C. 11:3-35.6 which requires insurers to file their underwriting rules for approval one month later than March 1, 1991. Three reiterated a request for a “deemer” provision, by which underwriting rules filed would be deemed approved if not disapproved within a certain time. Two suggested that this rule be expanded to set forth procedures for approval and disapproval, for a hearing to resolve disputes and for the method of appeal. One commenter suggested that the Department amend the rule to provide the underwriting rule filings be spread over a period of six months beginning March 1, 1991, but did not suggest a method for determining which insurers must file sooner rather than later. One inquired whether March 1 was the “filing” date or the “implementation” date.

RESPONSE: The Department is not willing to include a “deemer” or other procedural provisions at this time for reasons previously stated (see 22 N.J.R. 3859) and stated elsewhere in connection with the concurrent adoption of N.J.A.C. 11:3-19 (see adoption notice set forth elsewhere in this issue of the New Jersey Register.)

N.J.A.C. 11:3-35.6(a) provides penalties for failure to file by March 1, 1991. Implementation will occur upon approval and at a date developed in that process.

COMMENT: Two commenters restated objections to N.J.A.C. 11:3-35.6(c), which prohibits underwriting rules based on a change in the insured’s employment. One commented restated objections to N.J.A.C. 11:3-35.6(c), which prohibits underwriting rules based on the purchase of other products from the insurer.

RESPONSE: These commenters provided no additional reasons why the Department should change its previous responses which are set forth at 22 N.J.R. 3859.

COMMENT: One commenter stated that N.J.A.C. 11:3-35.6(c) was inconsistent and conflicts with N.J.S.A. 17:33B-13, which defines “eligible person” in a manner to permit membership in a club or organization.

RESPONSE: The Department does not believe the provisions are irreconcilable. Any theoretical conflict may be addressed appropriately in the process of approving a particular insurer’s underwriting rules.

COMMENT: Two commenters stated that N.J.A.C. 11:3-35.4(a) and (b) were an impermissible attempt to implement prematurely N.J.S.A. 17:33B-15, which requires insurers to provide coverage in the voluntary market for all “eligible persons” on and after April 1, 1992.

RESPONSE: These commenters are reminded that N.J.A.C. 11:3-35.4(a) and (b) refer to renewals of those currently insured while 11:3-35.4(b) refers to new business. The Department believes this rule properly sets forth the statutory requirements regarding the provision of coverage to eligible persons (see 22 N.J.R. 3856).

COMMENT: One commenter stated that certain provisions of the standard for approval of underwriting rules (for example, N.J.A.C. 11:3-35.3(c)(5) concerning physical disabilities) were inconsistent with the requirement that insurers provide coverage to “eligible persons.”

RESPONSE: The Department does not believe these provisions are irreconcilable. Development of proper language is initially left to insurers, to be refined if necessary during the approval process.

COMMENT: Two commenters reiterated previous comments that the make and model of a vehicle should be permitted as an underwriting rule. The Department has stated elsewhere in connection with the concurrent adoption of N.J.A.C. 11:3-19 the insurer’s standard and non-standard rate level.

RESPONSE: As noted at 22 N.J.R. 3859, the Department recognizes that while rates for different vehicles may vary in accordance with approved classification plans, the market segment or rate level to which the risk is assigned (standard or non-standard) shall be based upon the characteristics of the driver.

(CITE 23 N.J.R. 578)
2. An underwriting rule shall be based on a reasonable and demonstrable relationship between the risk characteristics of the driver(s) insured and the hazards insured against.
3. An underwriting rule shall be based on specific and verifiable measurements. No underwriting rule shall be based on subjective judgments such as "pride of ownership evident," "poor attitude," "unsatisfactory environment to conduct business," etc.
4. No underwriting rule shall be based on race, color, creed, national origin or ancestry.
5. No underwriting rule shall be based on whether the applicant insured was previously insured as a non-standard or sub-standard risk, was previously insured by a residual market mechanism, or whether another insurer declined to insure or terminated insurance.
6. No underwriting rule shall be based on whether the insured or a member of the insured's household purchases or continues to account for 10 percent or more of the use of the automobile for 10 percent or more of the use of any other automobile in the household.
7. No underwriting rule shall be based on the lawful occupation or profession of an insured, except that this provision shall not apply to any insurer which limits all its insureds to one lawful occupation or profession, or to several related lawful occupations or professions.
8. No underwriting rule shall be based on whether the insured has changed employment in the recent past, except that this provision shall not prohibit a rate discount to an insurer's employees or agents.
9. No underwriting rule shall be based on whether the insured is impaired by physical or mental disabilities except those disabilities that impair the ability to operate an automobile safely.
10. No underwriting rule shall be based on whether a member of the insured's household is not an "eligible person" as defined in N.J.A.C. 11:3-34 or has accumulated one or more automobile insurance eligibility points, unless the member of the household usually accounts for 10 percent or more of the use of the automobile insured or to be insured. For the purpose of this section:
   i. Any driver who is the principal driver of an automobile shall be presumed not to account for 10 percent or more of the use of any other automobile in the household.
   ii. Except when there are more automobiles than drivers in the household, a person shall be presumed not to be the principal driver of more than one automobile.*

Underwriting rules for eligible persons
(a) All insurers shall file for approval underwriting rules that provide that the insurer will make an offer to renew any of its insureds who is defined as an "eligible person" in N.J.A.C. 11:3-34.
(b) All insurers shall file for approval underwriting rules that provide that on or after April 1, 1992, the insurer shall not refuse to renew or limit coverage available to any of its insureds or to any applicant for insurance, which is defined as an "eligible person" in N.J.A.C. 11:3-34.
(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure at its standard rate level to any person who has accrued one or more automobile insurance eligibility points.*
(d) Underwriting rules for standard/non-standard rating plans shall provide that an automobile insured at the non-standard rate level shall be rated based upon the eligibility points of the principal driver; eligibility points of other household members may additionally be used to rate the automobile only if not used to rate any other automobile in the household.*

11:3-35.4 Underwriting rules for eligible persons
(a) All insurers shall file for approval underwriting rules that provide that the insurer will make an offer to renew any of its insureds who is defined as an "eligible person" in N.J.A.C. 11:3-34.
(b) All insurers shall file for approval underwriting rules that provide that on or after April 1, 1992, the insurer shall not refuse to renew or limit coverage available to any of its insureds or to any applicant for insurance, which is defined as an "eligible person" in N.J.A.C. 11:3-34.
(c) An insurer may file for approval underwriting rules pursuant to which it will determine whether to insure any person not defined as an "eligible person" in N.J.A.C. 11:3-34.

Underwriting rules for eligible persons applicable on and after April 1, 1992 shall not provide that coverage will be declined based on whether a member of the insured household is not an "eligible person" as defined in N.J.A.C. 11:3-34 unless the member of the insured household accounts for 10 percent or more of the use of the automobile insured or to be insured. For the purposes of this section:
1. Any driver who is the principal driver of an automobile shall be presumed not to account for 10 percent or more of the use of any other automobile in the household.
2. Except when there are more automobiles than drivers in the household, a person shall be presumed not to be the principal driver of more than one automobile.*

Underwriting rules for standard/non-standard rating plans
(a) Insurers shall file underwriting rules applicable to each rate level of a standard/non-standard rating plan in accordance with N.J.A.C. 11:3-19.3(c) which filing shall be made in accordance with, and in satisfaction of, the requirements of this subchapter.
COMMENT: One commenter objects to the definition of an "insurer" in N.J.A.C. 11:3-36.2. The commenter suggests defining an insurer to include "all affiliated companies within a group." The commenter recommends that the Department adopt the definition of "affiliated companies" from N.J.A.C. 11:3-19, Standard/Non-standard Rating Plans.

RESPONSE: The Department agrees and has amended this section accordingly.

COMMENT: One commenter states that the definition of a private passenger automobile in N.J.A.C. 11:3-36.2 should be the same as the definition in N.J.S.A. 39:6A-2. The commenter suggests that if the semicolon after "pickup body" in the rule is changed to a comma, the definition would be exactly the same.

RESPONSE: The Department agrees with the commenter and has amended this section accordingly.

COMMENT: Several commenters expressed concern with N.J.A.C. 11:3-36.4(a). One commenter notes that when these rules were reproposed, the Department stated that the reference to "endorsements" in N.J.A.C. 11:3-36.4(a)1 included the adding of coverages as well as automobiles to a policy. The commenter believes that the rules should be amended to clarify that an inspection is required when physical damage coverages are added to a policy. Two commenters suggested revising N.J.A.C. 11:3-36.4(a)1 to read:

When a new policy or endorsement adding physical damage coverage to a private passenger automobile is effected . . .

A fourth commenter states that this provision should address endorsements when an insured elects to add physical damage coverage to an insurable vehicle that already exists on a policy.

RESPONSE: The Department agrees and has added the clarifying language suggested.

COMMENT: One commenter states that when a vehicle is inspected as a result of an accident in accordance with N.J.A.C. 11:3-36.3(b)1, there should be a time restriction in which the insured is required to have the repairs completed or have physical damage coverage suspended.

RESPONSE: The Department disagrees; such a provision would be outside the scope of these rules.

COMMENT: One commenter questions how renewals for the Market Transition Facility will be conducted in accordance with N.J.A.C. 11:3-36.3(b)2, which permits an insurer to inspect an automobile as a condition of renewal. The commenter inquires whether the intent of the regulation is to inspect MTF vehicles when the renewal offer is accepted and a declaration page is issued or is the inspection to be completed before or during the offer period.

RESPONSE: This will be addressed in the Servicing Carriers rules of practice in the Plan of Operation for the MTF; it is outside the scope of these rules.

COMMENT: One commenter states that it does not interpret "operative date" as the renewal date for the policies noted in N.J.A.C. 11:3-36.3(e).

RESPONSE: The Department has deleted this provision, which makes the question moot.

COMMENT: Several commenters expressed their objections to N.J.A.C. 11:3-36.3(c), which requires an insurer to randomly inspect at least one seventh of the insurer's total number of automobiles insured for physical damage coverage on renewal. One commenter believes that mandatory inspections of vehicles other than new business, additional or replacement vehicles, exceeds the scope of the FAIR Act.

A second commenter suggests that the Department should require that 20 percent of insured automobiles be inspected annually. A third commenter believes that the random, one-in-seven requirement is insufficient. The commenter believes a 25 percent mandated inspection of the current book of business will enable the industry to exercise tighter control on fraud in a shorter time frame.

RESPONSE: The Department has reviewed this requirement and has determined that this provision should be deleted. It has amended this section accordingly. The Department does not believe that it is necessary to inspect one out of seven automobiles on renewal, at this time.

COMMENT: One commenter objects to N.J.A.C. 11:3-36.4, which does not permit the waiver of an inspection when no inspection site is located within 10 miles of the insured. The commenter notes that the rule permits only a deferral of inspection, not a waiver. The commenter believes that this rule has the potential of significantly increasing underwriting expenses by increasing the number of inspection sites and costly "house calls" to reach insureds who are not located close to an inspection site. The commenter suggests that the Department permit waivers under these circumstances.

RESPONSE: The Department does not believe that insurers should be permitted to waive inspections by failing to establish an adequate number of inspection facilities.

COMMENT: Two commenters object to N.J.A.C. 11:3-36.4(a) which addresses hardship exemptions. One commenter states that repropose N.J.A.C. 11:3-36.4(a) does not give an exemption for cases involving individual hardship as determined by the insurer. The commenter states its policyholders may be out of the country or out-of-State for month and have either taken their vehicle with them, have stored the vehicle but are maintaining comprehensive coverage on the vehicle, or have purchased a vehicle out-of-State. These may include military persons or reservists (including those serving in Saudi Arabia), or others who travel during certain seasons of the year. Compliance by these people with inspection requirements at renewal or even on new business may be physically impossible. Additionally, the commenter does not believe the Department will be able to conduct inspections outside of New Jersey. The comments suggest that N.J.A.C. 11:3-36.4(a) should be amended to add a new subsection (q) to state:

Where there is an individual hardship in complying with the vehicle inspection requirements as determined by the insurer and documented in the policy records.

RESPONSE: The Department believes this problem is significant mitigated by the deletion of the mandated inspection upon renewal.

COMMENT: One commenter notes that the MTF will conduct automobile inspections pursuant to these rules. The commenter suggests that a waiver be granted pursuant to N.J.A.C. 11:3-36.4(a). The commenter contends that when an insurer writes a former MTF insured vehicle under a commercially rated policy, the MTF insurer will become the primary insurer of record by the voluntary market insurer. A producer placing a risk in the MTF will know if an inspection has been conducted for the MTF. The commenter suggests that the MTF could upon inquiry provide the voluntary insurer with a copy of the vehicle inspection form and photographs. The commenter suggests amending N.J.A.C. 11:3-36.4(a) to add a new subsection which reads:

When the automobile was previously insured and inspected by the MTF and the MTF is not otherwise using its copy of the vehicle inspection forms to adjust an outstanding claim.

RESPONSE: The Department does not believe this amendment is necessary nor does the Department want the MTF to absorb the cost of providing inspection reports to voluntary insurers. The risk is to be inspected or waived in accordance with these rules.

COMMENT: One commenter recommends that the Department amend N.J.A.C. 11:3-36.4(a)1, which permits a waiver of a mandatory inspection for new autos if the specified documentation is supplied. The commenter notes that since N.J.A.C. 11:3-36.7 requires the suspension of an insured's physical damage coverage on a new auto due to the insured's failure to provide the documents within seven calendar days N.J.A.C. 11:3-36.4(a)1 should require the documents at the time of application or "within seven days thereafter."

RESPONSE: The Department agrees with the commenter and has amended this section accordingly.

COMMENT: One commenter questions whether all three documents mentioned in N.J.A.C. 11:3-36.4 must be provided in order to waive an inspection on a new automobile.

RESPONSE: N.J.A.C. 11:3-36.4(a)1 only requires one of the three documents.

COMMENT: Three commenters objected to N.J.A.C. 11:3-36.4(a)4 which permits an insurer to waive an inspection "when the insured automobile is insured under a commercially rated policy which insures 10 or more automobiles." One commenter questions what automobiles are included in the count of "10 or more automobiles." The commenter asks whether a corporately owned station wagon insured on the same policy with 10 dump trucks and three flat bed trucks must be inspected. Additionally, the commenter requests the Department's position on the applicability of the inspection rule to private passenger and station wagon types regardless of the form or ownership (for example, corporate, partnership, etc.) or use and to the rest of the vehicles types listed in the definition of a private passenger automobile (N.J.A.C. 11:3-36.2) regardless of ownership.

A second commenter suggests that the rule should specify that an inspection can be waived for a commercial policy covering five or more vehicles.

A third commenter requests that the Department amend the rules to apply to those private passenger type vehicles insured on a commercial

(CITE 23 N.J.R. 580)
automobile policy covering an individual named insured with at least one private passenger type vehicle but not more than four.

RESPONSE: N.J.S.A. 17:33B-13 requires that automobiles be inspected, and references the definition of "automobile" set forth at N.J.A.C. 11:3-36.2. N.J.A.C. 11:3-36.4(a) permits an insurer to waive an inspection of a private passenger automobile when the insured automobile is insured under a commercially rated policy which insures 10 or more automobiles. The first commenter's case, dump trucks and flat bed trucks do not constitute an automobile as that term is defined at N.J.S.A. 39:6A-2. This definition also addresses the form and type of ownership. The Department believes that a commercial rated policy which insures 10 or more automobiles is consistent with industry standards.

COMMENT: Two commenters assert that mandated inspections of camper type vehicles should be deleted from these rules. One commenter states that the frequency of loss for home motor homes is much lower than private passenger automobiles. The commenter further states that where average home motor home is driven only 7,500 annual miles; it is never used to drive back and forth to work; is only driven 45 to 55 days a year; and is used for recreational purposes only. The commenter notes that New York's insurance inspection regulation does not apply to motor homes.

RESPONSE: The Department disagrees. N.J.S.A. 39:6A-2 sets forth the definition for a private passenger automobile which includes these vehicles.

COMMENT: One commenter recommends that the Department amend N.J.A.C. 11:3-36.4(a) to include a new paragraph which reads: Where the vehicle has previously been insured pursuant to this subchapter by the insurer or an affiliate of the insurer.

RESPONSE: The Department believes this issue is addressed in N.J.A.C. 11:3-36.4(a)(3).

COMMENT: One commenter asks whether an inspection may be waived pursuant to N.J.A.C. 11:3-36.4(a)(4) if a vehicle is garaged out-of-State and the carrier has an inspection site within 10 miles of the city or town where the vehicle is garaged.

RESPONSE: No; N.J.A.C. 11:3-36.4(a)(6) permits an insurer to waive mandatory inspection when the automobile is garaged out-of-State and he insurer has no inspection facility or authorized representative within 10 miles of the city or town in which the automobile is garaged.

COMMENT: Two commenters argued that N.J.A.C. 11:3-36.4 should be amended to permit an inspection waiver for insureds who have had continuous physical damage coverage for at least three years. One commenter asserts that these insureds are less likely to commit fraud.

RESPONSE: The Department has determined not to permit a waiver under these circumstances. The Department does not believe it is necessary at this time to grant such waivers. The Department believes there is a likelihood that fraud may be committed.

COMMENT: One commenter asks whether an MTF servicing carrier is required to provide the documents required by N.J.A.C. 11:3-36.5(a)(1) if an insured is a producer of photographs. The commenter asks whether coverage should be added or should coverage be suspended until an acceptable photo is received.

RESPONSE: The Department believes that the 10 mile limit is a reasonable standard to be used throughout the State. The mileage is calculated from the edge of the municipality or town in which the insured lives.

COMMENT: One commenter requests the Department to clarify what a company should do if they receive a photo of an EPA sticker (taken pursuant to N.J.A.C. 11:3-36.6(a)) where the VIN number is not discernible. The commenter asks whether coverage should be added or should coverage be suspended until an acceptable photo is received.

RESPONSE: An insured complies with the inspection requirements coverage should not be suspended. The insurer should promptly investigate the incident or file a report with the New Jersey Insurance Fraud Division.

COMMENT: Several commenters expressed objections to N.J.A.C. 11:3-36.6(c)(4) which requires a photograph of the odometer. One commenter states that the position of the steering wheel, the angles of dash coverings, etc. reduce legibility of the photograph. The commenter states that this requirement will increase the overall inspection cost by approximately 50 percent while providing very little fraud deterrence value.

Another commenter suggests that the Department amend the inspection rules to provide a new section that states:

The AIP in its plan of operation may adopt different procedures than in this regulation to govern vehicle inspections of AIP risks.

RESPONSE: The commenter's suggestion is premature. The Department does not believe the suggested revision is necessary at this time. The Department may modify this provision upon the establishment of the AIP.

COMMENT: One commenter requests that the Department clarify how to determine whether an insured is within 10 miles of an inspection facility (in accordance with N.J.A.C. 11:3-36.6(a)). The commenter believes that if an insured works in an area which is within a 10 mile radius of the facility, then they should be required to have their vehicle inspected even if their home is more than 10 miles from an inspection station. This would permit companies a greater opportunity to inspect more vehicles.

RESPONSE: The 10 mile requirement of N.J.A.C. 11:3-36.6 is calculated from the edge of the municipality in which the insured lives. The Department has determined that an insured's place of work should not be considered in determining the location of an inspection facility or compliance with N.J.A.C. 11:3-36.6. Its intent is to require that sufficient facilities are available throughout the State.

COMMENT: One commenter raises the issue that reposed N.J.A.C. 11:3-36.6(a) requires that an inspection is conducted in "a reasonably convenient place" that "shall not be more than 10 miles from the city or town where the automobile is principally garaged." The commenter contends that the problem is that in rural areas and for certain suburban areas of New Jersey, it may have no company agent or drive-in claims service center within 10 miles. The commenter suggests the following amendment to N.J.A.C. 11:3-36.6(a):

In the alternative, a reasonably convenient place shall be all of the insurer's drive-in claim service centers and the applicant's or policyholder's voluntary market producer.

The commenter alternatively suggests a 10 mile limit for urban areas in the State and 25 mile limits for rural areas in the State.

RESPONSE: The Department believes that the 10 mile limit is a reasonable standard to be used throughout the State. The mileage is calculated from the edge of the municipality or town in which the insured lives.

COMMENT: One commenter asks whether an inspection may be required for inspections conducted on and after April 1, 1994 for the photographs. A fourth commenter argues that there is no reason to single out physical damage inspection reports as requiring duplication when this is not required for any other type of records in the insurer's file on the insured.

RESPONSE: The Department has revised this provision to require a backup system or other duplicate or secondary source for the report, and for inspections conducted on and after April 1, 1994 for the photographs. This requirement is to ensure against the loss of information.

COMMENT: Three commenters strongly objected to N.J.A.C. 11:3-36.9 which require image processing of reports and photographs and on and after April 1, 1994. One commenter states that this requirement is unauthorized, unprecedented and an unwarranted intrusion into insurance company operations. It states that, a practical matter, the Department cannot predict that such technology will be available by April 1, 1994. The commenter further argues that even if this technology is available, the acquisition, installation and maintenance of such a system might not be cost beneficial for small insurers. It further states that this rule would prohibit the use of any better technology which could possibly be developed prior to April 1, 1994. The commenter suggests that this provision be deleted.

A second commenter questions whether computer equipment must be in place at each inspection site. The commenter believes if so, then the number of inspection sites must be diminished, due to cost, training of inspectors, etc.
A third commenter states that the cost to purchase several hundred optical imaging cameras for all its agents and for each of its drive-in insurance centers would be very high.

**RESPONSE:** The Department believes that the requirements set forth in N.J.A.C. 11:3-36.6(d) through 9 are reasonable and important to the implementation of these rules. The Department has witnessed demonstrations of current technology and believes that satisfactory systems are available. This rule does not require optical imaging camera to be used by any company except to require computer equipment at each site.

**COMMENT:** One commenter notes that N.J.A.C. 11:3-36.6(f) requires the report and photographs shall be retained in the insurer's file on the insured for five years. The commenter asks whether an inspection file must be retained if the insurer no longer provides coverage and there have been no claims reported after a period of one year.

**RESPONSE:** Yes, the information shall be retained in the insurer's file on the insured for five years.

**COMMENT:** Two commenters objected to N.J.A.C. 11:3-36.6(f). One commenter states that the Department should clarify the specific physical records that insurers are required to keep on file. The commenter contends that if an insurer's system electronically stores photo images and scanned images of original inspection reports signed by the inspector, then the insurer should not be required to maintain the original paper inspection report on file.

**RESPONSE:** If an insurer is utilizing a system that stores photo images and/or scanned images of original inspection reports, then they are not required to maintain the original paper inspection report on file. They must either provide to the Department of Treasury the original of N.J.A.C. 11:3-36.6(f). This comment is consistent with N.J.A.C. 11:3-36.6(f) and states that allowing an insurer's "authorized representative" to maintain the records in question would reduce administrative expense.

**RESPONSE:** The authorized representative may maintain the records provided they are kept in accordance with the provisions of this subchapter.

**COMMENT:** One commenter states that N.J.A.C. 11:3-36.6(g) requires insurers to maintain a list of all authorized representatives and inspection sites performing inspections for the insurer and send this list semi-annually to the Department. The commenter states that its inspection sites will be its drive-in claim service centers and agent offices. The commenter states that its agents may train some of their office personnel to do inspections. The commenter argues that since their agents are independent contractors, the commenter will not know who the agents will be training to do vehicle inspections. The commenter recommends that the Department amend this provision to permit companies to provide a list of agents and the supervising person in each drive-in claim service center in charge of conducting these vehicle inspection along with the list of inspection sites to the Department.

**RESPONSE:** The Department disagrees that a change is necessary. Insurers are required to maintain an up-to-date list of all authorized representatives and inspection sites performing inspections for the insurer. In the commenter's case its agents would be its authorized representatives.

**COMMENT:** One commenter states that under N.J.A.C. 11:3-36.6(h), which requires the use of the inspection report to settle claims, it should be clarified that the inspection report should only be used when relevant. For example, if the inspection report does not contain any information or evidence of a claim, it should be dismissed. The commenter also states that it writes other coverages which are tied directly to collision and comprehensive coverages. The maintenance of collision and comprehensive coverage is a prerequisite to the additional coverages. The commenter suggests that the rules be amended to specifically allow suspension of coverages tied to physical damage coverage.

**RESPONSE:** The Department does not believe this provision should be amended at this time. The commenter did not provide a list of those coverages it considers "tied" to physical damage coverage.

**COMMENT:** Two commenters state that N.J.A.C. 11:3-36.6(a) mandates that a lienholder's interest be suspended without prior notice. On commenter believes that this requirement is unnecessary. The commenter argues that the fraud these rules are designed to prevent will rarely involve lienholders.

**RESPONSE:** The Department disagrees; lienholders can protect their interest by obtaining collateral protection insurance.

**COMMENT:** One commenter states that N.J.A.C. 11:3-36.6(b) requires the insurer to mail a Notice of Suspension of physical damage coverage to the insured and producer of record. The commenter notes that they have a computer link with their New Jersey agents, therefore, the would send notice to the producer electronically. The commenter suggests amending this provision to permit an insurer to do so.

**RESPONSE:** Insurers may electronically mail a Notice of Suspension to the producer of record. The Department does not believe that an amendment is required.

**COMMENT:** One commenter suggests that N.J.A.C. 11:3-36.7(b)2 amended to read "shall retain the certificate and copy of the Notice in [the insured's policy record] a central location".

**RESPONSE:** The Department has revised this section to provide that insurers retain the certificate and copy of the notice in the insured's file on the insured, which it believes addresses this commenter's concern.

**COMMENT:** One commenter states that N.J.A.C. 11:3-36.4(b) and N.J.A.C. 11:3-36.5(b)1 should be changed for consistency.

**RESPONSE:** The Department disagrees; lienholders can protect their interest by obtaining collateral protection insurance.

**COMMENT:** One commenter states that N.J.A.C. 11:3-36.5(b)2 should be changed for consistency.

**RESPONSE:** The Department agrees and has amended this section accordingly.

**COMMENT:** One commenter believes that N.J.A.C. 11:3-36.7e should provide insureds with more than seven days to submit the required documents for a new automobile. The commenter notes that the origination proposal (see 22 N.J.R. 2111(a)) permitted the insured to return the notification to the producer for delays in mail and delays in processing when the documents arrive at the insurer's office.

**RESPONSE:** The Department believes that seven days is a sufficient amount of time to provide the appropriate documents in order to waive the inspection requirement.

**COMMENT:** One commenter suggests changing the N.J.A.C. 11:3-36.9(a), which requires insurers to maintain records of the costs associated with, and the savings resulting from, physical damage inspections. While record-keeping of costs should be feasible for insurers, it would be extremely difficult to capture data, identify a dollar figure on the amount not spent and quantify savings since this would involve an insurer's estimates of savings. Each insurer will have a different subjective measure of savings and an accurate total figure cannot be obtained. The commenter suggests that this record maintenance requirement be deleted from the proposed rule.

**RESPONSE:** The Department believes that the information required in N.J.A.C. 11:3-36.9(a) is quantifiable by insurers.

**COMMENT:** One commenter states that N.J.A.C. 11:3-36.9(b) is redundant and should be deleted. In order to provide the Department with the information required by N.J.A.C. 11:3-36.9(c), insurers have to maintain this information.

**RESPONSE:** The Department agrees and has deleted N.J.A.C. 11:3-36.9(b).

**COMMENT:** Two commenters objected to the reporting and auditing requirements of N.J.A.C. 11:3-36.9 as burdensome, costly and unjustified.

**RESPONSE:** The Department disagrees. The reporting requirements are necessary in order for the Department to monitor and enforce the requirements of these rules.

**COMMENT:** One commenter recommends that the Department amend the rules by adding a new section N.J.A.C. 11:3-36.11 which would address the timing of physical damage inspection on renewals. The commenter suggests the following language:

(CITE 23 N.J.R. 582) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
INSURANCE

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D A P O T I O N S

Where an insurer issues policies with a six month policy term, the insurer may choose which six month renewal during the year to require a renewal inspection under N.J.A.C. 11:3-36.3(b) or (c).

RESPONSE: This is moot since N.J.A.C. 11:3-36.3(c) has been electe.

COMMENT: One commenter stated that the documents set forth in Appendices A and B require some clarification. The commenter suggests that the Department add new language clarifying that this inspection is insurance related and unrelated to DMV inspections.

RESPONSE: The Department believes that the boldfaced lettering on the form as set forth in the appendix. The commenter suggests that the Department add language clarifying that this inspection is insurance related and unrelated to DMV inspections.

COMMENT: One commenter notes that both Appendix A and B contain a minimum amount of coverage as set forth in the appendix. The commenter believes that these disclosures would satisfy the requirements of N.J.A.C. 11:3-36.3(a) and asks why the requirements need to be repeated.

RESPONSE: The disclosure is repeated in the appendix so that the insured is adequately notified of the consequence of failure to have his or her automobile inspected.

COMMENT: One commenter states that Appendix B essentially contains a coverage exclusion notice if policy and requirements are not met. The commenter suggests that the paragraph dealing with suspension of coverage be worded in a stronger fashion and displayed more prominently on the Inspection Notice.

RESPONSE: Appendix B establishes minimum standards; insurers may add more language but the notice must at least contain the information in Appendix B.

COMMENT: One commenter notes that the Department has stated see 22 N.J.R. 3865 that Appendix C establishes "minimum standards" or the inspection report, and was not a mandatory form. The commenter questions whether the same applies to Appendices A, B and D. It appears that in each section which refers to forms, the rules mandate the use of the forms as set forth in the appendix. The commenter suggests that the rule should be revised to state that the appendices are minimum standards; insurers should be allowed to use modified forms so long as all the information specified in the appendices is included.

RESPONSE: The Department agrees that the appendices are minimum standards and has added a provision so stating N.J.A.C. 11:3-36.6(j).

COMMENT: One commenter contends that certain discrepancies appear in the appendices which need to be corrected. Appendices B and D require a list of the vehicles which carry comprehensive or collision coverage, along with a notation as to the coverages carried. Unfortunately, the forms assume that each of the vehicles carry the same coverages. Since many policyholders carry different physical damage coverages on different vehicles the forms need to be revised to allow the notation of coverages for each vehicle.

RESPONSE: Appendices B and D establish minimum standards; insurers are permitted to use modified forms as long as all the information specified in the appendices is included.

COMMENT: One commenter states that Appendix C (page 1) does not conform with the provisions of N.J.A.C. 11:3-36.6, which requires that the form of photographs that must be attached. The commenter suggests that the diagrams... , which satisfies the requirements of N.J.A.C. 11:3-36.6. The insurer may provide a space for the policy number in Appendix A.

COMMENT: Two commenters state that Appendix C is unnecessarily long in that it requires the vehicle’s VIN number, items that are minor cost items, and items which can simply be listed or described on a blank line if needed. The time required to complete this two page form will be a major cost and inconvenience to the policyholder and the insurer.

RESPONSE: The Department disagrees. The form includes information that will be useful to the insurer in settling claims and preventing or deferring fraud.

COMMENT: One commenter states that they have made arrangements with many of the carriers in the State to handle insurance inspection. The commenter contends that the rules have been changed significantly from the prior proposal (see 22 N.J.R. 2111(a)). The commenter states that they have spent tremendous amount of money on equipment. The changes made by the Department have dramatically altered what would have been if that proposal was adopted. The commenter questions whether the Department is mandating that inspection services invest in advanced technology, such as digital imaging, to comply with certain requirements that have minimal value, or return on investment. The commenter argues that the requirements are forcing carriers to expend time and money to have this program computerized. Also, these requirements eliminate the possibility that producers may perform their own inspections even through the use of rides permits.

RESPONSE: These rules do not prevent producers from performing inspections. The enhancements referred to by the commenter (N.J.A.C. 11:3-36.6(d) through 9) do not have to be in place until April 1, 1994. The Department believes that this provides sufficient time for all insurers to comply with these rules.

COMMENT: One commenter suggests that the Department adopt New York’s regulation 79. The commenter contends that New York’s regulation has been in force for over 13 years and all glitches and implementation problems have been worked out to the extent possible. The commenter further states that most automobile insurers in New Jersey write physical damage coverage in New York and have already implemented these New York regulations. It is easy for an insurer to transfer a program it has in one state to a neighboring state. It is very difficult and costly to create a new program.

RESPONSE: The Department has reviewed New York’s and Massachusetts’ regulations governing automobile physical damage inspection procedures. The Department believes that these rules incorporate the important aspects of both the New York and Massachusetts rules as well as address additional problem areas.

COMMENT: Three commenters suggested that the Department delay the effective date by 60 days following publication of the final rules in order to permit orderly implementation. One commenter states that an earlier requirement will result in many carriers failing to comply through no fault of their own.

The second commenter requests that the effective date be extended 90 days from the date this rule is adopted.

RESPONSE: The Department disagrees. The rule was originally proposed on July 16, 1990 (see N.J.R. 2111(a)). The Department adopted these rules on an emergency basis November 26, 1990 and they were published December 17, 1990. Insurers have had sufficient enough time to begin preparation for the implementation of these rules. The operative date of these rules is March 1, 1991.

COMMENT: One commenter objects to the Department’s rules based on what he interprets as being an unresolved conflict of statutory and regulatory provisions with existing policy language. The commenter notes that new policy forms may be filed by the insurer and ultimately receive Departmental approval, but the rules will become effective while conflicting language in existing contracts of insurance remains operative. The commenter states that in-force policies now state: If the vehicle you acquire replaces one shown in the Declaration, it will have the same coverage as the vehicle it replaced... and if the vehicle you acquire is in addition to any shown in the Declaration, it will have the broadest coverage we now provide for any vehicle shown in the Declaration.

RESPONSE: The Department recognizes that insurers need to file amended policy forms with the Department reflecting the statutory and regulatory changes. It further notes that policy forms referencing N.J.S.A. 17:33B-33 through 40 may have been filed at any time after March 12, 1990.
COMMENT: One commenter, which writes commercial insurance that protects a lender’s interest in the automobile as collateral, inquired whether these rules apply to that line of business. It suggested additional language be added as follows:

The rules do not apply to collateral protection insurance i.e., policies and certificates of insurance purchased by a secured creditor when its debtor(s) fail to maintain contractually required physical damage insurance.

RESPONSE: The Department does not believe that this addition is necessary. N.J.A.C. 11:3-36.1(b) sets forth the scope of these rules, which are limited to the lines of private passenger automobile insurance.

Summary of Agency-Initiated Changes:

A minor editorial correction has been made to N.J.A.C. 11:3-36.6(e).

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

SUBCHAPTER 36. AUTOMOBILE PHYSICAL DAMAGE INSURANCE INSPECTION PROCEDURES

11:3-36.1 Purpose and scope

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

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

11:3-36.2 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

"Private passenger automobile" or "automobile" means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver, and a motor vehicle with a pickup body *\[\*\*\]**, a delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupa-

cation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch or otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

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

"Replacement automobile" is a vehicle acquired to replace or shown in the declarations.

11:3-36.3 Mandatory inspection requirements

(a) No insurer shall provide automobile physical damage insurance coverage prior to conducting an insurance inspection in accordance with this subchapter, under the following circumstances:

1. When a new policy or endorsement adding physical damage coverage insuring a private passenger automobile is effected;
2. When coverage is effected for an additional or replacement private passenger automobile;
(b) An insurer may require, prior to continuing physical damage coverage on an automobile, that the insured present the automobile for inspection, under the following circumstances:

1. When the automobile insured for physical damage coverage has been in an accident or otherwise damaged; or
2. As a condition of renewal.

*\[(c) Notwithstanding the provisions in (b) above, upon renew: an insurer shall randomly inspect on an annual basis at least or out of every seven automobiles of the insurer's total number of automobiles insured for physical damage coverage, in accordance with the standards and procedures for inspections as required by this subchapter.]*

11:3-36.4 Waivers of mandatory inspection

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

1. When a new automobile is purchased from a franchised automobile dealership and the insurer is provided at the time of application or within seven days thereafter *\[or within seven days thereafter\]* with the following:

i. A copy of the bill of sale which contains a full description of the automobile, including all options and accessories; or
ii. A copy of the window sticker or advanced dealer shipping notice (invoice) showing the itemized options and equipment, if total retail price of the automobile, and any dealer installed option purchased by the customer; or
iii. Vehicle buyer's Order (contract) and/or the dealership invoice to the buyer, including all options and accessories;
2. When the automobile is more than seven model years old. For example: in 1991 an insurer shall inspect 1984 and newer model year vehicles and in 1992 an insurer shall inspect 1985 and newer model year vehicles;
3. When a policy is being renewed or issued by a different individual, and the insurer has no inspection facility or authorized representative within 10 miles of the city or town in which the automobile is garaged;
4. When the automobile is a temporary substitute automobile;
5. When the automobile is leased for less than six months.
(c) An insurer may waive a mandatory inspection under any of the following circumstances:

1. When a new automobile is purchased from a franchised automobile dealership and the insurer is provided at the time of application or within seven days thereafter *\[or within seven days thereafter\]* with the following:

i. A copy of the bill of sale which contains a full description of the automobile, including all options and accessories; or
ii. A copy of the window sticker or advanced dealer shipping notice (invoice) showing the itemized options and equipment, if total retail price of the automobile, and any dealer installed option purchased by the customer; or
iii. Vehicle buyer's Order (contract) and/or the dealership invoice to the buyer, including all options and accessories;
2. When the automobile is more than seven model years old. For example: in 1991 an insurer shall inspect 1984 and newer model year vehicles and in 1992 an insurer shall inspect 1985 and newer model year vehicles;
3. When a policy is being renewed or issued by a different individual company within a group of affiliated companies;
4. When the insured automobile is insured under a commercial rated policy which insures 10 or more automobiles;
5. When an insurance producer or insurer is transferring a block of business from one insurer to another insurer(s);
6. When the automobile is garaged out-of-state and the insurer has no inspection facility or authorized representative within 10 miles of the city or town in which the automobile is garaged;
7. When the automobile is a temporary substitute automobile;
8. When the automobile is leased for less than six months.
(b) Insurers shall maintain a record of the waiver in the *\[insured policy record\]* *\[insurer's file on the insured\]*.
(c) Insurers shall decide whether to waive an inspection base solely on underwriting criteria uniformly applied and not based on the age, race, sex or marital status of the insured, the principal place of garaging or the fact that the automobile is insured in the residual market.

(CITE 23 N.J.R. 584) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
1:3-36.5 Deferral of inspection

(a) An insurer, by itself or through its authorized producers, may defer inspections required by N.J.A.C. 11:3-36.3 for not more than even calendar days if an inspection at the time of the request for coverage would create a serious inconvenience or hardship for the insured.

1. When an inspection is deferred pursuant to (a) above, the insurer or producer shall:
   i. At the time insurance application is completed, obtain the Acknowledgement of Requirement for Insurance Inspection form (as set forth in Appendix A and incorporated herein by reference) signed by the insured if the insured has applied for coverage in person; or
   ii. At the time insurance application is completed, confirm physical damage coverage and advise the insured of the inspection requirements and mail the insured the Notice of Insurance Inspection form is set forth in Appendix B and incorporated herein by reference) the insured has applied for coverage by mail or by telephone.

2. In addition to the notice requirements set forth in (a) i and ii above, the insurer or producer shall furnish the insured with information about where an inspection can be conducted and the consequences of the insured's failure to have the automobile inspected.

3. The insurer shall retain documentation of the required notice to the insurer's file on the insured.

(b) An insurer shall decide whether to defer an inspection based solely on underwriting criteria and not based on age, sex, race, or marital status of the insured, the principal place of garaging, or the set that a policy is insured in the residual market.

1:3-36.6 Standards and procedures for inspection

(a) Inspections shall be made by an authorized representative of the insurer at a time and place reasonably convenient to the insured.

1. Reasonably convenient time shall include, in addition to customary business hours, sufficient early morning, evening and weekend hours.

2. Reasonably convenient place shall not be more than 10 miles from the city or town where automobile is principally garaged.

(b) Whenever an insurer requires an automobile to be inspected pursuant to this subsection, the insurer by itself or through its authorized producer shall provide the insured with a Notice of Inspection in the form set forth in Appendix B or an Acknowledgement of Requirement for Insurance Inspection as set forth in Appendix D incorporated herein by reference.

1. Any form so provided shall not contain the vehicle identification number (VIN) of the automobile to be inspected.

(c) The inspection shall include the following:


2. Two color photographs of the automobile, taken as directed on the inspection report (Appendix C), which shall be a part of the policy.

3. A third close-up color photograph showing the VIN located on the Environmental Protection Agency/Federal Certification Label (EPA sticker) affixed to the driver's side door jamb. The photograph must be of sufficient clarity that the information contained on the EPA sticker and VIN is legible. If the EPA sticker is damaged, faded, torn or otherwise not legible, a photograph of the EPA sticker, r of the area of the door jamb where the sticker is normally located, shall be required.

*[4]* A fourth close-up color photograph of the odometer.*

*[5]* The authorized representative may take additional photographs showing any damaged areas, which shall also be a part of the report; and

*[6]* The authorized representative shall provide a copy of the report, without photographs, to the insured at the time of the inspection.

(d) The insurer shall utilize authorized representatives and systems to implement the provisions of this subchapter which meet the following standards:

1. Verifies the accuracy, completeness and identity of the person completing each inspection report;

2. Provides a control system for its inspection reports such as the use of sequentially numbered or coded reports;

3. Completes all required information for each automobile on the Automobile Insurance Inspection Report set forth in Appendix C;

4. Takes photographs as required in (c) through *[4]* above;

5. Provides for the storage and retrieval of reports and photographs in a manner that facilitates their use as set forth in paragraph (b) below;

6. Provides for a backup system or other duplicate or secondary source for the report; and *for inspections conducted on or after April 1, 1994 for the* photographs* to ensure against loss;

7. For inspections conducted on and after April 1, 1994, provides the ability to view inspection reports and photographs on a computer system monitor;

8. For inspections conducted on and after April 1, 1994, provides the ability to print inspection reports and photographs from a computer system with a code that identifies the document by policy number, inspection report number or other common identifying code; and

9. For inspections conducted on and after April 1, 1994, provides the ability for all of the insurer's New Jersey claims offices to view or access the inspection report and photographs.

(e) There shall be no direct charge to the insured by the authorized representative or insurer in connection with an inspection.

(f) After the inspection is completed, the report and photographs shall be retained in the insurer's file on the insured for five years.

(g) The insurer shall maintain an up-to-date list of all authorized representatives and inspection sites performing inspections for the insurer. The list shall include the names, addresses and business telephone numbers of all authorized representatives. The insurer shall send a copy of the list to the Department and update it semi-annually at the following address:

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

(h) The inspection report and photographs shall be used by the insurer to document previous damage, prior condition, options and mileage of the automobile on physical damage claims whenever:

1. The appraisal indicates prior damage and the new damage (claim) exceeds $1,000;

2. The automobile is a total loss or unrecovered theft; or

3. The new damage (claim) exceeds $3,000.

(i) A copy of the inspection report and photographs shall be utilized, and made a part of the insurer's claim file, in the settlement of all total loss claims. The inspection report shall be made a part of the claim file regardless of whether or not the payment is reduced based on the information contained therein.

*If the documents set forth as Appendices A through D provide minimum standards. Insurers may enhance or alter the form of these documents provided the minimum information requirements are met.*

1:3-36.7 Suspension of physical damage coverages

(a) If the inspection is not conducted prior to the expiration of the deferral period or the expiration of the policy in the case of renewals, the insurer shall suspend automobile physical damage coverage on the automobile at 12:01 A.M. of the day following the last day for inspection. Suspension of coverage shall apply to all insureds, owners and lienholders.

(b) Whenever physical damage coverage is suspended, the insurer shall:

1. No later than the 30th calendar day after the effective date of the suspension, mail to the insured, the producer of record and any lienholders a Notice of Suspension of physical damage coverage (as set forth in Appendix D incorporated herein by reference);

2. Obtain a certificate of mailing or other evidence of mailing of the Notice of Suspension to the insured and shall retain the certificate and copies of the Notice in the *insurer's policy record;* *insurer's file on the insured*; and

3. Make a pro-rata premium adjustment (premium refund or credit) whenever there is a suspension of physical damage coverage for more than 10 days. A refund of premium, if applicable, shall be sent to the insured within 45 days of the effective date of suspension.

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 585)
(c) A reinstatement of physical damage coverage shall only be effective upon inspection and payment by the insured to the insurer of the adjusted premium for the physical damage coverage in full or in accordance with the insurer’s normal payment plan. Any such reinstatement shall be effective at the time of inspection.

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

(e) Physical damage coverage on a new automobile shall be suspended due to the insured’s failure to provide the documents required by N.J.A.C. 11:3-36.4(a)1 within seven calendar days. A reinstatement of physical damage coverage shall be effective upon inspection.

11:3-36.8 Enforcement

(a) A violation of any provision of this subchapter by an insurer shall be punishable by a $500.00 fine pursuant to N.J.S.A. 17:33B-39.

1. Insurers shall be responsible for the conduct of their authorize representatives with respect to all duties imposed by this subchapter:
2. Each issuance, procurement, or negotiation of a policy of insurance, or maintenance of a record in violation of this subchapter shall be deemed a separate offense.

11:3-36.9 Results and audits

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

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

(b) Insurers shall report the following information to the New Jersey Department of Insurance Fraud Division on a quarterly basis:
1. The number of automobiles inspected; and
2. The number of automobiles which were not inspected by reason of the insured’s failure to present the automobile for inspection.

11:3-36.10 Severability

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

ACkNOWLEDGMENT OF REQUIREMENT FOR INSURANCE INSPECTION

(This is not a safety inspection)

NAME OF INSURED OR APPLICANT: ____________________________
ADDRESS: ________________________________________________

EFFECTIVE DATE OF COVERAGE: ____________________________
INSPECTION SHALL BE COMPLETED BY: _________________________
(Date: not more than 7 days after the effective date of coverage)

AUTOMOBILE(S) TO BE INSPECTED

1. ______, ________, ________.
2. ______, ________, ________.
3. ______, ________, ________.

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

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

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

SIGNATURE OF INSURED OR APPLICANT: ____________________________ (Date)

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

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

________________________________________________________
________________________________________________________
________________________________________________________

INSURED/APPLICANT MUST RECEIVE A COMPLETED COPY OF THIS FORM ALONG WITH A LIST OF AUTHORIZED AUTOMOBILE PHYSICAL DAMAGE INSPECTION SITES.

cc: INSURANCE COMPANY
PRODUCER OF RECORD
NOTICE OF INSURANCE INSPECTION
(THIS IS NOT A SAFETY INSPECTION)

IMMEDIATE ACTION REQUIRED TO AVOID LOSS OF INSURANCE COVERAGE

(Date of mailing)

Name of Insured: __________________________
Address: __________________________

EFFECTIVE DATE OF COVERAGE: __________
INSPECTION SHALL BE COMPLETED BY: __________

POLICY #: __________________________

Dear Policyholder,

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

1. _______; __________________________; __________________________;
2. _______; __________________________; __________________________;
3. _______; __________________________; __________________________;

YEAR  MAKE  MODEL

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

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

(Date)

If you have your car inspected after the above deadline your coverage will only be restored after your car has been inspected and the adjusted premium due for the coverages listed above had been paid. You will have no coverage for any physical damage loss that occurs during the suspension period. Attached is a list of authorized automobile physical damage inspection sites.

FOR FURTHER INFORMATION PLEASE CALL:

Name and phone number of Company Representative

Very truly yours,

cc: INSURANCE COMPANY
PRODUCER OF RECORD
## APPENDIX C(1)

**INSURANCE COMPANY LETTERHEAD**  
**OR**  
**INSPECTION SERVICE LETTERHEAD**

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<th>TIME OF INSPECTION</th>
<th>INSURANCE COMPANY NAME</th>
<th>INSURED'S POLICY NUMBER</th>
<th>NUMBER OF PHOTOS</th>
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<th>INSURED'S ADDRESS</th>
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<th>ODOMETER READING</th>
<th>PRINCIPAL PLACE</th>
<th>VEHICLE ID NUMBER</th>
<th>LICENSE PLATE NO.</th>
<th>OF GARAGING</th>
<th>(NOT FROM REGISTRATION FORM)</th>
<th>AND STATE</th>
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<th>V.I.N. LOCATION:</th>
<th>ACCESSORIES AND OPTIONAL EQUIPMENT</th>
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<td>(COMPLETE FOR ALL VEHICLES INCLUDING VANS)</td>
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<th>( ) AIR CONDITIONER</th>
<th>( ) CRUISE CONTROL</th>
<th>( ) ANTI-TheFT DEVICE</th>
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<td>( ) TINTED GLASS</td>
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<td>( ) AM RADIO</td>
<td>( ) POWER STEERING</td>
<td>ROOF RACK</td>
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<td>( ) AM/FM RADIO ( ) STEREO</td>
<td>( ) POWER BRAKES</td>
<td>SPARE TIRE (OUTSIDE MOUNT)</td>
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<td>( ) CASSETTE PLAYER</td>
<td>( ) POWER WINDOWS</td>
<td>CARPETING</td>
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<td>BRAND</td>
<td>( ) POWER LOCKS</td>
<td>INSTRUMENTATION</td>
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<td>TYPE</td>
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<td>( ) SPECIAL MIRRORS</td>
<td>( ) YES ( ) NO</td>
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<td>( ) SPECIAL ROOF</td>
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<td>BRAND</td>
<td>( ) SPECIAL CUSTOM OPTIONS OR</td>
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<td>( ) RADAR DETECTOR</td>
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<td>BUILT IN ( ) YES ( ) NO</td>
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**NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991**  
(CITE 23 N.J.R. 589)
APPENDIX C (2)

ATTACH AT LEAST TWO (2) COLOR PHOTOGRAPHS OF THE AUTOMOBILE TAKEN FROM THE ANGLES SHOWN ON THE DIAGRAMS TO THE RIGHT.

ALSO ATTACH CLOSE-UP PHOTO OF THE E.P.A. STICKER (INCLUDING THE V.I.N.) FROM DRIVER'S SIDE DOOR JAMB.

PHYSICAL CONDITION OF VEHICLE

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

<table>
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<tr>
<th>DAMAGED/RUSTED</th>
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<td>( ) ( ) FRONT BUMPER</td>
<td>( ) WINDSHIELD</td>
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<td>( ) ( ) LEFT FRONT DOOR</td>
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<td>( ) ( ) LEFT REAR DOOR</td>
<td>( ) LEFT REAR SIDE GLASS</td>
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<td>( ) ( ) LEFT REAR QUARTER PANEL</td>
<td>( ) RIGHT REAR SIDE GLASS</td>
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<td>( ) ( ) REAR BUMPER</td>
<td>( ) REAR WINDOW</td>
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<td>( ) ( ) REAR DOOR/TRUNK LID</td>
<td>( ) REAR VIEW MIRROR</td>
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<td>( ) ( ) RIGHT REAR QUARTER PANEL</td>
<td>( ) WHEEL COVERS</td>
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<td>( ) ( ) RIGHT REAR DOOR</td>
<td>( ) WORN/TORN OR SOILED INTERIOR</td>
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<tr>
<td>( ) ( ) RIGHT FRONT DOOR</td>
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<td>( ) ( ) RIGHT FRONT FENDER</td>
<td>( ) OTHER DAMAGE OR</td>
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<td>( ) ( ) HOOD PANEL</td>
<td>( ) RUST (LIST)</td>
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<td>( ) ( ) ROOF PANEL</td>
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<td>( ) ( ) GRILL</td>
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<td>( ) ( ) UNDER CARRIAGE</td>
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( ) CHECK HERE IF NO EXISTING DAMAGE, RUST OR MISSING PARTS

DESCRIBE EXISTING DAMAGES OR RUST:

LIST ANY MISSING PARTS:

DESCRIBE ANY ALTERATIONS FROM FACTORY DESIGN:

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

DATE: ________________

INSPECTOR'S SIGNATURE: ____________________________

NAME AND ADDRESS OF PERSON PRESENTING VEHICLE FOR INSPECTION TO INSURED: ____________________________

SIGNATURE: ____________________________  RELATIONSHIP: ____________________________
NOTICE OF SUSPENSION OF PHYSICAL DAMAGE COVERAGE

YOU ARE NO LONGER INSURED FOR PHYSICAL DAMAGE TO YOUR CAR

(Date of Mailing)

Name of Insured: ____________________________
Address: ____________________________

POLICY #: ____________________________

Dear Policyholder,

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

1. ________,  ________,  ________
2. ________,  ________,  ________
3. ________,  ________,  ________

YEAR  MAKE  MODEL

DATE COVERAGE WAS REQUESTED  ________________
DATE COVERAGE WAS SUSPENDED  ________________

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

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

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

INSURER REPRESENTATIVE

_____________________________

TELEPHONE NUMBER

_____________________________

cc: PRODUCER OF RECORD
LIENHOLDER
DIVISION OF FRAUD

Towing and Storage Fee Schedule For Private Passenger Automobiles Damaged or Stolen

Adopted Concurrent New Rules: N.J.A.C. 11:3-38

Adopted: January 25, 1991 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Filed: January 25, 1991 as R.1991 d.97, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).


Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently reproposed on November 26, 1990, pursuant to N.J.S.A. 52:14B-4(c). The present adoption of the concurrent reproposed rule is effective upon acceptance for filing at the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), except for those changes made upon adoption, which are effective upon publication of this notice, February 19, 1991.

The Department of Insurance (Department) received 60 written comments from insurers, towers and municipalities.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES:

COMMENT: One commenter objects to the definition of "motor vehicle accident" in N.J.A.C. 11:3-38.2. The commenter believes that the definition is needlessly restrictive. The commenter contends that the term "accident" has been construed by the New Jersey courts to include all situations which are accidental as to the insured even if they are caused by the intentional acts of a perpetrator where the perpetrator was not the insured or not otherwise involved with the insured. See Furr v. Metropolitan Life Insurance Co., 111 N.J. Super. 596, 270 A.2d 69, 72 (Law Div. 1970). Thus, vandalism and fire comprehensive claims are accordingly.

RESPONSE: The Department has prevented insurers from including storage charges for determinations of "daytime hours.

COMMENT: Two commenters' objections to N.J.A.C. 11:3-38 were based on the establishment of Region I and Region II of the fee schedule. One commenter believes that the use of two regions will encourage certain abuses. The commenter further argues that additional investigation and verification will be required to detect these abuses which would cost more than the small difference in fees. The commenter recommends the use of one schedule statewide.

The second commenter states that no rationale has been established to justify different regional rates in New Jersey.

RESPONSE: N.J.S.A. 17:33B-47 requires the Commissioner to promulgate a towing and storage fee schedule on a regional basis. The proposed rules are consistent with this requirement. The proper fee for towing services is based on the region in which the tow vehicle's base of service is located. The storage fee is determined by the region in which the facility is located. The Department does not believe it will be difficult to determine the appropriate county and the corresponding fee in accordance with the fee schedule.

COMMENT: One commenter notes that N.J.A.C. 11:3-38.4(d) contains an incorrect citation to N.J.A.C. 11:3-36. The commenter believes the correct citation should be N.J.A.C. 11:3-38.4.

RESPONSE: The Department agrees and has amended this section accordingly.

COMMENT: One commenter suggests that the day rate established in N.J.A.C. 11:3-38.4(d) should be revised to apply between the hours 7:00 A.M. and 7:00 P.M. The commenter believes that this revision appropriately applies the "day rate" to commuter traffic patterns and higher accident frequency times.

RESPONSE: The Department believes that the day rate, the hour between 8:00 A.M. and 4:30 P.M., established by these rules is reasonable and appropriate. The current schedule reflects commonly held notion of "daytime hours.

COMMENT: One commenter notes that N.J.A.C. 11:3-38.4(e) refer to the maximum storage charges, but the commenter believes storage companies may attempt to avoid the impact of the rule by adding charges for handling, moving and access. The commenter suggests that the rule should be clarified to indicate that the maximum listed in the fee schedule includes all related charges including, but not limited to, handling, moving and access.

RESPONSE: The towing and storage fee schedules established by the Department are the maximum charges that shall apply to a private passenger automobile that is towed or stored as a result of being damaged in an accident or recovered after being stolen. No storage charges to exceed the maximum charges listed in the fee schedule.

COMMENT: One commenter's remarks address N.J.A.C. 11:3-38.4 which prevents an insurer or rating organization from including an expense for storage of a private passenger automobile for more than 30 days into the base for determining private passenger automobile insurance rates used or to be used in this State. The commenter questions, what does a vehicle cease being stored as a result of an accident or theft at some time after being stored as a convenience, to the owner or interested third party at any point after 30 days.

A second commenter suggests adding a provision that would require the insurer to provide the notice of the storage and app raise the 30 day rate from date of storage. The commenter argues that in many instances, a recovered theft is in storage for months before the insurer is notified. The commenter further suggests that the Department show consideration limiting the number of days for which storage can be charge.

RESPONSE: The Department is not sure whether the first commenter's question is regarding a storage facility or an automobile shop. The determination as to whether a motor vehicle ceases to be stored, as a result of an accident or theft should be subject to the current business practice. The Department believes it is reasonable for the insured to notify the insurer or his or her insurance company promptly of the location of the automobile. The Department has prevented insurers from including storage charge past 30 days into their base for determining rates used or to be used in this State.

COMMENT: One commenter believes that the Department's regulation of rates for towing and storage relative to accidents and stolen vehicles recovered is unnecessarily duplicative since such rates are already regulated by other governmental bodies or regulatory agencies. The commenter believes that Assembly Bill A-3011 which requires local governmental units to regulate towing rates through either competitive bidding processes or regulations adopted pursuant to N.J.S.A. 40:48-2.49 augments his position that the towing regulations are redundant and superficual.

The commenter suggests that the Department should publish the rate that have been otherwise established by municipalities or turnpike or bridge authorities and, in doing so, would be in compliance with the legal mandate of the FAIR Act, which requires the Commission to "promulgate" rates for towing and storage fees.

RESPONSE: The Department disagrees. N.J.S.A. 17:33B-47 require the Department to promulgate a towing and storage fee schedule on a regional basis. This provision does not require the Department to monitor or approve any municipality schedule. Moreover, the Department's rules only apply to private passenger automobiles damaged in accidents recovered after being stolen.

COMMENT: Several commenters argue that the rules do not recognize existing towing contracts that are already in effect between to operators and municipal entities. One commenter questions whether municipal ordinances or contracts are superseded by the Department's towing and storage fee schedule. A second commenter believes that if public contract laws were applied properly and all municipalities and agencies in the State were required to submit their competitive tow contract annually for State review, there would be no need for the Commission to set rates.

RESPONSE: The Department's rules only affect existing municipal contracts to the extent that they apply to towing and storage charges for private passenger automobiles damaged in an accident or recovered after being stolen.

COMMENT: One commenter questions whether municipalities continue to limit what its official towers may charge through its or nances which call for lower fees than are allowable under the State regulation.

(CITE 23 N.J.R. 592)
RESPONSE: The towing schedule promulgated by the Department effects the maximum fees to be charged for the towing or storage of a private passenger automobile which is damaged in an accident or recovered after being stolen. Municipalities are permitted to set fees lower than the fees established in this schedule.

COMMENT: One commenter questions who interprets and enforces these rules with regard to day to day questions and disputes involving the tow operator and the consumer.

RESPONSE: The New Jersey Insurance Fraud Division may subject a person to certain civil and criminal penalties relative to violations of N.J.S.A. 17:33A-1 et seq. The Department is not authorized to act as an arbiter for disputes between the tow operator and the consumer. Such matters should be decided in a civil proceeding.

COMMENT: Several commenters stated that the rules have no allowance for additional costs (for example, a situation where a flatbed carrier and/or winching services, additional men, etc. are required). One commenter notes that certain situations require the recovery of a vehicle from a ditch, from being suspended on a median, or when the automobile rolls over on its roof. The commenter argues that all of these factors have bearing on the value, repair and recovery cost. Another commenter objects to the omission of labor charges from the fee schedule.

RESPONSE: The Department does not intend for these rules to apply to recovery cost. The Department has amended these rules by clarifying what constitutes basic towing services.

COMMENT: Several commenters object that the schedule only applies to persons with collision or comprehensive coverage. One commenter argues that a vehicle under third party property damage liability coverage and uninsured motorist property damage coverage involve vehicles that are damaged in accidents and can include towing and storage fees. The commenter argues that nothing in the FAIR Act restricts the application of the fee schedules to comprehensive and collision coverage. The commenter further believes that such a restriction would be arbitrary, capricious, and beyond the Department's statutorily authority. The commenter suggests that this provision be amended to include first and third party coverages.

A second commenter objects to this provision because he believes that here needs to be a means by which a tow operator can verify if the automobile is insured and thereby subject to the provisions of the fee schedule. A third commenter questions which rate applies when drivers refuse to provide information regarding the nature of their insurance coverage. Another commenter suggests that notification of ownership along with the insurance company should be given directly to the tower by the Police department, within 48 hours.

RESPONSE: The Department has determined that these rules should apply to all automobiles registered in New Jersey that are towed or stored as a result of being damaged in an accident or recovered after being stolen regardless of the auto insurance coverage of the driver. N.J.S.A. 17:33B-47 provides that no person shall be liable to any person who tows or stores a private passenger automobile which was damaged in an accident or recovered after being stolen for any amount of money which results from the charging of fees in excess of those permitted by the towing and storage fee schedule and does not require physical damage coverage or this provision to be operative.

COMMENT: Several towers questioned whether they can require an owner to sign an affidavit regarding the nature of his insurance coverage, in order to protect the towers from potential fines.

RESPONSE: The Department does not believe this will be necessary because the rules apply to all automobiles damaged in an accident or recovered after being stolen.

COMMENT: One tower questions whether he is permitted to charge his normal regulated rates when a car is involved in an accident, and the owner has insurance, but decides not to report the accident to his insurance company.

RESPONSE: N.J.S.A. 17:33B-47 states that no person shall be liable to any person who tows or stores a private passenger automobile which was damaged in an accident or recovered after being reported stolen for any amount of money which results from the charging of fees in excess of those permitted by the towing and storage fee schedule.

COMMENT: One commenter questions whether a tower can require payment for vehicles covered under the insurance rules to come directly from the insurance company providing collision and comprehensive coverage. The commenter believes that this procedure would permit tow facilities to be assured that the claim is covered under these rules.

RESPONSE: The Department has determined that these rules should apply to all automobiles registered in New Jersey that are towed or stored as a result of being damaged in an accident or recovered after being stolen regardless of the auto insurance coverage of the driver. Therefore, the Department does not believe it is necessary for a tower to require payment to come directly from an insurance company.

COMMENT: One commenter questions why the Department’s rules do not apply to accidents involving drunken drivers. The commenter does not believe that this provision could be used to penalize and forced to live under rules for accidents caused by drunken drivers.

RESPONSE: N.J.S.A. 17:33B-47 does not exclude accidents caused by drunken drivers.

COMMENT: One commenter states that often police officers will permit a vehicle involved in an accident or recovered after being stolen, to remain at the scene until the owner can remove it or have it removed recovered. The commenter questions whether the car is damaged or driveable. The commenter states that the officer’s concern for public safety appears to be the factor used in determining when a vehicle is to be removed. The commenter questions whether the towing and storage fee schedule applies when an officer requests that a vehicle be towed and/or stored for reasons other than being damaged or recovered after being stolen.

RESPONSE: The towing and storage fee schedule only applies to private passenger automobiles damaged in an accident or recovered after being stolen.

COMMENT: Two commenters questioned whether the towing fee schedule applies when a second tow is necessary to transport a vehicle from a storage yard to a repair shop or salvage yard or when the subsequent tow is performed by another company. One commenter questions who determines if the circumstances and status meet the criteria of the rule.

RESPONSE: The towing fee schedule applies when a second tow is necessary to transport a vehicle from a storage yard to a repair shop or salvage yard even if the subsequent tow is performed by another company as long as the private passenger automobile was damaged in an accident or recovered after being stolen.

COMMENT: One commenter argues that out-of-State motorists should not be penalized for traveling through this State. The commenter believes that the fees should be applied to all vehicles.

A second commenter believes that if the schedule does not apply to all vehicles, it is likely that savings from these rules will be eroded through price gouging on out-of-State vehicles.

RESPONSE: The Department has determined that these rules should apply to all vehicles.

COMMENT: One commenter believes that the $1.75 per mile towing fee for additional miles may be excessive. The commenter states that for accidents occurring in rural areas, the mileage will in many cases exceed 20 miles for the round trip. The commenter contends that the total amount would be higher than the amount insurers currently pay.

RESPONSE: The Department recognizes that there may be some towers who will not make as much per tow as they did prior to these rules. The Department also recognizes that there are towers who will make more money per tow than they did prior to these rules. The Department believes that the fees realistically provide a reasonable rate of return for towing and storage facilities as is demonstrated by the fact that they are based on a survey of insurance carriers in New Jersey and the amount of charges the carriers actually incurred as a result of having an insured’s automobile towed or stored.

COMMENT: One commenter believes that a mechanism should be included in the rules to help deter charging holiday rates when the day rate should be applied. The commenter believes this is necessary to prevent “estimated” times and would permit independent verification of times from other sources (for example, the police report).

RESPONSE: The Department believes that insurers will be able to determine the date the services were performed and verify whether that date was a holiday.

COMMENT: Why are automobiles with mechanical breakdowns and impounded vehicles excluded from the rules?

RESPONSE: N.J.S.A. 17:33B-47 requires the Commissioner of Insurance to promulgate a towing and storage fee schedule. The statute limits the application of this schedule to towing and storage charges resulting from a private passenger automobile damaged in an accident or recovered after being stolen.
COMMENT: One commenter suggests that towing and storage facili-
ties should post their fee schedule and provide a copy for the public
following an accident so that the citizens of New Jersey are aware of
the fees charged by that operator.
RESPONSE: The Department does not presume it to be necessary to
require towing or storage facilities to post a schedule and provide a
copy to the public following an accident at this time.
COMMENT: One commenter suggests the use of more specific guide-
lines which should be given to insurers to determine how a company
calculates the mileage from the scene of an accident. The commenter
believes that specific requirements would be easy to use, as well as
inexpensive.
RESPONSE: The Department believes that N.J.A.C. 11:3-38.4(d)(1)
adequately describes how mileage is to be determined.
COMMENT: One commenter suggests that on stolen and recovered
thefts, the storage facility should be required to notify the owner by
certified mail within 48 hours of its possession of the vehicle. The com-
menter believes that this requirement will place the insured on notice of
the exact location of the vehicle and this information could be forwarded
to the insurer. The commenter believes that this process will assist both
the insured and insurer in a more expeditious pickup of the vehicle
and will result in a reduction of accrued storage charges.
RESPONSE: The Department does not presume it to be necessary to
require storage facilities to notify the owner by certified mail within 48
hours of possession of the vehicle and this information could be forwarded
to the insurer. The Department provides arbitration to resolve disputes concerning towing and storage charges.
RESPONSE: The Department does not presume it is necessary to act
as an arbiter for disputes involving towing and storage charges at this
time.
COMMENT: One commenter recommends that the storage rates be
increased to $20.00 a day. The commenter states this increase is needed
in order for him to maintain security in his storage yard as well as cover
his fuel, insurance, equipment and labor costs.
Several other commenters offered suggested rate increases to the
storage fees established by the Department.
RESPONSE: The Department believes that storage fees established are
reasonable and provide a reasonable rate of return. The Department will
review the suggested fees and other cost factors to determine if future
amendments to these rules is warranted.
COMMENT: One commenter suggests that restrictions should be
placed on the insurance companies specifying a set number of days that
a vehicle may be left in storage before an appraiser is sent to inspect the
vehicle. Another commenter recommends that vehicle inspections be con-
ducted by the insurance carriers within 10 days and removed within 14
days.
RESPONSE: N.J.S.A. 17:33B-48 and N.J.A.C. 11:3-38.4(f) provide
that no insurer or rating organization shall include any expense for
storage of a private passenger automobile for more than 30 days into
the hazard determining private passenger automobile insurance rates
used or to be used in this State. The statute does not authorize the
Department to require an insurer to remove a vehicle within 14 days.
Insurers are required to conduct vehicle inspections pursuant to N.J.A.C.
11:3-10.3.
COMMENT: One commenter notes that the fee a tower charges for
a vehicle towed to an auto body shop is usually adjusted if that auto body
shop is the one that provided the service. Another commenter states that
certain times a vehicle is on the premises and is being
repaired the auto body shop facility does not charge for the storage in
the interim. The commenter believes that although these fees are
chargeable, most auto body facilities do not charge for storage under
these conditions; however, the Department's rules may force facilities to
begin to charge for storage services.
Another commenter suggests that the Department ban automobile
repair facilities from charging storage fees after it has been awarded and
accepted a contract to repair the damaged automobile. The commenter
argues that it is unconscionable to allow an automobile repair facility to
collect money by simply delaying the start of repairs, unless the repair
facility agrees the vehicle owner or insurer prior to being awarded the
contract to repair, that it cannot begin repairs for a certain number of
days, storage charges will be incurred, and this matter is expressly agreed
to by all parties.
RESPONSE: The Department believes that these situations should be
negotiated between the insurer and the auto body shop. The Department
does not presume it is necessary to place restrictions on these types of
negotiations at this time.
COMMENT: Several commenters question the definition of space. A
storage space determined by the total number of spaces available or the
total number of collision spaces? A second commenter specifically asks
whether they should take into account: (1) parking for employees; (2)
parking for business vehicles; or (3) parking for mechanical breakdown.
RESPONSE: The Department defines storage space as the total
number of spaces available for storage based on the classification of the
facility. For example, if the facility is an inside building, then the total
number of storage spaces inside the building determines the rate to be
charged for an automobile stored inside that facility.
COMMENT: One commenter states whether the inside storage areas
should be added to the total storage area for the location, or at the
outside and inside storage areas considered two separate areas.
second commenter questions whether he could have a separate yard for
impounds and another for collision, both with their own entrances.
RESPONSE: If a facility has both outside and inside storage area:
that the charge for storage is based on the total number of space
available for inside storage if the car is stored inside, or the total number
of available spaces of the outside storage if the car is stored outside
A person is permitted to have a separate yard for impounds an
other for damaged vehicles.
COMMENT: One commenter states that his location is open 24 hours a
day and he fully dispatches or duty at all times and that he has a site-
fence around the total area, except for the entrance way. The commenter
states that all vehicles are in sight of the dispatcher on duty. The com-
menter questions whether this location is considered secure or un
secured.
RESPONSE: The Department would view this as an outside secure
facility based on the definition provided in N.J.A.C. 11:3-38.2.
COMMENT: One commenter believes that it would be beneficial if
the State would officially certify or designate the exact fee that each individual storage facility can charge. If a storage facility is operating in a fraudulent manner pursuant to these rules, it should be reported to the New Jersey Insurance Fraud Division.
COMMENT: One commenter suggests that all bills submitted by tow-
ing and storage facilities should be fully itemized to include the region:
the base rate, miles to the scene, total miles traveled, and type and
capacity of facility. The commenter believes that the requirement would
hold facilities accountable for the figures submitted, and it would enable
insurers to verify and make timely payment of the bills.
RESPONSE: The towing and storage facilities location determine
whether they can apply to Region 1 or Region 2 rates to the service
performed. Insurers should be able to use these rules to determine whether bills submitted by towing and storage facilities contain the correct charge for the services performed.
COMMENT: One commenter questions whether they can forbid ad
justers and vehicle owners from walking around their storage yards be
cause they are unable to provide a security guard to make sure that the
area is safe as a result of the Department's rules.
RESPONSE: The Department does not presume it to be necessary to
require storage facilities to provide access to insurers or adjusters at this
time. The Department does not believe that storage facilities should
attempt to hinder efforts of insurance companies to get an automobile
removed from a storage facility.
COMMENT: Two commenters argue that the rules should prohibit
unreasonable restrictions on the ability of persons to retrieve vehicle
from storage. The commenters believe that some storage companies
an attempting to circumvent these rules by imposing unreasonable require
ments for retrieving vehicles, thus delaying retrieval and adding to the
storage charges. For example, they have seen notices issued by storage
companies which include the following requirements before releasing
a vehicle:
(a) A call must be made one working day prior to retrieval to schedule
an appointment.
(b) A notarized release from owner of vehicle and the original in
surance policy must be presented.
(c) The driver must bring a container for anti-freeze, oil and "Speed
Dry," and a manifest indicating where hazardous waste will be disposed

(CITE 23 N.J.R. 594) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991
The Department reviewed the information submitted by GSTA. The Department notes that according to GSTA the average cost of a tow in New Jersey is $65.47, and that same tow would provide the tower with $63.75. The Department believes that this supports the fact that the Department's rates are reasonable, given the closeness of its rate to the average cost of a tow as stated by GSTA.

The Department notes that GSTA also provides a rate of $70.00 established by the New Jersey Turnpike Authority which it suggested the Department consider. The Department reviewed N.J.A.C. 19:9-3.2(b) from the New Jersey Turnpike Authority on repairs and towing as well as N.J.A.C. 19:9-3.1 towing rates. GSTA asserts that the Department's towing rates are below the average cost of a tow in New Jersey.

The Department reviewed N.J.A.C. 19:9-1.14 from the New Jersey Turnpike Authority on repairs and towing as well as N.J.A.C. 19:9-3.1 towing rates. GSTA notes that the New Jersey Turnpike rate is based on a $40.00 base charge plus $2.00 per mile, based upon 15 mile tow. Pennsauken's rate is based upon a competitively bid contract. Egg Harbor is based upon a local municipal ordinance. GSTA states that the foregoing are representative of rates that demonstrate the inadequacy of the Department's proposed base tow rate.

GSTA asserts that the Department's towing rates are below the average cost of operation and amount to an illegal deprivation of property in contradiction of both Federal and State constitutions.

The Department reviewed the schedule proposed by the Department is constitutional. The schedule, together with other reforms found in the FAIR Act, are rationally related to the legitimate governmental objective of reducing the car insurance premiums of New Jersey residents. The fees realistically provide a reasonable rate of return for towing and storage facilities as is demonstrated by the fact that they are based on a survey of carriers in New Jersey and the amount of charges the carriers actually incurred as a result of having an insured's automobile towed or stored. The Department recognizes that these rules affect a portion of a 'tower's business. The Department also recognizes that the insurance reimbursement portion of the towing business should not be used to subsidize the other portions of towing operations.

The Department reviewed the information submitted by GSTA. The Department notes that according to GSTA the average cost of a tow in New Jersey is $65.47, and that same tow would provide the tower with $63.75. The Department believes that this supports the fact that the Department's rates are reasonable, given the closeness of its rate to the average cost of a tow as stated by GSTA.

The Department notes that GSTA also provides a rate of $70.00 established by the New Jersey Turnpike Authority which it suggested the Department consider. The Department reviewed N.J.A.C. 19:9-3.2(b) from the New Jersey Turnpike Authority on repairs and towing as well as N.J.A.C. 19:9-3.1 towing rates. GSTA asserts that the Department's towing rates are below the average cost of a tow in New Jersey.

The Department reviewed N.J.A.C. 19:9-1.14 from the New Jersey Turnpike Authority on repairs and towing as well as N.J.A.C. 19:9-3.1 towing rates. GSTA notes that the New Jersey Turnpike rate is based on a $40.00 base charge plus $2.00 per mile, based upon 15 mile tow. The Department's review of this provision seems to provide some discrepancies in information. N.J.A.C. 19:9-3.1 as published provide towing rates for Class I vehicles as well as Class 2-6 vehicles. According to N.J.A.C. 19:9-3.1 the towing rates are as follows:

- Class I
  - $1.50 per mile to a maximum of $40.00
  - Service Charge $25

- Class 2-6
  - $2.50 per mile on turnpike (maximum of 10 miles) to a maximum of $70.00
  - Service Charge $45

The Department notes that N.J.A.C. 19:9-1.14(c) (Repairs and towing) provides that "if towed, such disabled vehicle must be removed at the nearest exit way in the original direction of travel." The Department notes that Class 1 does not provide for a $2.00 per mile rate nor a base rate of $40.00. The Department further notes that under Class 2-6, 10 miles are the maximum number of miles that can be charged (at a rate of $2.50). If GSTA applied the Department's rates to this tow, the Department believes that its rates are comparable. For example, under the Department's rules there is no 10 mile limitation on mileage, because it is calculated from the towers base of service to the accident site and return. A 15 mile tow under the Turnpike's regulation does not include the additional mileage for which a tower can charge for service under the Department's rules. The Department's estimated rates for a similar tow would be:

- Lowest $70.00 (based on Region 1 daytime rate and round trip of 20 miles)
- Highest $85 (based on Region 2 holiday rate and round trip of 20 miles)

The Department appreciates the information received from the GSTA and individual towers throughout the State and will consider this information in future modifications of this rule.

COMMENT: One commenter requests the Department clarify whether the Department intends to implement the 10 mile limitation on mileage, because it is adjusted for the information. N.J.A.C. 19:9-3.1 as published provide towing rates only if the least expensive storage is full.

COMMENT: One commenter suggests that the Department mandate that a storage operator use the least expensive storage area when the company has more than one type of storage capability (for example, both inside and outside). A storage company should be able to employ the more expensive storage only if specifically requested by the vehicle owner or if the least expensive storage is full.

COMMENT: One commenter requests the Department to clarify whether the schedule applies to commercial automobiles. The commenter believes that commercially rated automobiles should be included under the scope of these rules.

COMMENT: One commenter suggests that the rules should be revised to include a provision which requires storage companies to store vehicles in the least expensive setting if the company has more than one type of storage capability (for example, both inside and outside). A storage company should be able to employ the more expensive storage only if specifically requested by the vehicle owner or if the least expensive storage is full.

COMMENT: One commenter suggests that the rules should be revised to include a provision which requires storage companies to store vehicles in the least expensive setting if the company has more than one type of storage capability (for example, both inside and outside). A storage company should be able to employ the more expensive storage only if specifically requested by the vehicle owner or if the least expensive storage is full.
SUBCHAPTER 38. TOWING AND STORAGE FEE SCHEDULE

11:3-38.1 Purpose and scope
(a) The purpose of this subchapter is to establish towing and storage fee schedules on a regional basis pursuant to N.J.S.A. 17:33B-47 for the reimbursement of towing charges and storage charges for private passenger automobiles that are damaged in accidents or are recovered after being stolen.
(b) The provisions of this subchapter apply to all insurers which write private passenger automobile insurance in this State and to all persons who provide towing and storage services in this State for private passenger automobiles that are damaged in accidents or are recovered after being stolen.

11:3-38.2 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Automobile” means a private passenger automobile of a private passenger or station wagon type that is owned or hired and is neither used as a public or livery conveyance for passengers nor rented to others with a driver; and a motor vehicle with a pickup body, or delivery sedan, a van, or a panel truck or a camper type vehicle used for recreational purposes owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other than farming or ranching. An automobile owned by a farm family copartnership or corporation, which is principally garaged on a farm or ranch and otherwise meets the definitions contained in this section, shall be considered a private passenger automobile owned by two or more relatives resident in the same household.

“Basic towing service” means the removal and transportation of an automobile from a highway, street or other public or private road, or a parking area, or from a storage facility, and other services normally incident thereto, but does not include recovery of an automobile from a position beyond the right-of-way or berm, or from being impaled upon any other object within the right-of-way or berm.*

“Commissioner” means the Commissioner of Insurance of the State of New Jersey.

“Department” means the New Jersey Department of Insurance.

“Outside secured” means an automobile storage facility that is not indoors and is secured by a fence, wall or other man-made barrier, and all other storage facilities not defined above as inside building or outside secured.

“Tow vehicle’s base of service” means the towing operator’s principal place of business where the tow vehicle is stationed when not in use.

11:3-38.3 Regions
(a) Region I, as used in this subchapter, consists of the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem.
(b) Region II, as used in this subchapter, consists of the following counties in New Jersey: Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren.

11:3-38.4 Application of storage and towing fee schedule
(a) No person shall be liable to any person who tows or stores a private passenger automobile which was damaged in an accident or recovered after being reported stolen for any fees in excess of those permitted by the towing and storage fee schedules established in this subchapter.
(b) The region used to determine the proper fee set forth on the schedules shall be determined as follows:
1. For towing services, the fee shall be based on the region in which the tow vehicle’s base of service is located.
2. For storage services, the fee shall be based on the region in which the facility is located.
(c) The fee schedules shall be reviewed by the Commissioner on an annual basis and may be revised if necessary.
(d) The fees set forth on the schedule for towing rates are the maximum charges that shall apply to a private passenger automobile [towed by a tow vehicle] *for basic towing services rendered* as a result of an accident or theft recovery. There shall be no additional charges other than those provided in N.J.A.C. 11:3-**38.6*, including, but not limited to, flatbedding, waiting time, winching, [uprighting,*] cleanup cost, and additional labor*, when only basic towing services as defined are provided.
1. The towing rates shall be calculated based on the total distance travelled from the tow vehicle’s base of service to the job site and return, by way of the shortest available route. Fractions shall be rounded up to the nearest whole mile.
2. Tow vehicles transporting multiple passenger cars at one time shall receive the applicable fees for each vehicle transported.
3. When towing services are required at the scene of an automobile accident, the Day rate shall apply when the time of the accident is between 8:00 A.M. and 4:30 P.M., Monday through Friday, except New Jersey State Holidays. The Night, Weekend and Holiday rate shall otherwise apply.
4. When towing services are otherwise required, the Day rate shall apply when the vehicle is transported (pickup to delivery) entirely between the hours of 8:00 A.M. and 6:00 P.M., Monday through Friday, except New Jersey State Holidays. The Night, Weekend and Holiday rate shall otherwise apply.
(e) The fees set forth on the schedule for storage fees are the maximum storage charges per 24 hour period that shall apply to a private passenger automobile that is stored by a person as a result of an accident or theft recovery.
(f) No insurer or rating organization shall include any expense for storage of a private passenger automobile for more than 30 days into the base for determining private passenger automobile rates used or to be used in this State.

11:3-38.5 Penalties
*(a)* Failure of a person to abide by the requirements of this subchapter may be punishable by a fine not to exceed $5,000 for the first violation, $10,000 for the second violation and $15,000 for each subsequent violation pursuant to N.J.S.A. 17:33A-5.
ADDITIONS

*(b) Violators who are licensed as an automobile repair facility will be
reported to the Division of Motor Vehicles. Insurers may also report
violators under the provisions of N.J.S.A. 17:23-8 to 15*.

11:3-38.6 Towing and storage fee schedules
(a) The following is the fee schedule for towing services:

<table>
<thead>
<tr>
<th>Region</th>
<th>1</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 10 spaces</td>
<td>$9.00</td>
<td>$10.00</td>
</tr>
<tr>
<td>10-20 spaces</td>
<td>$11.00</td>
<td>$12.00</td>
</tr>
<tr>
<td>21 or more spaces</td>
<td>$13.00</td>
<td>$15.00</td>
</tr>
</tbody>
</table>

(b) The following is the fee schedule for storage services:

<table>
<thead>
<tr>
<th>Inside Building:</th>
<th>Region</th>
<th>1</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Storage Facility Capacity</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>21 or more spaces</td>
<td>$13.00</td>
<td>$15.00</td>
<td></td>
</tr>
<tr>
<td>10-20 spaces</td>
<td>$18.00</td>
<td>$20.00</td>
<td></td>
</tr>
<tr>
<td>Less than 10 spaces</td>
<td>$22.00</td>
<td>$25.00</td>
<td></td>
</tr>
<tr>
<td>Outside Secured:</td>
<td>Region</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Storage Facility Capacity</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>21 or more spaces</td>
<td>$9.00</td>
<td>$10.00</td>
<td></td>
</tr>
<tr>
<td>10-20 spaces</td>
<td>$11.00</td>
<td>$12.00</td>
<td></td>
</tr>
<tr>
<td>Less than 10 spaces</td>
<td>$13.00</td>
<td>$15.00</td>
<td></td>
</tr>
<tr>
<td>Outside Unsecured:</td>
<td>Region</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Storage Facility Capacity</td>
<td>1</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>21 or more spaces</td>
<td>$7.00</td>
<td>$8.00</td>
<td></td>
</tr>
<tr>
<td>10-20 spaces</td>
<td>$9.00</td>
<td>$10.00</td>
<td></td>
</tr>
<tr>
<td>Less than 10 spaces</td>
<td>$10.00</td>
<td>$12.00</td>
<td></td>
</tr>
</tbody>
</table>

DIVISION OF ACTUARIAL SERVICES
Order of Benefit Determination Between Automobile Personal Injury Protection and Health Insurance
Adopted Concurrent Amendments: N.J.A.C. 11:4-16.4, 16.5, 28.2 and 28.5
Adopted Concurrent New Rules: N.J.A.C. 11:3-14.8 and 11:3-37
Adopted: January 25, 1991 by Jasper J. Jackson, Acting
Commissioner, Department of Insurance
Filed: January 25, 1991 as R.1991 d.90, with substantive and
technical changes not requiring additional public notice and
comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 17:1-8, 17:1C-6(e) and 39:6A-4.3.
Effective Date: January 25, 1991, Readoption of Emergency
Amendments and New Rules; February 19, 1991,
Changes upon Adoption.
Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis and concurrently
reproposed pursuant to N.J.S.A. 52:14B-4(c). The emergency adoption of
these rules were effective on November 26, 1990, at which time the
concurrent reproposal of the Department was filed. The present adoption of the concur-
rent reproposed rules is effective upon acceptance for filing at the Office
of Administrative Law (see N.J.A.C. 1:30-4.4(d)), except for the changes
upon adoption, which are effective on the date of publication of this

Summary of Public Comments and Agency Responses:
The Department received comments from nine insurers, an insurance
support organization, two trade associations and a member of the medical
profession. The Department has attempted to address all of the comments
clearly and concisely. To the extent that a comment received either is
substantially similar to a comment previously received and responded to,
or is a comment to a response from the Department on a previously
received comment, which appeared in the Emergency Adoption and Con-
current Reproposal of these new rules and rule amendments at 22 N.J.R.
3777(a) on December 17, 1990, and no new issues are raised, no additional
response is provided in this Summary. Any comments received which,
in substantive issue, address the medical fee schedules at N.J.A.C. 11:3-29
may appear in the Summary Comments and Responses to the adoption
of the reproposal of N.J.A.C. 11:3-29, rather than in this Summary.

COMMENT: Two comments received are critical of the processing of
claims required of auto insurers when secondary, stating that the process
is grossly inefficient, complex, time consuming and causes a crushing
administrative burden.
RESPONSE: The Department disagrees with the commenter that the
process is grossly inefficient and creates a crushing administrative burden.
The Department agrees that the process may appear complex and time
consuming at first. While this cannot be avoided altogether, the Depart-
ment believes that by reinterpreting N.J.A.C. 11:3-37.7, the calculation
of actual benefits payable may be simplified. No modification of the rules
is required.

First, the auto insurer, as a secondary coverage provider, will still need
to determine the total amount of benefits it would have paid had it been
primary. This means it will need to determine an amount for each service
rendered which is eligible (deriving the total amount of allowable expense)
and remove amounts for the specified deductible and copayment, if
applicable (determining the total amount the auto insurer would have
paid had it been primary). Second, the auto insurer determines the health
benefits provider’s EOB, see what benefits the health benefits provider
actually paid, and subtract the benefits paid from the total amount of
allowable expense (which, if billing is in accordance with the medical fee
schedules, should equal the charges billed), to derive the total uncovered
remaining allowable expense. Finally, the auto insurer would pay the total
uncovered remaining allowable expense, or the amount it would have paid
had it been primary, whichever amount is less.

The result is two-fold. On an administrative level, it eliminates one step
in calculating benefits owed because this method reduces the need for
the auto insurer to extract the health benefits provider’s deductible and
copayment amounts, if any, for reimbursement. It also assures that the
auto insurer does not pay in excess of the medical fee schedules, which
may result if the health benefits provider’s deductible and copayment
requirements are specifically reimbursed. Appropriate amounts of the
health benefits provider’s deductible and copayment amounts and any
other uncovered amounts which are within the medical fee schedule will
continue to be reimbursed.

COMMENT: Two commenters request that the Department provide
an educational program for using these rules of coordination, stating that
examples thus far have been vague, ambiguous or simply confusing. A
third commenter suggests a joint meeting for both health and property/
casualty insurers with the Commissioner, and possibly the formation of a
committee to address coordination problems which may develop.
RESPONSE: The Department has received similar unwritten requests
from other entities, and is in the process of developing some type of
seminar training program. Details have yet to be approved, but as soon
as information becomes available, the Department will notify insurers and
other parties which have expressed an interest in such training. The
Department believes training, and possible joint meetings will prove very
helpful.

COMMENT: One commenter states that nothing in the FAIR Act
provides any indication that deductibles and copayments should not apply in all cases to medical expense benefits under PIP coverage. The
commenter states that the statute’s intent is that the deductible and
copayments should apply regardless of whether PIP is primary or second-
ary, and that the rules should be revised to correctly reflect the intent of
the statute.
RESPONSE: The Department disagrees with the commenter’s analysis
of the intent of the statute. The statute states that the principles of
coordination of benefits shall apply to personal injury protection medical
expense benefits coverage. Currently, the principles of coordination in-
clude the concept that the deductibles and copayments of the secondary
coverage provider “disappear”. When the total remaining uncovered
amount of allowable expenses exceed the allowed amount of benefits
which the secondary coverage provider would have paid had it been primary,
and hence, the secondary coverage provider pays the total benefits it
would have paid had it been primary, the deductible and copayment
amount “reappear,” because, of course, the secondary coverage provider
has accounted for the deductible and copayment in calculating its upper

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 597)
limit of total benefits payable). The Department deviated from the standard principles with respect to health benefits providers in this instance to partially offset the effect upon health benefits providers that coordination will have when auto insurers cap their benefits using the medical fee schedules, and for those claims which exceeded the $250,000 cap.

The Department acknowledges that treatment of deductibles and copayments of secondary payors are not written in stone. While the Department is continuing to follow the current principles in this matter, insurers are advised that this is an area which the Department is continuing to study.

COMMENT: One commenter requests that a definition of “deductible” in reference to auto insurance PIP be provided to clarify what “deductible” means when used at N.J.A.C. 11:3-37.7. The commenter also states that it interprets the term “deductible,” used at N.J.A.C. 11:3-37.7, to be referring to the statutory PIP deductible ($250.00).

RESPONSE: The Department does not believe that a definition of “deductible” is necessary. As used in N.J.A.C. 11:3-37.7 and throughout the rules, the term deductible is meant to refer to whatever deductible selected by the insured, if different. There is no indication in the statute that the deductible should be limited to the statutory amount of $250.00 for purposes of calculating benefits as a secondary coverage provider.

COMMENT: One commenter requests clarification as to how deductibles are to be applied: per accident, per family, etc.

RESPONSE: The manner in which deductibles apply is not the same for auto insurers and most health benefits providers. All PIP-related deductibles apply on a per accident basis; this is true also of copayment requirements. Health coverage providers generally apply deductibles per person (or per family, if the policy or contract covers dependents), per claims determination period. Copayments also typically apply on a claims determination period. That is, with each new claim determination period, an insured must again satisfy whatever deductible and copayment requirements apply on the policy or contract. A claim determination period is typically 12 months. Although not common, some health benefits contracts and policies contain additional deductible and separate copayment requirements for certain specified benefits, which may or may not be based on a claims determination period. These new rules do not alter the normal application of benefits for either auto insurers or health benefits providers as primary coverage providers, or in calculating benefits payable.

COMMENT: One commenter requests clarification as to the time frame auto insurers have to pay PIP benefits, or to otherwise respond to claims made.

RESPONSE: In accordance with N.J.S.A. 39:6A-5, auto insurers have 60 days within which to pay or deny a claim, or provide the insured with a statement that further investigation of the claim is required, after being furnished written notice of a coverage loss and the amount of that loss. The additional investigative period may not exceed 45 days. Payments made within the 60 day, or additional 45 day, period are not considered to be overdue, and are not subject to interest penalties.

COMMENT: One commenter states that the Department did not address the instance of an insured submitting a claim to an automobile insurer first where the automobile insurer is providing secondary coverage, and that the commenter intends to file a complaint in the 60 day period to toll the date the automobile insurer receives notice that the health benefits provider has paid the claim. An additional commenter states that the automobile insurer is entitled to exceptions or extensions on the 60 day period when it has no control over the health benefits provider’s activity.

RESPONSE: The Department did address the instance in which a claim is erroneously submitted to the auto insurer. The 60 day period begins to toll when the claim is submitted to the auto insurer. If the auto insurer is the secondary coverage provider, and has no notice of disposition of the claim by a primary coverage provider, the auto insurer should deny the claim, pending such disposition, to halt the 60 day period. A new 60 day period would then begin upon resubmission of the claim. As a secondary coverage provider, the amount of loss is difficult to calculate without disposition of the claim by the primary coverage provider and may result in overpayments or underpayments. Inasmuch as auto insurers, as secondary coverage providers, have 60 days following submission of a claim which has been disposed of by the health benefits provider, the Department does not believe any extensions or exceptions in the 60 day period were warranted.

COMMENT: One commenter raises whether the insured (or the health care provider) may add the statutory interest to the billed charges when the insured and auto insurer have gone into arbitration or litigation.
COMMENT: One commenter questions the necessity for the distinction between N.J.A.C. 11:3-37.6 and N.J.A.C. 11:4-28.2. The commenter asserts that since, in New Jersey, under N.J.A.C. 11:4-28 (without amendment), there may be coordination between the PIP plan and a health benefits plan, regardless of which plan is primary or secondary, it would appear that reference to automobile no-fault contracts must be retained in the definition of "Plan". The commenter queries how coordination of such a plan is to take place if it is removed from the definition of N.J.A.C. 11:4-28.

RESPONSE: Coordination of benefits between the PIP plan and health benefits plans shall now occur in accordance with N.J.A.C. 11:3-37.

While N.J.A.C. 11:4-28 appears to allow coordination between PIP plans and health benefits plans on a plan by plan basis, a close reading of N.J.A.C. 11:4-28 indicates that this is not the case. N.J.A.C. 11:4-28 allows coordination between plans that contain coordination provisions complying with the rules of N.J.A.C. 11:4-28. However, the rules of that chapter do not anticipate a plan becoming primary or secondary based on the insured's selection, but rather, based upon other contract-dependent criteria. PIP plans have never been allowed to contain the contract language of N.J.A.C. 11:4-28, and the FAIR Act has not altered that effective restriction. Therefore, N.J.A.C. 11:4-28, in practical application, specifies that the PIP plan, as a plan with non-conforming language, would always be primary.

There are other impediments to using N.J.A.C. 11:4-28. First, the rules that subchapter do not apply to individual health insurance. Second, even if the rules were substantially amended to accommodate individual health insurance and PIP plans in some manner, it would be impractical to allow insureds the choice as to which health plan would be primary or secondary on a plan by plan basis. The determination of liability would be very complex, and it is possible that insureds could manipulate the system by selecting one health carrier as primary to get the PIP discount, while keeping another health carrier secondary to maximize his or her benefit, to the detriment of both the other health carrier and the auto carrier from which the PIP purchased the coverage.

COMMENT: Several commenters suggest that "Medicare" and "Medicaid" be deleted from the definition of "health benefits provider" since Medicare and Medicaid have been indicated as programs which will not provide primary coverage benefits.

RESPONSE: The Department disagrees. The definition of "health benefits provider" only defines what a "health benefits provider" is, not whether a health benefits provider's plan is one that will provide primary coverage benefits when auto insurance PIP benefits are, or would be available to an insured but for an election to make the PIP plan secondary coverage.

COMMENT: One commenter states that in revising the definition of "hospital expenses," so that it only applies to automobile insurers just issues confusion, as health benefits providers and auto insurers will be using completely different definitions of "hospital expenses."

RESPONSE: The Department disagrees, and there shall be no change in the definition. The commenter would like for the definition of hospital expenses to be the same for both auto insurers and health insurers. This cannot be done. The definition of "hospital expense" for auto insurers is set forth by statute; the Department will not deviate from the definition. Additionally, by statute, health benefits providers are not required to cover treatment not normally covered under their contracts. The Department will not provide a definition of "hospital expenses" which may infringe that statutory assurance.

COMMENT: One commenter requests that the Department make exceptions in the realm of eligible health benefits plans to exclude prescription only plans, limited hospital plans, limited medical plans or any combination which would not provide actual significant coverage. This commenter is joined by another commenter in stating that minimum benefits are needed for health benefit plans to be "eligible."

RESPONSE: The Department disagrees that minimum benefits should be required, but the commenter's arguments were not discussed in this rulemaking and we refer to the testing of the plan's response to substantially similar comments at 22 N.J.R. 3779. However, the Department will exclude prescription only plans, although it is not aware of any plan of that nature delivered or issued for delivery in New Jersey to individuals or groups other than in combination with other health benefits coverage.

COMMENT: One commenter requests confirmation that N.J.A.C. 11:3-37.12 allows continuation of the PIP concurrency system. RESPONSE: Yes, as appropriate.

COMMENT: One commenter questions whether a health benefits provider would have the right to refuse to process a claim, and asks how one is to know whether a health benefits provider is correct or incorrect in stating that they are not the primary coverage provider for that claim.

RESPONSE: The Department has addressed this comment previously at 22 N.J.R. 3779. Any health benefits provider not subject to New Jersey regulation is not compelled to comply with these rules. A health benefits provider should provide information as to whether it is subject to regulation by this State. Complaints about any health benefits providers or other insurers may always be presented to the Department.

COMMENT: One commenter states that many health plans have limitations upon coverage for certain types of treatments and therapies. The commenter questions whether, when that benefit is exhausted, the secondary coverage provider must continue coverage for that treatment or therapy, or whether responsibility will be terminated for all coverage providers.

RESPONSE: The secondary coverage provider must continue to provide coverage for that treatment or therapy, to the extent that the treatment is an eligible expense, or the costs of the treatment are within the limits of the contract of medical fee schedule allowances.

COMMENT: One commenter asks whether the $250,000 cap on benefits is for medical benefits only, exclusive of lost wages and essential services benefits.

RESPONSE: The $250,000 cap applies to medical expense benefits only. N.J.S.A. 39:6A-4 sets forth separate limitations for income continuation and essential services benefits.

COMMENT: Two commenters note that the Unsatisfied Claim and Judgment Fund ("UCJF") requires auto insurers to audit hospital and medical bills in excess of $10,000. The commenters ask whether, in light of the fee schedule, this would still be a requirement of the UCJF.

RESPONSE: Inasmuch as the medical fee schedule does not apply to hospital charges as such, but hospital bills may include charges which contain services of health care providers who may be subject to the medical fee schedules, audits of such bills is still appropriate. Technically, however, this matter is beyond the scope of these rules. A definitive answer would be sought from the UCJF Board of Directors. All indications are that the UCJF Board of Directors plans no changes to its current rules.

COMMENT: One commenter questions whether health benefits providers will be required to audit hospital and medical bills, and if not, whether their failure to audit will impose a duty on the auto insurer, as the secondary coverage provider, to audit the bill prior to submitting the request for reimbursement from the UCJF.

RESPONSE: Health benefits providers do not receive reimbursements from the UCJF, and are thus under no obligation to audit hospital and medical bills. The Department believes that if a bill submitted is one which an auto insurer would have been required to audit as a primary coverage provider, the auto insurer is still obligated to audit that bill, even though it is now a secondary coverage provider. The commenter may wish to check with the UCJF Board of Directors for a definitive answer on this issue.

COMMENT: One commenter questions whether a health benefits provider is subject to penalties similar to auto carriers if they are late in processing payments, and if so, whether penalty payments affect the $250,000 cap.

RESPONSE: Because of the definition of "personal injury protection coverage" set forth at N.J.S.A. 39:6A-4, the Department is of the opinion that health benefit providers are not subject to the penalty provisions of N.J.S.A. 39:6A-5 for late payment of personal injury protection coverage. Health benefits providers are not subject to any other similar provision. Of course, any payment subjected to arbitration or litigation may incur penalties, generally for a finding of unfair claims settlement practices. Payment of penalties should never affect any benefit limit; otherwise, there would be no point in the penalty being assessed.

The Department advises the commenter that health benefits providers are not subject to the $250,000 cap on benefits. Auto insurers may not consider anything paid by the UCJF by the health benefits provider as counting towards the $250,000 cap. Only auto insurers, and payments made by auto insurers, are subject to the $250,000 cap on benefits set forth in N.J.S.A. 39:6A-4.

COMMENT: Two commenters ask what fee schedule applies when an out-of-State resident elects New Jersey PIP benefits pursuant to N.J.S.A. 17:28-1.4, and questions how a health benefits provider would pay.
RESPONSE: This comment does not squarely address these rules. Regarding the fee schedules to be used, readers should consult the Summary of Public Comments and Agency Responses for N.J.A.C. 11:3-29, appearing within this New Jersey Register.

Out-of-State residents should be assumed to have accepted payment of their personal injury protection coverage from the auto insurer, unless they specify otherwise, and the auto insurer is able to confirm that the insureds have coverage from a health benefits provider that makes no exclusions for auto injuries or PIP benefits. These rules of coordination do not apply to policies delivered out-of-State; therefore, it is possible that many out-of-State residents will have health coverage which will not be primary to PIP benefits. If health benefits plans of the out-of-State residents will be primary, auto insurers should coordinate benefits with their health benefits plans using the EOB form. If health benefits plans of out-of-State residents will not be primary, auto insurers should pay benefits without further consideration of the existence of any health benefits plans. In most instances, the PIP plan will be primary.

COMMENT: Two commenters ask whether, when the auto insurer is the secondary coverage provider, it may request an independent medical exam when it believes the insured's treatment is excessive, and the health benefits provider does not or will not conduct an exam to determine if further treatment is warranted.

RESPONSE: This comment has been responded to previously at 22 N.J.R. 3783, at least in part. The right of the auto insurer to request an independent physical exam is not abrogated by virtue of becoming a secondary coverage provider. Obviously, the request for an independent medical exam should be weighed against the costs being borne by the auto insurer as the secondary coverage provider.

COMMENT: Two commenters state that it may be useful for the Department to develop a standard form to be utilized by health benefits providers and auto insurers for coordination of benefit claims.

RESPONSE: The Department has set criteria for an Explanation of Benefits (EOB) form at N.J.A.C. 11:3-37.10. Health benefits providers currently use EOBS which are more-or-less standardized. The Department has no standard EOB forms for health benefits providers, but such have developed as a matter of necessity. The Department has assumed that auto insurers would follow the examples of the health benefits providers, essentially. If this may not be achieved amongst the insurers without Department intervention, then the Department may develop a standard form EOB. Readers are advised that the Department has made a revision to the EOB form requirements, so that insureds may more easily understand what charges, if any, they might still owe.

COMMENT: One commentator notes that PIP benefits are paid regardless of fault to the statutory benefit limit, per person. The commentator asks whether, if health benefits providers pay, there are subrogation rights.

RESPONSE: The Department is not certain that it fully comprehends the commenter's question. Auto insurers have specific rights of subrogation and to seek recovery from collateral resources. These rights are set forth at N.J.S.A. 39:6A-9.1 and 39:6A-6, respectively. These statutory rights are not abrogated by virtue of the auto insurer being cast into the secondary coverage provider position. With respect to the issues of the rights of health benefits providers in such subrogation actions, and the mix of health benefits providers and auto insurers in subrogation actions, readers should refer to the Department's response previously provided at 22 N.J.R. 3781.

COMMENT: One commenter asks whether an employer who, in compliance with these rules, provides a health benefits plan which may be elected as primary coverage for auto accident-related injuries, will be subject to the "experience" related to the auto accident injuries. The commenter also asks whether this would also be true for coverage extended to spouses and other dependants.

RESPONSE: The health benefit plans of employers (and others) will be rated in the same manner as always. If a health benefit plan pays out or allows for reimbursement due to auto accident injuries or otherwise, it is assumed that the experience rating of the specific health benefit plans will be affected in varying degrees, depending on the size of the group and the magnitude of any aberrant experience. It should be kept in mind that most employer-sponsored plans are group plans, and are subject to group plan experience rating criteria. This would apply also for employer-sponsored single member contracts written to cover dependants and spouses.

COMMENT: One commentator states that the rules should avoid a no payments at all situation when disputes arise, with a procedure set so that someone pays while the dispute is in progress, with reimbursement occurring after the dispute is settled.

RESPONSE: The Department has provided for such a procedure N.J.A.C. 11:3-37.11.

COMMENT: Two commenters request a clarification be made N.J.A.C. 11:3-37.8(a). One commenter requests that the rule be revised to require that an insured have primary health insurance which apply at the time of an injury. The second commentator requests that a special reference to dental-only plans be included at N.J.A.C. 11:3-37.8(a).

RESPONSE: The Department will revise N.J.A.C. 11:3-37.8(a) to include the provisions set out in N.J.A.C. 11:3-37.5(a).

COMMENT: Two commenters question the treatment of expenses of auto insurers, as secondary coverage providers, incurred by an insured who is not also an enrollee in HMO treatment - otherwise receives treatment outside of the HMO contract. One commentator requests that the rules be revised to specify that such services are not allowable expenses. The other commentator states that the auto insurer should be allowed to apply its deductible and copayments.

RESPONSE: When an insured elects to go outside the HMO contract and the HMO determines that the services or expenses incurred are not allowable expenses, the auto insurer shall continue to cover these expenses as allowable expenses in accordance with the requirements of N.J.A.C. 11:3-37.7, to the extent that the expenses are within the medical schedule or are reasonable and medically necessary, and the auto insurer does not pay any benefit amount in excess of what it would have paid had it been primary. The situation is no different from that which may arise under any other traditional health contract in which the insured elects surgery which the health benefits provider does not cover.

COMMENT: One commentator questions whether auto insurers are required in their contracts to provide language regarding the premium reduction rule at N.J.A.C. 11:3-37.5(b).

RESPONSE: Auto insurers should include contract language stating that the PIP or secondary coverage selection may be invalidated for the reasons set forth at N.J.A.C. 11:3-37.5(a), and that the insured may be requested to pay additional premiums for PIP coverage to reflect the option selection invalidation. The contract language should either explicitly or otherwise reference current contract provisions regarding equitable cancellations for nonpayment of premiums.

COMMENT: One commentator questions whether the minimum standard rules of N.J.A.C. 11:4-16, when referenced by the rules at N.J.A.C. 11:3-37, apply to both individual and group health benefits plans.

RESPONSE: No, N.J.A.C. 11:4-16 only applies to nongroup health benefit plans. The Department notes that N.J.A.C. 11:3-37 never references N.J.A.C. 11:4-16.

COMMENT: One commentator states that there is confusion as to how auto insurers should interpret the definitions of N.J.A.C. 11:4-16 with applicable PIP. The commentator specifically questions: (a) whether the definitions of "insured" will vary between health benefits plans and PIP plans; (b) whether auto insurers are entitled to apply a health benefits provider's "pre-existing condition" application, or will become "primary payers" if the health benefits provider denies coverage based on pre-existing related conditions or will become "primary payers" if the health benefits provider covers expenses of unrelated pre-existing conditions; (c) whether there is a conflict between the health benefits providers definition of "disability" and those used under PIP for income continuation; and (d) if terms defined under PIP conflict with health definitions, which definition applies.

RESPONSE: Definitions set forth under N.J.A.C. 11:4-16 apply only to nongroup health benefits plans, and have no application whatsoever to PIP plans.

"Insured" typically is defined differently under health benefits plans and auto insurance. Hence the possibility that a health benefits plan covering the named insured, unlike his or her auto insurance policy, may not apply to a resident relative of the named insured's household.

Auto insurers may not use a health benefits provider's determination of a pre-existing condition to avoid benefit payments. If the health benefit provider and the auto insurer happen to draw the same conclusion about a particular condition and expenses arising from its treatment, then the expenses therefrom may be excluded by both carriers from coverage. (If both carriers draw the same conclusion, then the condition must not have been auto accident-related.) However, the auto insurer is obligated to make its own assessment in this matter. It is probable that in some circumstances, both carriers' definitions will be based upon a pre-existing condition, but there is a greater probability that the denials will not coincide. The auto insurer does not become a "primary payer" in instances when a health benefits provider denies coverage for treatment.

(CITE 23 N.J.R. 600) NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991

INSURANCE

ADOPITION
The definitions of “disability” between health benefits plans and auto insurers may vary; however, this is of no importance. Coordination of benefits associated with a pre-existing condition, but remains a secondary coverage provider, paying benefits in accordance with N.J.A.C. 11:3-37.7.

The definition of a pre-existing condition is that of a condition for which any medical expenses were incurred prior to the policy effective date. The definition of automatic coordination applies only to the policy effective date.

The comment addresses the definition of a pre-existing condition as defined by statute N.J.S.A. 39:6A-2, in whole or in part, not income continuation benefits. An insured who has income continuation benefits under a PIP plan and disability benefits under a health benefits plan may have to meet certain criteria to qualify for the respective benefits.

With respect to the definition of a pre-existing condition, the policy applies to medical expenses (as defined by statute N.J.A.C. 11:3-37.6(d)) which are payable to a PIP plan, not to the health benefits plan. The Department believes that the definition applies only to treatment for auto accident-related injuries. Health coverage will apply for other injuries, sicknesses and preventive treatments.

Health benefits plans, while generally provide benefits up to $1,000,000; PIP plans are capped at $250,000. These incentives are substantial. The Department does not believe any other incentives are necessary. Furthermore, the statute specifies that the $750.00 deductible is for the situation discussed by the commenter does not qualify under the statute.

COMMENT: One commenter asks whether health benefits plans are also required to utilize an EOB identifying the same information set forth at N.J.A.C. 11:3-37.10 and notes that it believes certain plans do not include specific procedure codes, etc., which is information that the auto insurer may need.

RESPONSE: Health benefits providers have not been specifically required to utilize an EOB as set forth at N.J.A.C. 11:3-37.10, because they generally use such an informational EOB already. An exception may be HMOs or PPOs, and possibly self-insured plans. In the case of HMOs and PPOs, however, if any expense remains to be covered following coverage by the HMO or PPO (an unlikely situation), the information which the auto insurer received should be sufficient. This is also true for the self-insureds. Obviously, if an auto insurer cannot understand benefits and benefit payments, it should contact the claims department of the specific health benefits provider.

COMMENT: One commenter questions from whom the auto insurer, as a secondary coverage provider, should expect to receive bills and EOBs.

RESPONSE: As a secondary coverage provider, the auto insurer should expect most often to receive bills and an EOB through its insurer, although other arrangements are possible, and are encouraged.

COMMENT: One commenter states that N.J.A.C. 11:3-37.11(a) and (b) appear to conflict, noting that under (b), if the health benefits provider asserts that it is not subject to the rules, and will not be a primary coverage provider, then the auto insurer shall assume primary payer status. The commenter states that the problem seems to be with the word “asserts” versus “provides proof” and requests additional clarification.

RESPONSE: No conflict exists between subsections (a) and (b) of the rule. The term “asserts” is appropriate. If the health benefits provider “provides proof” that it is not subject to regulation by this State, and will not become a primary coverage provider, there would be no basis for the commenter to assert that (b) would apply automatically. Here, an assertion, without further proof, leaves room for discretion. However, if the dispute exists in areas other than whether the health benefits provider must comply with this subchapter or whether the health benefits plan does or should cover the insured individual under the circumstances, then subsection (a) of N.J.A.C. 11:3-37.11 applies. N.J.A.C. 11:3-37.11(a) might apply, for example, when the health benefits provider asserts that the governing PIP Plan section is incorrect, or that the “birthday rule” at N.J.A.C. 11:3-37.12 has been applied inappropriately, etc.

COMMENT: One commenter states that N.J.A.C. 11:3-37.12(a) does not appear to be supported by the FAIR Act, and may have a direct impact on underwriting rules. N.J.A.C. 11:3-37.12(a) states that if an automobile policy identifies more than one person as a named insured on the automobile policy, the birthdate of the named insured whose birthday occurs earliest in the calendar year shall be considered the determinative birthday on that automobile policy.

RESPONSE: The Department disagrees that the provision may be outside the scope of the FAIR Act, or that it will have a direct impact upon underwriting rules. One of the named insured’s birthdays must be determined with respect to that policy; it might as well be the earlier birthday as the latter. Any impact upon underwriting should be indirect and statistically insignificant, inasmuch as all auto insurers should comply with the rules, and that day of birth provides no relevant indication of a propensity for accidents, propensity to choose health benefits or PIP benefits as primary or secondary, or propensity to have an indeterminate number of resident relatives to whom the selection would apply (who are not themselves named insureds with their own auto policies). Additionally, the commenter has suggested no alternative method; therefore, the Department will make no revision.
COMMENT: One commenter requests clarification that when a health benefits provider is providing secondary coverage, that the health benefits plan may apply its deductible and copayment requirements to the remaining uncovered allowable expenses, and may pay the amount derived from that calculation, if that amount is less than the health benefits plan's liability would have been had it been the primary coverage provider. The commenter provided an example, which the Department has elected not to reproduce here.

RESPONSE: The commenter correctly states the concept involved. The commenter is cautioned, however, that its example is incorrect in one respect. Health benefits providers are reminded that they are not permitted to ignore amounts of expenses which exceed the medical fee schedules, but that, in accordance with N.J.A.C. 11:3-37.9(c)2ii, these amounts shall be considered.

COMMENT: One commenter requests confirmation that its interpretation of N.J.A.C. 11:3-37.9(e) is correct, providing the following example: An insured has a hospital benefits only contract, and a medical benefits only contract, with separate health benefits providers. The insured has elected the PIP plan to be primary. The insured is left with $1,000 worth of services not covered by the PIP plan, amounting to $600.00 worth of hospital expenses and $400.00 worth of medical expenses. Both health benefits providers determine that their respective potential liabilities exceed the $1,000 in outstanding charges if they had been primary coverage providers. The commenter asks whether both health benefits providers would pay $500.00 of the remaining $1,000 charge, or whether the hospital plan would pay $600.00 and the medical plan would pay $400.00.

RESPONSE: The two plans should apportion the expenses between themselves based on what their respective obligations would have been had they been primary. If the hospital plan would have paid more then the medical plan, the proportion of the payments should be applied to the remaining uncovered expenses, without regard as to whether expenses are hospital-related or medical-related expenses. The Department cannot conclude that the commenter's example is correct under either payment method, without further information regarding what each plan would have owed overall. The commenter is reminded that remaining uncovered expenses essentially should lose their identity for purposes of payment by secondary coverage providers.

COMMENT: One commenter questions whether the Department's position concerning possible ERISA-exempt plans has changed in light of the recent decision of the United States Supreme Court in F.M.C. Corp. v. Holiday. Docket No. 89-1048.

RESPONSE: No. F.M.C. Corp. v. Holiday addresses a situation in which the self-funded plan has already been determined to be ERISA-exempt, and whether an anti-subrogation law may be imposed upon the self-funded plan. This has no bearing on the Department's position that a "self-insured" plan is subject to New Jersey regulation unless and until it provides the Department with a document from the U.S. Department of Labor stating that the plan qualifies as an ERISA-exempt self-funded plan subject to no state regulation, or that the plan is partially insured and therefore subject to regulation of its solvency and financial condition only by this State.

COMMENT: One commenter requests that the Department revise N.J.A.C. 11:3-37.5(a) by adding a new section to allow auto insurers to invalidate a PIP-as-secondary coverage option selection when the indicated health benefits provider allows itself to become primary but contains a clause in the plan contract that it can subordinate payments made involving injuries arising out of an automobile accident where the plan provides primary coverage. The commenter states that this would eliminate those ERISA-exempt self-funded plans which allow primary to PIP, but will subordinate against bodily injury claim recoveries (in light of the ruling in F.M.C. Corp. v. Holiday, Docket No. 89-1048). The commenter states that this would prevent such plans from shifting the mandatory PIP coverage to mandatory bodily injury liability.

RESPONSE: The Department appreciates the commenter's concern, but does not believe that the revision will have the affected intend. Any self-funded plan which is truly ERISA-exempt may choose to act as a primary coverage provider whether or not the insured selects that option on the Coverage Selection Form and then subrogate against any bodily injury recovery the insured may collect. In fact, it is questionable whether the self-funded plan would be foreclosed from seeking recovery from collateral resources (that is, PIP benefits) under the F.M.C. Corp. v. Holiday ruling. The Department does not believe that the revision the commenter requests will eliminate the problem the commenter foresees, but will result in numerous coverage option selection invalidations which are not warranted.

COMMENT: Two commenters question the application of the P option selection to commercial automobile policies. Both commenters state that they understand how the PIP primary option selection was if the named insured is other than a corporation or partnership, but that when the named insured is not an individual, the notions of other medical coverage and resident relatives have no real meaning. The commenters request an explanation of the Department's position in regard to practical application of the option.

RESPONSE: The Department is not in a position to provide the commenters with a definitive response at this time. This is an issue which remains after certain other option selections, the Department has been reviewing for a while, via the Commissioner's Producer Advisory Committee. The Committee is composed of several different trade associations. The Committee is scheduled to render a report to the Department within the next several weeks addressing the various aspects of practical application of personal options to commercial auto policies. The Department will study the Committee's report and recommendation before drawing any conclusions on the matter. Insurers are advised to continue to conduct their business with respect to commercial auto policies regarding this PIP option in the same manner as they do current regarding other personal coverage options, until the Department advises otherwise.

COMMENT: One commenter states that the definition of "named insured" should not have been revised to remove the reference to "natural persons." The commenter states that the Department removed the phrase "natural person" so as to avoid any conflict with the position that a primary option may apply on commercial auto policies. The commenters state that the Department is incorrect to make the application to commercial auto policies, and should reintroduce the term "natural person" to the definition of "named insured."

RESPONSE: The Department disagrees. The statutory definition "named insured" does not reference "natural persons." The deletion the term "natural persons" was appropriate.

Summary of Agency-Initiated Changes:

The Department has revised the definition of named insured N.J.A.C. 11:3-37.2, to more closely track the language of the statutory definition set forth at N.J.S.A. 39:6A-2f.

In addition to the changes made in response to comments, the Department has revised the language of N.J.A.C. 11:3-37.5 to make it clear that a notice of invalidation of coverage option selection and demand for payment of the premium reduction amount is a prerequisite to effecting an equitable cancellation of the automobile policy. In the process setting forth this clarification and the changes made in response to comments, certain sections have been renumbered.

The Department has revised the rules concerning the EOB, at N.J.A.C. 11:3-37.10. The Department is requiring auto insurers to state the rate of a statement comprising the FAIR Act with regard to the policy's personal insurance coverage and resident relatives. More parties become aware of the medical fee schedules, the fee schedules may have an increasing cost containment effect.

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

11:3-14.8 Application of the option to choose health care insurance coverage as the primary insurer

When an insured or prospective insured elects to have a health insurer provide primary personal injury protection medical expenses benefits, the medical expense benefits available to the insured under his or her automobile policy's personal injury protection provision shall become a secondary benefits provider. The order of benefit determination shall be in accordance with N.J.A.C. 11:3-37.

SUBCHAPTER 37. ORDER OF BENEFIT DETERMINATION BETWEEN AUTOMOBILE PERSONAL INJURY PROTECTION AND HEALTH INSURANCE

11:3-37.1 Purpose and scope

The purpose of this subchapter is to establish guidelines for the order of benefit determination between a plan of health insurance and personal injury protection provided through an automobile policy...
**13-37.2 Definitions**

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

"Actual benefits" means those benefits determined to be payable or allowable expenses.

"Allowable expense" means a medically necessary, reasonable and customary item of expense covered by an insured's health benefits plan(s) or PIP plan as an eligible expense, at least in part. When a plan provides benefits in the form of services, the reasonable monetary value of each such service shall be considered as both an allowable expense and a paid benefit.

"Benefits" means the provision of the following in consideration of payment of premiums or fees on a prepaid or postpaid basis:

1. Services, including supplies;
2. Payment of expenses incurred;
3. A combination of 1 and 2 above; or
4. An indemnification.

"Eligible expense" means:

1. In the case of health benefits plans, that portion of the medical expenses incurred for treatment of an injury which is covered under the terms and conditions of the plan, without application of the deductible(s) and copayment(s), if any.
2. In the case of PIP plans, that portion of the medical expenses incurred for treatment of an injury which, without considering any deductible and copayment, shall not exceed:
   i. The percent or dollar amounts specified on the medical fee schedules, or the actual billed expense, whichever is less; or
   ii. The reasonable amount, as determined by the automobile insurer, considering the medical fee schedules for similar services or equipment in the region where the service or equipment was provided, when an incurred medical expense is not included on the medical fee schedules.

"Health benefits provider" means any person, whether subject to the regulation of the New Jersey Department of Insurance, Department of Health, or both, or not otherwise subject to such regulation, who contracts to provide health services, provide reimbursement for the cost of health services in whole or in part, or to provide for indemnity in the event health services are used, in return for a prepaid or postpaid premium or fee or other consideration, including, but not limited to:

1. Insurers, as defined at N.J.S.A. 39:6A-2a.
2. Hospital service corporations, as defined at N.J.S.A. 17:48-1.
3. Medical service corporations, as defined at N.J.S.A. 17:48A-1.
4. Health service corporations, as defined at N.J.S.A. 17:48E-1.
5. Health maintenance organizations, as defined at N.J.S.A. 26:22-2.
6. Dental service corporations, as defined at N.J.S.A. 17:48C-2.
7. Dental plan organizations, as defined at N.J.S.A. 17:48D-2.
8. Medicare.
10. State Employees Health Benefits Plan;
11. CHAMPUS;
12. Self-insured programs; and
13. An entity organized under the laws of any other state or jurisdiction which delivers certificates to residents of New Jersey evidencing coverage under a contract issued and delivered in a state or jurisdiction other than New Jersey.

"Hospital expenses," when used by the automobile insurance PIP plan, means those expenses defined at N.J.S.A. 39:6A-2f.

"Injury" means any injury sustained by an insured as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile or by an object propelled by or from an automobile.

"Insured" means a person eligible for coverage, at least in part, for medical expenses incurred for treatment of injuries, under an automobile policy PIP medical expense provision, and who meets the definition of a named insured or family member.

1. Named insured means the person or persons identified as the insured in the automobile policy and, if an individual, that person's spouse, if the spouse is a resident of the same household, except that if the spouse ceases to be a resident of the household of the named insured, coverage for that spouse shall continue until the expiration of the term of any policy period in effect at the time of the cessation of residency [*has expired*].
2. Family member means any relative of the named insured or the named insured's spouse who:
   i. Is related to the named insured or named insured's spouse by blood, marriage, adoption or guardianship;
   ii. Resides in the household of the named insured or spouse of the named insured; and
   iii. Is not a named insured under another automobile policy.

"Medical expenses" means expenses for medical, surgical and dental treatment, professional nursing services, hospital expenses, rehabilitation services, diagnostic services, ambulance services, prosthetic devices, medications and other reasonable and necessary expenses resulting from the treatment prescribed by persons licensed to practice medicine and surgery, dentistry, psychology or chiropractic in accordance with this State's laws, or by persons similarly licensed in other states or nations, or any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing.

"Medical fee schedule" means that list of services, procedures and supplies to which have been assigned a maximum fee or percentage of a fee payable by an automobile insurer for expenses incurred as a result of the rendering to an insured any of those specific services, procedures or supplies for injuries, which list is set forth at N.J.A.C. 11:3-29.

"Out-of-State automobile insurance coverage" or "OSAIC" means any coverage for medical expenses under an automobile insurance policy other than PIP, as PIP is defined herein, including automobile insurance policies issued in another state or jurisdiction.

"PIP" means personal injury protection coverage provided as part of an automobile insurance policy issued in New Jersey, specifically those provisions for medical expenses coverage.

"Plan" means any policy, contract, certificate, booklet, evidence of enrollment, program, or other such term which evidences the existence of a relationship between a health benefits provider or PIP carrier and an insured with respect to the provisions of hospital, medical, surgical, dental and/or other health care related benefits, at least in part.

"Primary coverage" means coverage by any plan which determines its actual benefits payable on allowable expenses incurred by an insured for treatment of injuries without taking into consideration the existence of any coverage for which the insured may be eligible provided secondary in accordance with this subchapter. There may be more than one plan providing the insured primary coverage.

"Secondary coverage" means coverage by any plan which determines its actual benefits payable on all allowable expenses incurred by an insured for treatment of injuries after all plans providing primary coverage have considered expenses incurred and paid actual benefits.

11:3-37.3 Health benefits providers

(a) Nothing in this subchapter shall be construed as requiring any health benefits provider to offer, provide, or continue coverage to or for any individual or group, except as may be set forth by other laws of this State, or of the Federal government.

(b) Nothing in this subchapter shall be construed as requiring any health benefits provider to provide coverage for any treatment or service not otherwise covered under the terms of the applicable health benefits plan.

(c) No health benefits contract or policy delivered or issued for delivery in this State, or renewed, continued or converted on or after
January 1, 1991, shall contain any provision, rider, waiver of endorsement or other instrument which restricts, limits or excludes coverage, directly or indirectly, of services or expenses otherwise eligible under the policy or contract on the grounds that:

1. Such expenses arise from an automobile-related injury.
2. Such expenses are covered or paid by PIP.
3. Such expenses are covered or paid by OSAIC except for reductions in benefits when the health benefits contract provides secondary coverage as defined in and permitted by this rule.

(e) A health benefits contract or policy may provide that it is always primary to OSAIC, or may provide that it will determine its benefits as if it were secondary to any OSAIC. If the health benefits contract or policy provides that it will determine its benefits as if it were secondary to OSAIC and the OSAIC also contains a provision that it is always excess or secondary, or refuses to cooperate in determining the amount of benefits payable by the health benefits plan as secondary coverage provider, the health benefits plan shall provide primary coverage.

II:3-37.4 Application of the PIP-as-secondary coverage option

(a) When a named insured elects the PIP option, whereby the named insured intends that medical expenses incurred for treatment of an injury are to be covered by a health benefits provider or providers, as evidenced on the Coverage Selection Form, then the medical expense provisions of the PIP coverage shall be considered to be secondary coverage for the purposes of the order of benefit determination, and all health benefits plans of an insured subject to the policy or contract on the grounds that:

1. Such expenses arise from an automobile-related injury;
2. Such expenses are covered or paid by PIP; or
3. Such expenses are covered or paid by OSAIC except for reductions in benefits when the health benefits contract provides secondary coverage as defined in and permitted by this rule.

(b) The election by the named insured to make PIP medical expense provisions secondary coverage shall apply to only the named insured and family members of the named insured who reside in the named insured’s household and are not named insureds under other automobile policies.

(c) The election by the named insured to make PIP medical expense provisions secondary coverage shall continue in force as to subsequent renewal or replacement policies until the automobile policy or contract on the grounds that such expenses or services would be covered under an automobile policy PIP provision for which the insured would be eligible had the named insured on the automobile policy not selected the PIP-as-secondary coverage option.

(d) No health benefits contract or policy delivered or issued for delivery in this State, or renewed, continued or converted on or after January 1, 1991, shall contain any provision, rider, waiver or endorsement, or other instrument which restricts, limits or excludes coverage, directly or indirectly, of services or expenses otherwise eligible under the policy or contract on the grounds that:

1. Such expenses arise from an automobile-related injury.
2. Such expenses are covered or paid by PIP; or
3. Such expenses are covered or paid by OSAIC except for reductions in benefits when the health benefits contract provides secondary coverage as defined in and permitted by this rule.

(e) A health benefits contract or policy may provide that it is always primary to OSAIC, or may provide that it will determine its benefits as if it were secondary to any OSAIC. If the health benefits contract or policy provides that it will determine its benefits as if it were secondary to OSAIC and the OSAIC also contains a provision that it is always excess or secondary, or refuses to cooperate in determining the amount of benefits payable by the health benefits plan as secondary coverage provider, the health benefits plan shall provide primary coverage.

II:3-37.5 Health benefit plan standards and the PIP premium reduction

(a) An automobile insurer may eliminate the premium reduction on the base rate applicable to the amount of medical expense benefits chosen in conjunction with the PIP-as-secondary coverage option election if the automobile insurer 

*4. Provides benefits only for prescription drugs.*

(b) An automobile carrier shall notify a named insured if the automobile insurer determines that the health benefits plan(s) specified by the named insured contain exclusionary or restrictive coverage provisions as set forth in (a) above, or if the automobile insurer determines that *one or more of the insureds covered under the automobile insurance policy is not provided coverage by at least one of the health benefits plan(s) specified by the named insured*[do not provide coverage to at least one insured covered under the automobile insurance policy*], and, therefore, the named insured premium reduction for PIP medical expense benefits will be eliminated.

*1. The notice shall be in writing and shall specify the reason why the automobile insurer believes the named insured’s health plan coverage is not in compliance with this subchapter.*

*2. The automobile insurer may include in the notice a demand for payment of the premium reduction difference with an explanation that failure to pay the indicated premium reduction difference may result in early cancellation of the automobile policy in accordance with (c) below.

3. The notice shall be sent no later than 30 days prior to the date of cancellation as calculated in accordance with (c) below. A notice which is sent 30 days prior to the date of cancellation shall either contain a statement that it is a notice of cancellation, or be attached to a notice of cancellation, setting forth the effective date of cancellation.

*3.1. The automobile insurer may demand payment of the premium reduction difference.][*3.2*][*4.1*] The effective date of the date of cancellation of a policy for nonpayment of premium shall not be earlier than 10 days prior to the last full day of which premium received by the company prior to the date of preparation of the cancellation notice was prepared shall be the date the notice was prepared under the calculation and determination of such effective date.*

*1. No cancellation in accordance with (c) above shall be effective unless prior thereto, the automobile insurer shall have notified the insured that the premium reduction difference had to be paid to avoid cancellation, as specified in (b) above.*

2. No cancellation notice shall be mailed prior to 30 days in advance of its effective date.

*3.3. If the insured provides payment of the full premium amount and subsequently provides proof that coverage is not restricted in the manner set forth in accordance with (a) above,* the automobile insurer shall refund the monies paid in excess of the full reduction, or shall credit any excess paid on the reduced premium to the extent any premium payment is still unpaid on the policy.

II:3-37.6 Order of benefits determination when PIP is secondary coverage

(a) When the named insured of an automobile policy has selected the PIP-as-secondary coverage option, all health benefits plans for which the insured is eligible shall provide coverage for the allowable expenses incurred by the insured due to an automobile-related injury prior to any benefits for medical expenses being paid by a PIP plan.

(b) If the insured is eligible for coverage under more than one group health benefits plan, the group health benefits plans shall coordinate benefits with one another in accordance with the rule set forth for such plans at N.J.A.C. 11:4-28.

(c) The PIP plan shall provide benefits for allowable expenses remaining uncovered after all health benefits plans for which the insured is eligible have paid benefits towards those allowable expenses.

(d) The PIP plan shall continue to be liable for expenses relating to the same occurrence as the expenses are incurred, whether or not the health benefits plan(s) in force at the time of the accident terminate(s) coverage, or benefits provided under the health benefits plan(s) are exhausted subsequent to the occurrence of the accident, up to the maximum PIP benefits available to the insured under the terms of the automobile policy.
(e) Total benefits paid by an insured's health benefits and PIP plans shall not exceed the amount of total allowable expenses.

11:3-37.7 Determination of PIP medical benefits payable when PIP is secondary coverage

(a) In calculating the actual benefits to be paid by the automobile insurer when the PIP-as-secondary coverage option has been selected, the automobile insurer shall first determine the amount of eligible expenses which would have been paid after application of the deductible and copayment limitations had the PIP-as-secondary coverage option not been selected.

(b) In paying actual benefits, the automobile insurer shall not:

1. Reduce its actual benefits payable on account of any deductibles or copayments of the health benefits plans which have provided benefits ahead of the PIP plan due to the selection of the PIP-as-secondary coverage option; or

2. Reduce its actual benefits payable for any allowable expense remaining uncovered which item of expense otherwise would not be an eligible expense under the PIP plan, except as set forth by (c) below.

(c) In determining remaining uncovered allowable expenses, the automobile insurer shall not consider any amount for items of expense which exceed the dollar or percent amounts recognized by the medical fee schedules promulgated pursuant to N.J.S.A. 39:6A-4.6.

(d) The total amount of benefits to be provided through the PIP medical expense provisions for each insured per accident or occurrence shall not exceed the maximum PIP benefits as provided for by the terms of the policy.

11:3-37.8 Health benefits plan coverage ineligibility

(a) When, subsequent to the selection of the PIP-as-secondary coverage option by a named insured, it is determined that an insured did not have health coverage in effect at the time of an injury, or had health coverage in effect at the time of any injury which is such that the PIP-as-secondary coverage option selection could have been invalidated by the automobile insurer and elimination of the premium reduction in accordance with N.J.A.C. 11:3-37.5(a), but was not, then the insured shall be provided benefits for incurred medical expenses through the PIP medical expense provision.

1. Benefits payable shall be subject to a per accident deductible equaling the total of $750.00 plus the PIP deductible selected by the named insured of the policy.

2. Benefits payable shall be subject to a 20 percent copayment for amounts less than $5,000 after the deductible has been satisfied.

3. Determination of the amount of benefits payable shall be made in accordance with medical fee schedules promulgated pursuant to N.J.S.A. 39:6A-4.6 and set forth at N.J.A.C. 11:3-29, or on a reasonable basis, as determined by the automobile insurer, considering the medical fee schedules for similar services or equipment in the region where the service or equipment was provided, when an item of expense is not included on the medical fee schedules.

4. Total benefits paid for each insured eligible for benefits in any one accident shall not exceed the maximum PIP benefits provided for by the terms of the policy.

(b) All items of medical expense incurred by the insured for treatment of an injury shall be eligible expense to the extent the treatment or procedure from which the expenses arose is recognized on the medical fee schedules, or are reasonable medical expenses in accordance with N.J.S.A. 39:6A-4.

(c) The automobile insurer shall be entitled to recover, for the contract period in which the automobile-related injury occurred, the difference between the reduced premiums paid on the policy and the amount of premium which would have been due on the policy had the named insured not selected the PIP-as-secondary coverage option, and no premium reduction shall be provided on that policy for the PIP-as-secondary coverage option during the remainder of that current contract period.

11:3-37.9 Determination of benefits when PIP is primary coverage

(a) When no election has been made by a named insured to make his or her health benefits plan(s) primary coverage provider(s), so that the PIP plan will provide primary coverage for medical expenses incurred for treatment of injuries, the PIP plan shall provide benefits to the insured without consideration of any benefits for which the insured may be eligible under any health benefits plan.

(b) Actual benefits paid by the PIP plan shall be for all medical expenses which are eligible expenses incurred for treatment of injuries, subject to application of the deductible provided for by the terms of the automobile policy, and a 20 percent copayment requirement for amounts incurred after the deductible and up to $5,000.

(c) Actual benefits payable by a health benefits plan, when the PIP plan is providing primary coverage for medical expenses incurred for treatment of injuries, shall be the lesser of the remaining uncovered allowable expenses or the actual benefits that would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

1. Actual benefits payable may be reduced by the deductible(s) and copayment requirements applicable by the terms of the health benefits plan, and shall not exceed the amount of actual benefits that would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

2. Allowable expenses remaining uncovered, which the health benefits plan(s) shall consider when the PIP plan is providing primary coverage, include:

i. Any PIP deductible(s);

ii. Any PIP copayment amounts;

iii. Any expenses which exceed the medical expense coverage limits of the PIP plan per person per accident, as set forth by the terms of the automobile policy; and

iv. Any expenses not covered by the PIP plan when such expense was determined to be in excess of the reasonable charge for an item of expense not listed on the medical fee schedules, but for which the automobile insurer determined a reasonable charge based on the medical fee schedule for a similar item of expense in the region where the service or equipment was provided.

(d) When a health benefits plan provides hospital expense or service benefits only, or medical expense or service benefits only, and is not otherwise a part of a basic health benefits package, all allowable expenses remaining uncovered shall be considered by that health benefits plan for the provision of benefits, without regard as to whether the expenses are hospital-related or medical-related expenses. Actual benefits paid by that health benefits plan for the allowable expenses remaining uncovered shall not exceed the total actual benefits which would have been payable had the health benefits plan been providing coverage primary to the PIP plan.

(e) When there is one health benefits plan providing insureds hospital expense or service benefits and another health benefits plan providing insureds medical expense or service benefits as two separate parts of one basic health benefits plan package, the hospital benefits plan and the medical benefits plan shall both consider all allowable expenses remaining uncovered and shall apportion such allowable expenses between the two plans on a pro-rata basis without regard as to whether the expenses are hospital-related or medical-related expenses. Actual benefits paid by each plan of the health benefits plan package shall not exceed the total actual benefits which would have been payable by each plan had the health benefits plan package been providing primary coverage.

(f) No insured shall be liable to a health care provider for any fees for services or supplies which exceed the dollar or percentage amounts recognized for those services or supplies on the medical fee schedules.

(g) No health benefits plan shall seek repayment from or withhold payment to an insured for amounts paid to the insured in consider-
The following definitions are provided under the term “Policy definitions.”

(a) Except as provided hereafter, no health insurance policy delivered or issued for delivery in this State shall contain a declaratory provision which states or purports to state that in any event of a dispute as to the proper interpretation or application of this subchapter, the policy shall be construed in accordance with the provisions of this subchapter which fail to comply with the terms herein shall be in violation of this subchapter. Failure to comply with the terms of this subchapter may result in the assessment of any and all penalties in accordance with the laws of this State.

11:3-37.14 Severability

If any provision of this subchapter or application thereof to an person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other person or circumstances shall not be affected thereby.

11:3-37.15 Policy definitions

(a) Except as provided hereafter, no health insurance policy delivered or issued for delivery in this State shall contain a declaratory provision which states or purports to state that in any event of a dispute as to the proper interpretation or application of this subchapter, the policy shall be construed in accordance with the provisions of this subchapter which fail to comply with the terms herein shall be in violation of this subchapter. Failure to comply with the terms of this subchapter may result in the assessment of any and all penalties in accordance with the laws of this State.

11:3-37.16 Penalties

(a) Except as provided hereafter, no health insurance policy delivered or issued for delivery in this State shall contain a declaratory provision which states or purports to state that in any event of a dispute as to the proper interpretation or application of this subchapter, the policy shall be construed in accordance with the provisions of this subchapter which fail to comply with the terms herein shall be in violation of this subchapter. Failure to comply with the terms of this subchapter may result in the assessment of any and all penalties in accordance with the laws of this State.
The plan may include:

1. If, due to some unusual circumstance, delivery within the program.

2. The requirement for urine specimens to be delivered should be changed to two laboratory working days of acquisition. This explanation of the delivery requirement is explained in detail in the Police Training Commission Drug Screening Standards.

3. The amendment of the Police Training Commission rules regarding an automobile no-fault medical benefits plan for which the covered member would be eligible, except as provided for by N.J.A.C. 1:3-37.

4. (No change.)

1:4-28.5 Prohibited coordination; benefit design
(a) (No change.)
(b) (No change.)
(c) No contract delivered or issued for delivery in this State, or renewed, continued or converted on or after January 1, 1991, shall contain any provision, rider, waiver or endorsement or other instrument which restricts, limits or excludes coverage, directly or indirectly, of services or expenses otherwise eligible under the contract on the grounds that such expenses or services would be covered under a contract.

2. Where appropriate, as with the Department of Corrections' practice of using internal affairs officers as official monitors, the rule could be relaxed.

3. The amendment of the Police Training Commission rules regarding operating entity responsibilities was proposed on August 6, 1990.
viii. The official monitor shall be of the same sex as the trainee being tested. If there are no female staff members available, the [appointed authority] may request that a female member of the prosecutor's office or another law enforcement agency serve as the official monitor.
x. The trainee will complete the information requested on the specimen bottle label and any related agency or laboratory forms.
xi. After the official monitor has inspected the information for accuracy, the trainee will void approximately 50 milliliters of urine into the specimen bottle. The specimen will be handled and processed in accordance with procedures approved by the Commission.
xii. After ascertaining that all forms have been completed accurately and after serving as a witness to the void, the official monitor shall take possession of the sample and place it in a controlled access refrigerated storage area until it is delivered to the designated laboratory. This delivery shall occur within one laboratory working day of acquisition.
xiii. The school director shall request that the designated laboratory provide notification of any urinalysis resulting in a positive test result. A sample shall be considered positive for the presence of drugs only when resulting from a confirmatory test procedure. A written laboratory report shall be obtained for all positive samples. All trainees who are found positive for drugs and an appropriate official in the trainee's law enforcement agency will be orally notified by the school director of the positive confirmation result as soon after notification from the laboratory as possible. A copy of the laboratory report shall be provided to the trainee by the school director if requested.

DIVISION ON CIVIL RIGHTS

Rules of Practice and Procedure

Readoption with Amendments: N.J.A.C. 13:4

Adopted: January 6, 1991 by C. Gregory Stewart, Director, Division on Civil Rights.
Filed: January 17, 1991 as R.199 d 67, without change.
Authority: N.J.S.A. 10:5-6; 10:5-8(g), (h); 10:5-12(g), (h), (k).
Effective Date: January 17, 1991, Readoption; February 19, 1991.
Amendments.
Expiration Date: January 17, 1996.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:4.

Full text of the adopted amendments follows.

13:4-1.4 Definitions

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

"Investigator" means any employee of the Division designated under the Department of Personnel as "Investigator, Division on Civil Rights."

"Office of Administrative Law" or "OAL" refers to the agency created by N.J.S.A. 52:14F-1 et seq.

"Office of the Division" means the office located at 31 Clinton Street, Newark, New Jersey, and the offices located at 369 Broadway, Paterson, New Jersey; 383 West State Street, Trenton, New Jersey; 130 Broadway, Camden, New Jersey; 1548 Atlantic Avenue, Atlantic City, New Jersey; 24 Washington Street, Morristown, New Jersey; 501 Landis Avenue, Vineland, New Jersey; 601 Bangs Avenue, Asbury Park, New Jersey; and any additional offices which may from time to time be established.

"Respondent" means any party charged with unlawful discrimination under the Law Against Discrimination. (N.J.A. 10:5-9.1.)

13:4-2.1 Director's investigations

(a) The Director, pursuant to N.J.S.A. 10:5-6; 10:5-8(c, h, i, j). 10:5-9.1, may, on his or her own motion or on the motion of a person entitled to be a complainant under N.J.A.C. 13:4-3.3, conduct investigations to determine the extent to which industries, groups, businesses, persons, or groups of persons are complying with the Law Against Discrimination. (b)(c) (No change.)

(b) (e) (No change.)

13:4-2.3 Fact-finding conference

(a) Fact-finding, as part of an investigation in a discrimination complaint, is subject to the following:

1. As part of its investigation, the Division may convene a fact-finding conference for the purpose of obtaining evidence, identifying the issues in dispute, ascertaining the positions of the parties and exploring the possibility of settlement. The fact-finding conference is not an adjudication of the merits of the complaint. 2. (No change.)

13:4-9.1 Issuance of investigatory subpoenas by Director

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

(d) A subpoena may be issued by the Director upon the application of any party if that party can demonstrate to the Director that the subpoena is reasonable, and that the matters sought therein are relevant and material to the investigation.

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

DIVISION OF CONSUMER AFFAIRS

CHARITIES REGISTRATION AND INVESTIGATION SECTION

Charitable Fund Raising

Readoption with Amendments: N.J.A.C. 13:48

Proposed: October 1, 1990 at 22 N.J.R. 3108(b).
Filed: January 17, 1991 as R.199 d 67, without change.
Authority: N.J.A.C. 1:30-4.3.
Effective Date: January 17, 1991, Readoption; February 19, 1991.
Amendments.
Expiration Date: January 17, 1996.

The Charities Registration and Investigation Section, an agency of the Division of Consumer Affairs, afforded all interested parties an opportunity to comment on the proposed readoption of N.J.A.C. 13:48 relating to charitable fund raising. The official comment period ended on October 31, 1990. Announcement of the opportunity to respond to the Division appeared in the New Jersey Register on October 1, 1990 at 22 N.J.R. 3108(b). Announcements were also forwarded to American Association of Fund Raising Council, National Charities Information Bureau, National Society of Fund Raising Executives, Central New Jersey Fund Raising Forum, Center for Non-Profit Organization Philanthropic Advisory Service Council of Better Business Bureaus, St. Ledger, Trenton Times, and the New Jersey Law Journal.

A full record of this opportunity to be heard can be inspected contacting the Division of Consumer Affairs, 1207 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

One letter was received during the 30-day comment period from Center for Non-Profit Corporations. A summary of the Center's comments and the Division's responses follows.
N.J.A.C. 13:48-3.3

COMMENT: This section, which states that the Charities Registration and Investigation Section (C.R.S.) will send an appropriate form to any corporations that appear to be charitable entities, requires that all entities included in the Charitable Fund-Raising Act may be sent to all eligible organizations or individuals is certainly a good one, and in fact the C.R.S. already has a procedure in place which attempts to accomplish that goal. At present, the C.R.S. receives notification of all new corporations from the Secretary of State's Office. The documents are reviewed, and those corporations that appear to be charitable entities are sent a questionnaire. Based on the response to the questionnaire, the entity is either sent a registration form or notified that it is exempt or otherwise not under the jurisdiction of the agency. In addition, publication of the fund-raising rules in the New Jersey Register and the New Jersey Administrative Code provides additional notice to organizations that might fall within the agency's jurisdiction. While it may be that some of the Center's organizations have never received anything from the C.R.S. detailing their rights and responsibilities, the only expansion of the current procedure which might ensure more comprehensive education of non-profit organizations would be the sending of questionnaires to all non-profit organizations without the initial review. However, this procedure would require increases in staff and budget which are not available at this time.

RESPONSE: The suggestion that the appropriate registration forms be sent to all eligible organizations or individuals is certainly a good one, and in fact the C.R.S. already has a procedure in place which attempts to accomplish that goal. At present, the C.R.S. receives notification of all new corporations from the Secretary of State's Office. The documents are reviewed, and those corporations that appear to be charitable entities are sent a questionnaire. Based on the response to the questionnaire, the entity is either sent a registration form or notified that it is exempt or otherwise not under the jurisdiction of the agency. In addition, publication of the fund-raising rules in the New Jersey Register and the New Jersey Administrative Code provides additional notice to organizations that might fall within the agency's jurisdiction. While it may be that some of the Center's organizations have never received anything from the C.R.S. detailing their rights and responsibilities, the only expansion of the current procedure which might ensure more comprehensive education of non-profit organizations would be the sending of questionnaires to all non-profit organizations without the initial review. However, this procedure would require increases in staff and budget which are not available at this time.

N.J.A.C. 13:48-3.8 and 7.4

COMMENT: The requirement set forth in N.J.A.C. 13:48-3.8 that professional fund raisers must issue reports to the C.R.S. following fund raising campaigns does not appear in the enabling legislation. Therefore, this requirement represents an overextension of the Division's authority to implement, rather than enact, New Jersey's charitable fund raising laws. Similarly, N.J.A.C. 13:48-7.4 represents an overextension of the Division's authority to implement, rather than enact, New Jersey's charitable fund raising laws. Therefore, a full review of the entire chapter in this regard will be undertaken. Because such review cannot practically be accomplished prior to the expiration of these rules, however, any changes necessary to make the rules consistent will appear as a separate proposal in a future issue of the New Jersey Register.

RESPONSE: The Division agrees that clarification of this section as well as of the entire chapter is necessary with regard to the calculation of days. Therefore, a full review of the entire chapter in this regard will be undertaken. Because such review cannot practically be accomplished prior to the expiration of these rules, however, any changes necessary to make the rules consistent will appear as a separate proposal in a future issue of the New Jersey Register.

N.J.A.C. 13:48-5.2 and 7.3

COMMENT: N.J.A.C. 13:48-5.2, which concerns contracts entered into between professional fund raisers and/or solicitors and charitable organizations, requires that all contracts to be filed with the C.R.S. within 10 days after the contract is signed. To clarify that performance under the contract is not to be made until the contract is approved by the C.R.S., subsection (c) should be amended to read as follows: “Every contact or written agreement shall be filed . . . no later than 10 days after such contract or agreement is signed and before any performance of the contract is made.” A similar change should be made in N.J.A.C. 13:48-7.3, which concerns contracts to produce, conduct, manage, plan or run a show or event for a charitable organization.

RESPONSE: The Division agrees with these comments and has made the appropriate change in N.J.A.C. 13:48-5.2. A similar change has been made in N.J.A.C. 13:48-7.1, rather than in 7.3 as suggested by the Center, since N.J.A.C. 13:48-7.1 concerns the filing of contracts with the C.R.S.

N.J.A.C. 13:48-9.6

COMMENT: Subsection (a), which requires disclosure in telephone or verbal solicitation texts of the name and address of each organization or fund on behalf of which all or any part of monies collected will be utilized for charitable purposes, is subject to misinterpretation. The Center requests that this subsection be clarified to indicate that only initial recipients, and not indirect recipients such as member agencies of United Ways or other federated campaigns, be disclosed.

RESPONSE: The C.R.S. did not intend subsection (a) to require disclosure of the names and addresses of all members in a federated campaign. If, however, it is known and intended that the donation will go to one specific recipient, the name and address of that organization should be given along with that of the parent organization. The Division believes this subsection is sufficiently clear and that an amendment is not required at this time. If it is subsequently determined that this subsection is not clear, a clarification will be considered.

COMMENT: The required disclosure of status set forth in subsection (a2), which the commenter assumed was to ensure that potential donors be informed when they are being solicited by an independent fund raising entity, should be restricted to independent paid fund raisers and independent paid solicitors; disclosure of volunteer status should be optional for the employee of the charitable organization and the volunteer.

RESPONSE: The Division disagrees with this comment and points out that the commenter's assumption is not correct. In fact, the intent of this provision was to require disclosure of status by all fund raisers, including employees of the charitable organization. It is the Division's position that in order for a potential donor to make an informed decision about whether to make a charitable contribution, it is in the best interests of the potential donor to have as much information as possible about the charity, including the status of its fund raisers. Accordingly, the Division has amended this subsection to clarify its intent that disclosure of status is required by volunteers, bona fide employees of the charity and independent paid professionals.

COMMENT: A waiver of the requirement set forth in subsection (a) should be permitted. This subsection requires that telephone or verbal solicitation texts include a disclosure that additional information concerning the charity may be obtained at the Newark Offices of the C.R.S. The Center is of the opinion that if this disclosure were made to potential contributors by mail within a specified period of time (that is, 30 days) prior to the telephone solicitation, the exemption from subsequent telephone solicitation would be appropriate.

RESPONSE: The Division disagrees with this comment. Such an exemption might place an undue financial and administrative burden on the small or new charity which does not or cannot engage in advance mail solicitation but which is trying to compete with older, more established charities. In addition, the Division believes a hiatus between receipt of the information and the telephone solicitation is not in the best interests of the consumer; if the consumer has not kept or read the mailing, he or she will be unaware that additional information about the charity may be obtained at the C.R.S.

Summary of Changes Upon Adoption:

1. Based upon a comment received from the Center for Non-Profit Corporations, changes have been made in N.J.A.C. 13:48-5.2 and 7.1: the words “and before any performance of the contract is made” have been inserted to clarify that performance under a contract between a professional fund raiser and/or solicitor and a charitable organization is not to be made until the contract is approved by the C.R.S.

2. N.J.A.C. 13:48-9.6(a) has been revised for clarification purposes based upon a comment from the Center for Non-Profit Corporations, which stated that it assumed the required disclosure of status was intended to ensure that potential donors are informed when they are being solicited by independent professional fund raisers. The comment is not correct. Accordingly, the Division wishes to clarify its intent that, in the interests of potential donors, all fund raisers, whether volunteer, charitable organization employee or independent paid professional, are required to disclose their status.
**13:48-3.6 Letter indicating status**

The C.R.S. shall, within 10 business days of receipt of the completed form or forms, issue a letter informing the entity or individual either that it is properly registered, or that further information is required. No solicitation may take place by any registrable entity or individual prior to the issuance by the C.R.S. of a letter stating registration to be complete.

**13:48-5.2 Contracts between charitable organizations, professional fund raisers and professional solicitors**

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

(c) Every contract or written arrangement between a professional fund raiser and/or professional solicitor and a charitable organization shall be filed with the C.R.S. within 10 days of the execution or completion of this agreement *and before any performance of the contract is made*, except that where all parties to the agreement are located out of the State of New Jersey, and where none of the parties contemplates solicitation in this State when the agreement is executed or completed, and the decision to solicit in this State is subsequently made, said agreement shall be filed within 10 days of such decision. In the event that the written contract does not fully and accurately disclose the total compensation agreement between a professional fund raiser and/or professional solicitor and a charitable organization, including, but not limited to, the manner in which expenses incurred are to be paid, a written statement supplementing or amending the written contract shall also be submitted.

(d)-(g) (No change.)

**SUBCHAPTER 6. RELATIONS BETWEEN CHARITABLE ORGANIZATIONS AND PROFESSIONAL FUND RAISERS**

**13:48-6.1 Contracts with paid personnel; filing**

Any charitable organization required to register under the Act which retains or utilizes paid personnel to carry on all or part of its fund raising function shall file with the C.R.S. a contract or, where no written contract exists, a written statement in lieu thereof, clearly setting forth the relationship of such persons to the organization. For the purpose of this section, “paid personnel” shall include without limitation those persons whose compensation is contingent on the amount of money, pledges or other property collected as a result of their efforts, regardless of whether or not they ultimately in fact receive any remuneration.

**13:48-6.2 Determination of nature of relationship**

Where a claim is made that none of the parties involved is a professional fund raiser or professional solicitor, the chief shall, within 10 business days of the receipt of such contract or statement, make a preliminary determination as to whether the relationship is one of bona fide employment, and shall so notify the organization and person or persons involved by issuing a letter within that period. No fund raising or soliciting shall be engaged in by the persons in question until such written notification has been received. If it is subsequently determined that any registrations are improper, upon notice fund raising and solicitation shall cease until the improprieties are corrected.

**13:48-6.3 Contracts found to involve professional fund raisers**

Should the chief determine either preliminarily or subsequently that any of the persons in question is in fact a professional fund raiser, the person or persons involved shall be notified that he must comply with statutory registration and bonding requirements. If the requirements are not complied with within five days of receipt of notice, the chief may direct that solicitation cease pending a hearing which shall be requested within 10 days. Should the chief determine that the contract or arrangement does not comply with the Act or these rules, he shall disapprove the contract pursuant to the Act and these rules.

**13:48-6.8 Hearing**

Any party shall have leave to apply for a hearing on the chief's decision, whether preliminary or subsequent, within 10 days of notification. Such hearing shall be held before the Attorney General or such other person as may be authorized by law. The hearing shall be conducted pursuant to the Administrative Procedure Act N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1.

**13:48-7.1 Contracts or agreements involving events or shows for charitable organization**

Any contract, or if no written contract exists, a written description of the nature of the agreement, between a charitable organization and other person or persons to produce, conduct, manage, plan or run a show or other event to which admission is charged and/or requested for the purposes of raising funds for the charitable organization, shall be filed with the C.R.S. within 10 days of the conclusion or execution of said contract or agreement *and before any performance of the contract is made*. A rebuttable presumption shall exist that any person or entity contracting to produce, conduct manage, plan or run such an event is a professional fund raiser wherever it appears that a substantial portion of the sales or solicitation appeal relies on the charitable nature of the organization.

**SUBCHAPTER 9. SOLICITATION CONDUCT**

**13:48-9.1 Solicitations involving advertising or acknowledgment in publications**

(a) Where contributions are solicited by or on behalf of a charitable organization by means of offering advertising or other acknowledgment of contribution in a magazine, tabloid, newspaper or other publication published, owned, operated or controlled by the charitable organization or other party in contractual relationship with the charitable organization or its parent or affiliate:

1. The date of expected publication and expected circulation shall be clearly expressed to the contributor during the initial solicitation.

2. Such publication shall be identified with a publication date.

3. Every registered charitable organization which publishes or causes to be published such a publication shall as part of the reporting requirement furnish to the Charitable Registration Section within 10 days of the initial distribution a statement of circulation from any recognized circulation audit bureau or an affidavit from an officer of the charitable organization attesting to the circulation of such publication.

4. In the event such publication shall be cancelled or unreasonably delayed, all monies received in anticipation of advertising or acknowledgment of contribution in such publication shall be promptly refunded.

**13:48-9.3 Misrepresentations prohibited**

No charitable organization or any of its agents shall knowingly misrepresent an original denial of a request to purchase or contribute by an agent or authorized official of an organization as an agreement, approval or request for further information.

**13:48-9.6 Telephone or verbal solicitation**

(a) Every charitable solicitation text used in the State of New Jersey shall clearly state:

1. The name and address of each organization or fund on behalf of which all or any part of the money collected will be utilized for charitable purposes;

2. Whether the solicitor is a volunteer or a *bona fide employee of the charity or an independent* paid professional; and

3. That additional information concerning the charity may be obtained at the Office of the Charities Registration and Investigation Section in Newark.
NEW JERSEY RACING COMMISSION

Adopted Amendment: N.J.A.C. 13:70-14A.11

Urine Test

Adopted: November 19, 1990 at 22 N.J.R. 3451(a)

Proposed: November 19, 1990 at 22 N.J.R. 3452(a)

Effective Date: February 19, 1991

Filed: January 24, 1991 as R.1991, d.75, without change.


Effective Date: February 19, 1991.


Adopted: January 18, 1991 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director.

Filed: January 24, 1991 as R.1991, d.74, without change.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

13:70-14A.11 Urine test

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

(d) A “positive” Controlled Dangerous Substance or prescription drug result shall be reported, in writing, to the Executive Director or his or her designee. On receiving written notice from the official chemist that a specimen has been found “positive” for controlled dangerous substances or prescription legend drugs, the Executive Director or his or her designee shall proceed as follows:

1. For a licensee’s first violation, he or she shall not be allowed to participate in racing until such time as his or her condition has been professionally evaluated.

i. After such professional evaluation, if said licensee’s condition proves non-addictive and not detrimental to the best interests of racing, said licensee shall not be allowed to participate in racing until he or she can produce a negative test result performed at the Commission testing laboratory, which may be at the licensee’s expense, and agrees to further testing at the direction of the Executive Director or his or her designee.

ii. After such professional evaluation in which said licensee’s condition proves addictive or detrimental to the best interests of racing, the Executive Director or his or her designee shall require the following:

A. Further mandatory testing at the direction of the Executive Director or his or her designee.

B. In addition, said licensee shall agree to further mandatory testing at the direction of the Executive Director, or his or her designee.

C. In addition to other requirements specified in this subsection, the Racing Commission may require a licensee to submit additional proof of rehabilitation as may be required in view of the licensee’s patient assessment; his or her medical, drug and/or alcoholism history including current physiological dependency on drugs and/or alcohol and the duration of the addiction or abuse; and the facts and circumstances surrounding the violation.

2. For a licensee’s second violation, he or she shall be required to enroll in a certified drug rehabilitation program approved by the Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approval requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee shall agree to further mandatory testing at the direction of the Executive Director or his or her designee.

3. For a licensee’s third violation, he or she shall be subject to additional drug tests, as required by the Commission, may be at the licensee’s expense. It shall be the licensee’s responsibility to provide the Commission with such status reports as the Commission may require, including, but not limited to, written notice of enrollment, weekly status reports, and written notice of discharge and successful completion of the program.

4. After a licensee’s first violation, such additional drug tests, as are required by the Commission, may be at the licensee’s expense. It shall be the licensee’s responsibility to provide the Commission with such status reports as the Commission may require, including, but not limited to, written notice of enrollment, weekly status reports, and written notice of discharge and successful completion of the program.

(e)-(f) (No change.)
Department of Health or a similar agency in another jurisdiction. Inquiries as to whether a particular program meets the approval requirements of this rule shall be referred to the Executive Director or his or her designee for determination. In addition, said licensee agrees to provide the Board any mandatory testing at the direction of the Executive Director or his or her designee. Said licensee’s license shall be suspended for six months or until the requirements are fulfilled, whichever is greater.

3. For a licensee’s third violation, he or she shall be liable to the penalties provided in N.J.A.C. 13:71-2.3, including revocation of the individual’s license. A licensee may apply for reinstatement after five years but such reinstatement shall be at the discretion of the Commission based upon a review of the licensee’s entire record.

4. After a licensee’s first violation, such additional drug tests, as are required by the Commission, may be at the licensee’s expense. It shall be the licensee’s responsibility to provide the Commission with such status reports as the Commission may require, including, but not limited to, written notice of enrollment, weekly status reports, and written notice of discharge and successful completion of the program.

5. Said licensee’s license shall be suspended for six months or until the requirements are fulfilled, whichever is greater.

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

PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Regulations of Cable Television

Requests for Service; Seven Day Installation

Adopted Amendment: N.J.A.C. 14:18-3.2

Proposed: September 17, 1990 at 22 N.J.R. 2890(a).

Adopted: January 24, 1991 by Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).

Filed: January 24, 1991 as R. 1991 d.78, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).


Effective Date: February 19, 1991.

Expiration Date: July 26, 1995.

The purpose of this rulemaking (BPU Docket No. CX90070729) is to respond to comments in prior proceedings and more closely conform Board installation time standards to the cable industry standards. The reduction of the originally proposed 20-day standard to seven days constituted a substantive change requiring re-publication and further comment provided by this proceeding.

The present rulemaking originated with a notice of proposed rulemaking on the adoption of amendments to N.J.A.C. 14:18, which was published at 22 N.J.R. 327(c) on February 5, 1990. A notice of hearing was also published in the state’s major daily newspapers at least 15 days prior to the public hearing on February 20, 1990. Individual notices were sent to all cable television operators, legislators and municipalities.

The notice of proposed rulemaking, repeal, and new rules was published in the New Jersey Register on May 7, 1990 at 22 N.J.R. 1330. A public hearing was held on May 15, 1990. Notice of the hearing was published in ten daily newspapers throughout the State. Letters to all municipalities gave notice of the hearing and summarized the proposed changes in the rules. Notice of the full text of the agency proposal was sent to all cable television systems, their attorneys, legislative committees concerned with cable television, parties who provided oral or written comment on the proposed rulemaking, persons attending the proposed hearing and any other interested parties who requested copies or otherwise had been identified by the Office of Cable Television as having an interest in the proceeding. Following the hearing, written comments were accepted until June 6, 1990.

On July 18, 1990, the Board decided to adopt the original proposal setting forth the 20 day requirement, and to present, for further comments, a substantively new proposal calling for installation within seven days. This proposal was published at 22 N.J.R. 2577 on August 20, 1990.
Adelphia also stated that additional installers might have to be hired and additional costs would have to be shifted to the subscriber. Warner asked for reconsideration of, and flexibility in, the proposed rule and/or waivers therefrom.

RESPONSE: The Board notes the changes upon adoption to the proposed amendment will give operators greater latitude and is less onerous than previously proposed.

Additionally, the Board notes that waivers can be requested with good cause.

COMMENT: TKR Cable, Riverview and Monmouth Cable stated that the seven day policy for installation is consistent with industry standards and guidelines. However, the National Cable Television Association standards indicate a qualified level of 95 percent performance as measured on an annual basis. They state that in the industry guideline the seven day standard is for standard installations; those which re up to 125 feet from distribution systems. They would like the Board to consider two variations such as new builds and access problems or aing target standard guidelines like the utilities.

RESPONSE: While the proposed amendment did not allow for some variances, the adopted amendment does, especially for non-standard installations, line extensions and installations of multi-dwelling units where either equipment may be needed or where a specific custom install may need to be designed and completed. The Board, after careful consideration, believes that more flexibility should be permitted and, as suggested, has therefore changed the proposed rule upon adoption, by retaining the 20 day limit for action on line extensions and non-standard installations.

Line extension is the construction of cable distribution along the public streets and highways for the purpose of serving new or existing homes not originally covered by the systems initially proposed service areas. Each certificate of approval includes a line extension policy which details the criteria under which extension of cable plant will be constructed.

Non-standard installations are defined by the franchise documents (application, ordinance, certificate of approval) adopted by the municipality and the Board, or in tariffs filed with the Board. Generally, they involve extra long service drops where the dwelling is set far back from the road, and require extra time, special hardware, equipment and additional labor.

COMMENT: Riverview Cable writes that a further definition is needed as to the description of the installation. Riverview asks that allowances be made in circumstances involving landlord permission and the actions of prospective subscribers. Harron states line extension and multi-dwelling units installs should not be considered in the rule.

RESPONSE: The Board after careful consideration believes modifications should be allowed concerning the installation. The performance standard of 85 percent is adopted for all standard service installations.

COMMENT: Although the Township of Lakewood writes that reasonable standards dictate installation within seven days, the cost incurred by compliance makes the rule onerous.

RESPONSE: In proposing the amendment to the rule, the OCTV has considered the impact of the technical and operational requirements the amendment would have on the cable industry. The OCTV considered the costs the cable companies would be faced with and determined from past history that the cable industry can be expected to pass some of these costs on to its subscribers. The Board believes this amendment is necessary in order to adequately protect the safety and the interest of the general public and cable television subscribers. The Board agrees with the OCTV that the benefits from the amendment exceed the burden of costs.

COMMENT: The Borough of Metuchen endorses the seven day installation proposal. The League of Municipalities writes the adoption would show the OCTV’s dedication to making the cable operator responsive to the needs of the subscriber and to the municipalities wishes. The League further states that a cable operator must be made to respond to subscribers in a timely manner.

RESPONSE: The Board, after careful consideration, believes that greater flexibility concerning the rule needs to be permitted but that this modification will still require response to an installation request in a timely fashion.

COMMENT: Ms. Hart of the Housing Authority, City of Elizabeth, stated that the City has been trying to get cable for residents of four senior citizen complexes for 19 years. The Housing Authority asked the Board to assist.

RESPONSE: The OCTV has contacted TKR of Elizabeth for further information and requested a timetable for installation. TKR has provided the OCTV with a copy of the letter sent to the Housing Authority outlining a preliminary schedule for construction of the four buildings in question. All buildings should have service by July 1991, with the commencement of construction in January or February. The Office is currently assessing whether the timeframes are adequate.
The purpose of this rulemaking (BPU Docket No. CX90050378) is to define the appropriate elements to be considered when operators establish charges for lost, stolen or damaged converters or other auxiliary equipment.

The present rulemaking originated with a notice of proposed rulemaking (N.J.A.C. 14:18-3.16) published in the New Jersey Register on May 20, 1990. A notice of hearing was also published in the State's major daily newspapers at least 15 days prior to a public hearing on February 20, 1990. Individual notices were sent to all cable television operators, State legislators and municipal officials.

The notice of proposed rulemaking, repeal and new rule was published in the New Jersey Register on May 7, 1990 at 22 N.J.R. 1330(b), at which a hearing was held on May 15, 1990. Notice of the hearing was published in 10 daily newspapers throughout the State. Letters to all municipalities and other interested parties who requested copies or otherwise had been identified by the Office of Cable Television as having an interest in the proceeding. Following the hearing, comments were accepted until June 30, 1990.

On July 18, 1990, the Board completed readoption of its substantive regulations, and approved the proposal. The Board subsequently determined additional subscriber protection on lost, stolen or damaged converter replacement was needed.

The notice of proposl preceding this adoption was published in the New Jersey Register on September 17, 1990 at 22 N.J.R. 2892(a), at which a public hearing was held on Friday, October 5, 1990. At least 15 days notice of the hearing was published in 10 daily newspapers of general circulation throughout the State. Notices were also sent to all municipalities, cable television systems, their attorneys, legislative committees concerned with cable television commenters for the earlier proceeding and other persons identified as having an interest in the proceeding. On October 17, 1990, the Board extended the comment period to October 31, 1990. The proposal was discussed and approved for adoption with technical and substantive changes at the Board's November 21, 1990 open public meeting.

Summary of the Public Comments and Agency Responses:

COMMENT: Several commenters from the cable television industry, (New Jersey Cable Television Association, Adelphia Cable Communications, Comcast Corporation, Monmouth Cablevision Associates, TKR Cable Company, Bridge Cable TV, Garden State Cable TV, Storer Cable Communications) made separate comments that operators must be able to cover the black market value of converters in order to discourage theft. The industry practice is that a number of them noted, is to charge a two-time their converter costs for lost or stolen converters to discourage theft and street sale of the converters.

RESPONSE: The Board acknowledged the cable industry remark concerning the potential for the theft of cable services. However, factual data was submitted that showed the cable industry lost revenue because of theft related to the black market value of converters. The Board notes that the cable industry has alternative means, notably criminal prosecution pursuant to N.J.S.A. 2C:20-8, to pursue penalties against those individuals who steal or receive cable services without paying for them.

The Board's Office of Cable Television (OCTV) has found that there are currently three types of cable security technologies in use in New Jersey: (1) Addressability, which authorizes or deauthorizes converters through the operator's computer system. Converter addressability is a technical function which permits the company to remotely send a message to a subscriber's terminal or converter ("address") which allows the company to add, delete or deactivate services entirely; (2) Positive or negative traps (filters) at the pole, which scramble or descramble the picture, making the converter irrelevant; and (3) converters with programmable chips known as PROMs or chips. These are devices which are designed to unscramble certain pay services and are installed inside the converter.

It is the latter category of converters which have a higher black market value and which, if used illegally, could result in lost revenues for the cable operator. However, according to OCTV records, five systems serving only 6.5 percent of subscribers in the State are using programmable chips. Three systems owned by Storer Cable, one system owned by TKR, and a Warner Cable system are the only systems using non-addressable PROM technology according to the OCTV records. The aggregate

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**BOARD OF PUBLIC UTILITIES**

**Regulations of Cable Television**

**Reimbursement for Lost, Stolen or Damaged Equipment**

**Adopted New Rule: N.J.A.C. 14:18-3.23**

Proposed: September 17, 1990 at 22 N.J.R. 2892(b),

Adopted: January 24, 1991 by Celeste M. Fasone, Director,
Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).

Filed: January 24, 1991 as R. 1991, d. 80, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).


Effective Date: February 19, 1991.

Expiration Date: July 26, 1995.

(CITE 23 N.J.R. 614)
number of subscribers served by these five systems is 120,000. However, 
only pay TV subscribers have PROMs, therefore the actual number of 
subscribers using PROM technology is considerably less than 120,000.
The remaining systems either trap or are in the process of converting all 
subscribers to addressable converters. Therefore, the comments focus on 
diminishing concern.

COMMENT: Adelphia, Riverview, and Monmouth all noted that 
lagged or destroyed converters should be treated differently than lost 
or stolen converters.

RESPONSE: As there is diminishing use of PROMs and chips (see 
above response) by the systems operators, there is diminishing usefulness 
of same on the black market; therefore the Board sees no need to dis-

The present rulemaking originated with a notice of preproposal on the 
readoption of N.J.A.C. 14:18-3.24 which was published at 22 N.J.R. 327(c) 
on February 5, 1990 in the New Jersey Register. A notice of hearing was 
also published in the State's major daily newspapers at least 15 days prior 
to a public hearing on February 20, 1990. Individual notices were sent 
to all cable television operators, legislators and municipalities.

The notice of proposed readoption, repeal and new rule as published 
in the New Jersey Register on May 7, 1990 at N.J.R. 1330 and a hearing 
was held on May 15, 1990. Notice of the hearing was published in 10 
daily newspapers throughout the State. Letters to all municipalities 
gave notice of the hearing and summarized the proposed changes in the 
rules. Notice of the full text of the agency proposal was sent to all cable 
television systems, their attorneys, legislative committees concerned with 
cable television, parties who provided oral or written comment on the 
preproposal hearing and any other interested parties who requested copies 
or otherwise had been identified by the Office of Cable Television as 
having an interest in the proceeding. Following the hearing, comments 
were accepted until June 6, 1990.

On July 18, 1990, the Board decided to adopt the original proposal for 
readoption with amendments, and in response to comment, to address 
subscriber concerns about late charge practices.

The notice of proposal preceding this adoption was published in the 
New Jersey Register on September 17, 1990 at 22 N.J.R. 2839(a), and 
a hearing was held on Friday, October 5, 1990. At least 15 days' notice 
of the hearing was published in 10 daily newspapers of general circulation 
throughout the State. Notices were also sent to all municipalities, cable 
television systems, their attorneys, legislative committees concerned with 
cable television, commenters for the earlier proceedings and other persons 
identified as having an interest in the proceeding. On October 17, 1990, 
the Board extended the comment period to October 31, 1990. The 
proposal was discussed and approved for adoption with a change at the 
Board's November 21, 1990 meeting.

Summary of the Public Comments and Agency Responses:

COMMENT: Riverview Cablevision Associates (RCA), Monmouth 
Cablevision Associates (MCA) and TWR Cable Company commented 
that pursuant to the Board's rules, bills are late on the 16th day. The 
companies further stated that the severity of penalty for late payment 
does nothing to encourage customers to pay their bills on time and fails 
to target the costs incurred in the delinquent payment process.

The companies argued that the proposed rule is inconsistent with 
N.J.A.C. 14:18-3.9, which provides for disconnection, after notice, for 
non-payment 45 days after the unpaid bill is mailed. This arises under 
the proposed rule because a late fee could not be imposed until the 60th 
day after the bill is mailed, which is 15 days after service could be 
disconnected for non-payment. MCA believes that a 15 day grace period 
to pay the bill is appropriate and it meets subscribers halfway who object 
to the practice of advance billing. They contended the purpose of a late 
fee is to reduce disconnections and delinquent accounts. They further 
contended that limiting late charges is not fair to subscribers who make 
timely payments.

The companies have stated that the collection process costs are 
subsidized by those subscribers who pay on time. They consider it to be
inappropriate for the Board to intercede and prevent delinquent
subscribers from paying a penalty fee. The companies do not oppose
the requirement to itemize late charges on subscribers' bills, because it is
consistent with their goal of keeping subscribers informed.

RESPONSE: The Board believes cable operators have sufficient free­
dom to set the amount of late fees to deter individuals from becoming
delinquent in their payments. However, the Board believes it is
necessary to itemize the late fee charge on the bill when the charge
was in the tariff.

RESPONSE: The Board believes it is unreasonable to expect a
subscriber to review the company's tariff each time the subscriber is
subject to a late fee. If a late fee is itemized on the bill, the subscriber is
aware of the charge without having to contact the company.

COMMENT: The Township of Lakewood, stated it has no objection
proposed which indicated republication for additional comments would
require Board approval prior to closing or relocation of an office.

RESPONSE: The Board, after careful consideration, believes the re­
vised modifications will provide protection to those subscribers who pay
their bills on a timely basis. Additionally, the rule will insure that cable
subscribers will receive the service prior to facing penalties for non­
payment. The rule does not preclude an operator from establishing a more
liberal late fee structure. The rules of advance billing should be left
in abeyance for future consideration by the Board.

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

14:18-3.24 Late fees and charges

(a) In the event a cable television operator imposes an additional fee
charge or penalty to a subscriber for billing balances which are
considered past due or late, the cable television operator shall
clearly specify the amount of the fee, charge or penalty on the
subscriber's bill. The cable television company shall also specify the
method of calculation of the fee, charge or penalty on the bill.

(b) A cable television operator shall not impose an additional fee,
charge or penalties specified in (a) above on any account balance less
than *[45]* **[30]** days past due.

(a) BOARD OF PUBLIC UTILITIES
Regulations of Cable Television
Location of Offices

Adopted Amendment: N.J.A.C. 14:18-5.1


Adopted: January 24, 1991 by Celeste M. Fasone, Director,
Office of Cable Television (with the approval of the Board of
Public Utilities, Scott A. Weiner, President).

Filed: January 24, 1991 as R.1991 d.82, with a substantive change
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).


Effective Date: February 19, 1991.

Expiration Date: July 26, 1995.

The purpose of this rulemaking (BPU Docket No. CX9006059I) is to
require Board approval prior to closing or relocation of an office. It is
the adoption of a reproposal in response to comments on an earlier
proposal which indicated republication for additional comments would
be needed.

The present rulemaking originated with a notice of preproposal on the
readoption with amendments of N.J.A.C. 14:18, which was published at
22 N.J.R. 327(c) on February 5, 1990 in the New Jersey Register. A notice of
hearing was also published in the state's major daily newspapers at
least 15 days prior to a public hearing on February 20, 1990. Individual
notices were sent to all cable television operators, legislators and municipali­

The notice of proposed readoption, repeal, and new rules was published in
the New Jersey Register on May 7, 1990 at 22 N.J.R. 1330, and a
hearing was held on May 15, 1990. Notice of the hearing was published
The proposal was discussed and approved for adoption with an office closure or relocation, adequate notice and an opportunity for public comment or disapproval as stated in the original approval would be arbitrary. Suburban further states that the timetable for a relocation or closing contemplated by an operator impacts all of the municipalities served by the operator, and a hearing was held on Friday, October 5, 1990. At least 15 days notice of the hearing was published in 10 daily newspapers of general circulation throughout the State. Notices were also sent to all municipalities, cable television systems, their attorneys, legislative committees concerned with cable television, commenters from the earlier proceedings, and other persons identified as having an interest in the rulemaking. On October 17, 1990 the Board extended the comment period to October 31, 1990. The proposal was discussed and approved for adoption with a change at the Board’s November 21, 1990 open public meeting.

**Comment: Summary of the Public Comments and Agency Responses:**

**Comment: TKR Cable** commented that it is appropriate for notification of a relocation or closure, adequate notice and an opportunity for input through the Board approval process is reasonable.

**Response: N.J.A.C. 14:18-5.1 as proposed is intended to protect subscribers and municipalities from relocations which are not noticed.** The Board rejects TKR’s assertion that such a relocation, and the appropriate notice, is solely a business decision. As the public is affected by an office closure or relocation, adequate notice and an opportunity for input through the Board approval process is reasonable.

**Comment: Storer Communications and Comcast Cable have stated that they believe that the decision for location of a business office is best left between the franchising municipality, as stated in the original franchise, and the company, and further, that the Board does not need to be involved in the process. Also, they have stated the notification requirements of this particular rule would cause unnecessary administrative burdens and additional costs to the consumer.

**Response: The Board is the ultimate franchising authority for cable television operators.** Additionally, a relocation or closing contemplated by an operator impacts all of the municipalities served by the operator, not just the one where the office is located.

Most of the information required by the adopted amendment is the same information as the OCTV has always required of an operator. By formalizing the requirement little or no additional burden to the companies is created. Therefore, little or no increased costs to the consumer are contemplated. The most costly element, a public hearing, is discretionary on the part of the Board.

The Board notes the approval of its initiatives by the League of Municipalities.

**Comment: Monmouth Cablevision and Riverview Cablevision state that the Board should not require hearings. The Board’s role in these matters is to ensure that subscribers are kept informed and that any inconvenience to them is minimized.**

**Comment: U.A. Columbia Cablevision and T KR Cable state that companies could become hostage to landlords who know of the conditions the companies must meet for approval.** Companies also would become subject to an approval process by the Board, which means that the company loses its flexibility.

**Response: N.J.A.C. 14:18-5.1 as proposed is intended to prevent problematic office closings or relocations.** The Board notes that the rule adopted herein does not require hearings. The Board’s role in these matters is to ensure that subscribers are kept informed and that any inconvenience to them is minimized.

**Comment: U.A. Columbia Cablevision and Riverview Cablevision stated that in their role as retailers, cable operators should be allowed flexibility to open and close business offices at will.** Operators do not feel free to open an office on a temporary or full-time basis because of the fear that closure or relocation will not be allowed without Board approval, operators will not open such offices regardless of any determination of subscriber need to the contrary. Thus, the imposition of this rule in such a circumstance would be an unintended impediment to the improvement service. Rather, operators should be permitted to open and close such offices without Board approval by simply providing the Board, Office, municipal officials and subscribers with reasonable notice, such as notice required for channel modifications.

**Comment: Monmouth Cablevision and Riverview Cablevision stated that they believe that the rule adopted herein does not require hearings. The Board’s role in these matters is to ensure that subscribers are kept informed and that any inconvenience to them is minimized.**

**Response: Companies already have business offices established and the rule does not preclude the addition of new offices to improve services; however, the rule’s intent is to prevent problematic office closings or relocations.** The Board does not view the franchised cable television
COMMENT: Sammons Communications stated that even though it anticipated that the Board will act reasonably with regard to requests for the relocation of facilities, given the current economic factors and considering the existing real estate market there is a potential for serious economic harm to cable operators adversely impacted by requirements of this proposal.

RESPONSE: The Board disagrees with the presumption that conditions in the real estate market will generally lead to economic harm to cable operators impacted by the rule. The Board also disagrees with the commenters' presumption that the Board will be unable to act promptly on a request in light of the priorities and circumstances of any applicant.

COMMENT: Bridge Cable TV believes that the proposal is unnecessary because there have been very few situations, in which such a move has been proposed, which have not been satisfactorily resolved.

RESPONSE: The Board's intent is to provide for office relocations or closures that are not unreasonable, that will not unduly prejudice the public interest, and that provide the means by which customers and other interested parties will be adequately notified of the closing or relocation and the alternatives available.

COMMENT: The Borough of Metuchen submitted a resolution in support of the new rules and amendments.

RESPONSE: The resolution was noted by the Board in its deliberations.

COMMENT: The Township of Lakewood submitted a letter which raised an objection to the proposal if costs which are incurred when cable companies file petitions with Board for office closure or relocation are then passed on to the subscriber.

RESPONSE: As with any regulatory cost, the Federally mandated deregulation of cable television rates means that the Board cannot prevent such costs from being passed on to subscribers. Accordingly, the Board has determined the costs associated are limited and, as noted above, involve providing contact and information, which has been routinely provided, to the OCTV. The most costly element, a public hearing, is discretionary on the part of the Board. However, the protection afforded local jurisdictions to review comment or intervene in such a proposed office closure or relocation is believed in the best interest of municipalities and subscribers and offsets minimal related costs.

COMMENT: Garden State Cable commented that temporary offices used for marketing purposes, such as the distribution of converters, should not be construed as falling under this category.

RESPONSE: Proposed N.J.A.C. 14:18-5.1(a) identifies the purpose for the local offices. It does not apply to the temporary facilities referenced by the company.

Summary of Agency Changes Upon Adoption:

The Board, upon adoption, has added a requirement to N.J.A.C. 4:18-5.1(d). The requirement was included in the Board's similar proposed amendment to N.J.A.C. 14:3-5.1 which regulates utilities. It was published in the New Jersey Register at 22 N.J.R. 2404(a), on August 20, 1990. The requirement assures that the local exchange number for the company shall be provided as a toll free or local exchange telephone number for use by subscribers pursuant to the notice in the newspaper(s), pursuant to (c) above, serving the affected area. *As noted in the notice placed in the newspaper(s), pursuant to (c) above, the affected area.*

FULL TEXT OF THE ADOPTION

Board of Public Utilities

Adopted by the Board of Public Utilities, October 31, 1990.

Effective Date: February 19, 1991.

Expiration Date: July 26, 1995.


Proposed: September 17, 1990 at 22 N.J.R. 2894(b).

Adopted: January 24, 1991 by Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).

Filed: January 24, 1991 as R.1991, d.83, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).


Summary of Public Comments and Agency Responses:

The purposes of this rulemaking (BPU Docket No. CX90050380) are to require that guidelines and procedures for the use and operations of public, educational, and governmental channels be established for writing and to establish minimum record keeping.

The Notice of Proposed Proceeding this adoption was published in the New Jersey Register on September 17, 1990 at 22 N.J.R. 2894(b), and a public hearing was held on Friday, October 5, 1990. At least 15 days notice of the hearing was published in 10 daily newspapers of general circulation throughout the State. Notices were also sent to all municipalities, cable television systems, and their attorneys, State legislative committees, concerned, with cable television, commenters from the cable proceeding, and other persons identified as having an interest in the rulemaking. On October 17, 1990 the Board extended the comment period to October 31, 1990. The proposal was discussed and approved for adoption with changes at the Board's November 21, 1990 open public meeting.

Summary of the Public Comments and Agency Responses:

COMMENT: The Township of Lakewood stated that the cost for the establishment of new rules and guidelines for public, educational, and governmental (PEG) access channels should be borne by the cable television operator. The ratepayer should not have to bear the financial burden which is the product of the promulgation of written procedures and the scheduling of cable programming.

RESPONSE: The scope of PEG channel requirements, and therefore, the costs, are determined by each municipality within broad parameters of State and Federal law. The PEG channels are set aside for community purposes either in the cable operator's application which is then reviewed and approved by the municipality, or under the municipal consent ordinance. If the municipality does not want the responsibility to program, schedule users, and maintain the PEG channels, it should designate an individual, group or entity to do so. The rule adopted herein is to require that when the franchise agreement makes the cable operator the designee, that the operator have established procedures and guidelines, as well as essential records, to insure its use and administration of the access channel.

(CITE 23 N.J.R. 618)
The Board recommends that all municipalities consider the allocation of day to day administrative and management costs for PEG channel operations as an access requirement in their renewal proceedings. The extent of the cable operator's role in the operation of PEG access channels, and thus, the applicability of N.J.A.C. 14:18-7.5, should be negotiated locally during that process.

COMMENT: The League of Municipalities stated that the League would like to see language inserted in the rule which reaffirms the right of a municipality to require PEG access channels and facilities in the franchise agreement.

RESPONSE: The right of a municipality to require PEG access in the franchise agreement is derived from the Federal Cable Communications Policy Act of 1984. The Federal act, 47 U.S.C. SEC. 531, affirms the franchising authority's right to establish requirements with respect to the designation or use of channel capacity for public, educational and governmental use. The Board's regulations governing the determination of cable-related community needs and interests (N.J.A.C. 14:18-13.2) and the application for municipal consent (N.J.A.C. 14:18-1.2(a)(5)) empower the municipality to establish PEG requirements during the consent process. Most municipalities include PEG access requirements in their consent ordinances or incorporate PEG commitments by reference to the operator's application. The proposed PEG access rules are aimed at establishing structured guidelines ensuring access and encouraging use.

COMMENT: A number of cable television companies including TKR Cable Company, Garden State, Suburban Cablevision, Comcast Corporation, Storer Cable Communications, Bridge Cable TV, Sammons Communications of New Jersey, UA-Columbia Cablevision and the New Jersey Cable Television Association stated their opposition to the rule because the administrative burden is placed on operators; and (2) not all operators actively manage access channel use, making it impractical for them to keep usage records. For example, programming on many of these channels originate from high schools and other locations within the communities.

RESPONSE: In adopting proposed rule N.J.A.C. 14:18-7.5, the Board's intent for PEG access is to establish user guidelines aimed at simplifying and insuring a user's ability to gain access to said channels. The proposed rule applies only in situations where the cable television operator has a gatekeeper role or managerial control of access channel operations. Operators concerned about the burden of record keeping in those situations have the option, by mutual agreement in franchise documents, to delegate the requirement to establish and maintain schedules and records. However, the adopted rule does not require local groups or officials to undertake this responsibility, nor does the rule apply where the access channel is managed by a designated local entity, access channel committee or group other than the cable operator.

The Board is also aware that many cable companies already have guidelines for the use of the access channels. However, in situations where the public access channel is controlled by the cable operator, it is the operator's responsibility in conjunction with users to establish the procedures and guidelines set forth in this proposal.

The Board notes that in many cases PEG access channels are dedicated to, and controlled and programmed by, the municipality or an entity so designated by the municipality. The cable operator provides little or no assistance in the operation of the channel. The intent of this proposed rule is not to take away control or management responsibility from public, educational or governmental entities in communities in which operational management has been vested by the franchise documents or the local government.

COMMENT: The Cable Users Association of New Jersey agrees with the cable industry that it would be inappropriate for a cable operator to be required to provide reports in situations where access channels were dedicated to entities such as municipal governments, educational institutions or corporations created to provide access in general. Additionally, the association has also encouraged the Board to grant to the operators of access channels freedom from liability for content of programs produced by producers other than the channel managers themselves.

RESPONSE: As noted above, the Board agrees that the entire responsibility under this rule should not fall on the cable operators. Accordingly, the Board has changed the rule to clarify the scope of the rule that it will only apply to access channels in franchises where the management and operation of the access channel is vested with the cable operator and that the operator must inform the Office of Cable Television if another person or entity is responsible for the operation of the channel. To change the rule upon adoption to account for the variety of operational arrangements used for access channels would require republication and further comment.

The Board believes the question of content liability for access channels is a matter of well established law.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletion from proposal shown in brackets with asterisks *[thas]*):

14:18-7.5 Written procedures for use of public, educational and governmental access channels
(a) All cable television operators *which have managerial or operational control over an access channel* shall develop written guidelines concerning the use of channel capacity designated as public, educational and/or governmental access channels. These guidelines shall contain information on the following:
1. The designation of and restrictions upon any channels available for such use;
2. The number of channels available for such use;
3. The municipalities served by each channel;
4. The procedure by which persons arrange to use each channel;
5. The cost, if any, for use of each channel;
6. The method by which persons deliver programming for insertion of on channel;
7. The studio and production equipment available, including costs and restrictions on use;
8. The method by which persons arrange to use any available studio or production equipment;
9. The training which is available in use of any studio or production equipment;
10. A written agreement between user groups, operators, and companies which states the rights and responsibilities of each; and
11. A specified contact person to see that interested parties are accommodated.

(b) Each cable television operator *who has managerial or operational control over an access channel* shall keep a record of all users of access channels available for public inspection at the local business office of the cable television operator. This record shall contain the names, addresses, and telephone numbers of access users, and shall be kept for a period of two years.

(c) A cable television operator *who has managerial or operational control over an access channel* shall provide a copy of the revision to the OCTV and the municipality within 30 days of any revision to the procedural rules for the use of a channel. All parties affected by the revision shall be provided immediate written notice by the operator.

(d) These guidelines shall be posted and available at local business offices and studios in the cable system.

*e) For any access not within the cable operator's control or management, each cable television operator shall maintain a listing of the person or entity having such control and management authority.*

(a) BOARD OF PUBLIC UTILITIES
Regulations of Cable Television
Pole Plant Rearrangement Verification
Adopted New Rule: N.J.A.C. 14:18-12.3
Proposed: September 17, 1990 at 22 N.J.R. 2897(a).
Adopted: January 24, 1991 by Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).
Filed: January 24, 1991 as R.1991, d.84, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Effective Date: February 19, 1991.
Expiration Date: July 26, 1995.

NEW JERSEY REGISTER, TUESDAY, FEBRUARY 19, 1991 (CITE 23 N.J.R. 619)
Summary of Public Comments and Agency Responses:

COMMENT: New Jersey Bell filed a comment suggesting that N.J.A.C. 14:18-12.3(b),3 be revised to read as follows: "A field survey conducted at the applicant's cost by the pole owning utility or other such utility that owns or controls those portions of the poles to which the applicant proposes to attach." The purpose of this change would recognize that many poles are owned by the electric utility, and that the communications space on the poles is administered by the telephone utility. In addition, it provides clarification that the applicant is to bear the cost of field survey. Atlantic City Electric also requests that the Board recognize the electric utility leases the communications space to the telephone company.

RESPONSE: The Board agrees that the comments serve to clarify the circumstances of utility pole ownership and control and will modify the rule accordingly.

COMMENT: Shore Cable Company comments that there should be some cost allocation for overbuild make-ready as well as a stipulation which dictates where cable attachment is to go. Shore states that guidelines should be established as to where everybody belongs, and who shall pay for the relocation of the lines. Shore also suggested that incumbent operators be required to resurvey their pole attachments as part of re-franchising and certify that they are attached in compliance with applicable governing standards.

RESPONSE: The Board believes that existing orders, utility pole license agreements and other standard utility reference documents define the make-ready and pole attachment process, including cost allocation and survey work. Therefore, additional guidelines are not necessary. Further, the Board does not believe there is any reason to require incumbent operators to resurvey pole attachments during re-franchising since this would be a costly and time consuming process. In response to the comment concerning verification of data submitted in opposition to over-builds, the Office maintains that all filings are subject to verification, and the need to verify is decided on a case by case basis with the majority of informational filings.

COMMENT: The Township of Lakewood objects to this rule if the cost of this rule for an over-build operator is passed on to subscribers. The OCTR assessment should account for the economic limitation of subscribers already receiving services.

RESPONSE: The economic impact of this rule on an over-builder is very limited. and would not affect existing cable TV operations. The survey work required by this rule must be completed at any event. The proposed rule merely advances the submission of make-ready estimates so that they precede certification, so there is no new cost created by the rule.

Summary of Public Comments and Agency Responses:

The proposed rule was incorrectly proposed for codification at N.J.A.C. 14:18-12.2; upon adoption it is being properly codified at N.J.A.C. 14:18-12.3. The missing word "surveys" has been added to subsection (c).

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

14:18-**[12.2]**12.3* Requirements for plant rearrangement verification

(a) Applicants for a certificate of approval for an additional cable television franchise shall submit verifiable cost estimates of projected aerial utility and cable television plant rearrangement needed (make-ready work) to permit the attachment of the proposed cable television system.

(b) The estimates shall be compiled by one of the following methods:

1. A field survey conducted by the applicant of all utility poles on which the applicant may attach in the proposed service area;

2. A field survey conducted by the applicant of at least 10 percent of the poles on which the applicant may attach using a statistical random sampling method and extrapolation process. The sample shall include the full range of all make-ready work categories which the applicant can reasonably expect to encounter in the proposed service area; or

3. A field survey conducted *at the applicant's cost* by the pole-owning utility *or* other such utility that owns or controls those portions of the poles to which the applicant proposes to attach.*

(c) Any survey shall be submitted in a form permitting verification by the pole owning utility, the Office or an independent party with experience in conducting utility make-ready *surveys*.* All surveys shall contain the underlying facts and assumptions determining the cost estimate and a description of the process for conducting the survey.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Rules of the Games

Supplemental Wagers Made After Come Out Roll in Support of Pass, Don’t Pass, Come and Don’t Come Bets (Making and Laying Odds)

Adopted Amendment: N.J.A.C. 19:47-1.6


Adopted: January 23, 1991 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: January 24, 1991 as R.1991 d.73, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-63(c), 69(c), 70(f) and 100(e).

Effective Date: February 19, 1991.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Greate Bay Hotel and Casino, Inc., t/a Sands Hotel, Casino & Country Club, a licensed casino operator, submitted a comment in which it did not object to the proposed amendments.

RESPONSE: The Casino Control Commission ("Commission") agrees with this comment as evidenced by its adoption of the proposed amendment. The Commission authorized the temporary adoption of these amendments for the purpose of conducting experiments to determine whether the amendments should be adopted permanently (see 22 N.J.R. 2187(b) and 22 N.J.R. 3392(a)). The available results of those experiments indicate that the amendments offer casinos marketing flexibility without jeopardizing the public interest or the integrity of casino operations.

COMMENT: The Division of Gaming Enforcement ("Division") supports the amendments, and suggests that the Commission should also consider permitting casino licensees to offer supplemental wagers greater than five times the original wager as permitted by the proposed amendments.

RESPONSE: The Division's suggestion that the Commission consider unlimited supplemental wagers is acknowledged by the Commission. Depending upon the Commission's experience with the supplemental wagers permitted by the adopted amendment, a proposal to permit unlimited supplemental wagers may be published in the future.

Summary of Agency-Initiated Changes:

The adopted amendment includes minor substantive and technical changes from the proposed amendment which do not require republication. One such change clarifies that the minimum amounts of the additional wagers which must be offered remain the amount of the original wager for Pass and Come Bets, and the amount calculated to win the amount originally wagered for Don't Pass and Don't Come Bets. The proposed amendment retained the requirement that the patron must have the right to make additional wagers, but inadvertently deleted reference to the minimum amounts which must be permitted. Obviously, it makes little sense to have a minimum supplemental wager requirement if the amount of the minimum wager can be limited to some mere nominal amount. Therefore, the Commission has decided not to adopt those portions of the proposed amendments which would have deleted reference to the minimum amount of the supplemental wager which must be offered in subsections (a) through (d).

That the proposed amendments did not intend to eliminate these minimum wager requirements is further evidenced by the proposed amendments to subsection (f). Those amendments require casinos to post signs only if they offer multiples greater than the amount of the original wager. The fact that the offer of an additional wager equal to the original bet...
need not be posted implies that this additional wager will always be the minimum available.

In addition, the adopted amendment includes an explanation of what is understood in the casino industry as double, triple, quadruple and quintuple odds for the game of craps. Such multiple "odds" actually refer to permitted additional, or supplemental wagers. The proposed amendment simply recites the permitted multiple "odds," while the adopted amendment explains what is permitted in terms of additional wagers.

Finally, the adopted amendment establishes a notice requirement for changing the maximum additional wager being offered with minor differences from the present notice requirement. Casino licensees are now required to give notice to the Commission 24 hours in advance of such a change through a rules of the game submission. The adopted amendment permits casino licensees to make such a change with notice to the Commission one-half hour in advance. This change does not significantly curtail the requirement that a casino provide notice to the Commission in advance of such a change.

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

19:47-1.6 Supplemental wagers made after the come out roll in support of pass, don't pass, come and don't come bets (making and laying odds)

(a) Whenever a player makes a Pass Bet and a total of 4, 5, 6, 8, 9 or 10 is thrown on the come out roll, he shall have the right to make an additional wager in support of the Pass Bet *which may be limited by the casino licensee to an amount equal to the amount of the original Pass Bet.* If, in such circumstances, the Pass Bet wins, the original amount of the Pass Bet shall be paid at odds of 1 to 1 and the supplemental amount shall be paid at odds of 2 to 1 if the come point was a 4 or 10, 3 to 2 if the come point was 5 or 9, and 6 to 5 if the come point was 6 or 8.

(b) Whenever a player makes a Don't Pass Bet and a total of 4, 5, 6, 8, 9 or 10 is thrown on the come out roll, he shall have the right to make an additional wager in support of the Don't Pass Bet *which may be limited by the casino licensee to an amount equal to the amount of the original Come Bet.* If, in such circumstances, the Don't Pass Bet wins, the original amount of the Pass Bet shall be paid at odds of 2 to 1 if the come point was a 4 or 10, 3 to 2 if the come point was 5 or 9, and 6 to 5 if the come point was 6 or 8.

(c) Whenever a player makes a Come Bet and a total of 4, 5, 6, 8, 9 or 10 is thrown on the roll immediately following placement of such bet, he shall have the right to make an additional wager in support of the Come Bet *which may be limited by the casino licensee to an amount equal to the amount of the original Come Bet.* If, in such circumstances, the Come Bet wins, the original amount of the Come Bet shall be paid at odds of 1 to 1 and the supplemental amount shall be paid at odds of 2 to 1 if the come point was a 4 or 10, 3 to 2 if the come point was 5 or 9, and 6 to 5 if the come point was 6 or 8.

(d) Whenever a player makes a Don't Come Bet and a total of 4, 5, 6, 8, 9 or 10 is thrown on the roll immediately following placement of such bet, he shall have the right to make an additional wager in support of the Don't Come Bet *which may be limited by the casino licensee to an amount so calculated as to provide winnings not in excess of the amount originally wagered on the Don't Come Bet.* If, in such circumstances, the Don't Come Bet wins, the original amount of the Don't Come Bet shall be paid at odds of 1 to 1 and the supplemental amount shall be paid at odds of 2 to 1 if the come point was a 4 or 10, 3 to 2 if the come point was 5 or 9, and 6 to 5 if the come point was 6 or 8.

(e) A casino may *[offer up to five times odds at the game of craps in support of the Pass, Come, Don't Pass or Don't Pass Bets.] *allow an additional wager in support of a Pass or Come Bet in an amount up to five times the amount of the original Pass or Come Bet. A casino may allow an additional wager in support of a Don't Pass or Don't Come Bet in an amount so calculated as to provide winnings not in excess of up to five times the amount originally wagered on the Don't Pass or Don't Come Bet. The original Pass, Don't Pass, Come or Don't Come Bet and any additional wager allowed pursuant to this subsection shall be paid at the same odds as the original and supplemental wagers are paid under (a) through (d) above. The amount of the additional wager accepted from the patron may exceed the maximum additional wager otherwise allowed and posted pursuant to (f) below, to the extent that a wager in excess of the maximum is necessary to facilitate the payout permitted herein.

(f) Any casino offering *["double odds," "triple odds," "quadruple odds," or "quintuple odds" in craps]* *additional wagers greater than the additional wagers authorized under (a) through (d) above* shall post signs *(within its casino room)* *at the appropriate tables* advising the patrons of the *(option)* *maximum additional wager* being offered provided that the location, size and language contained on such signs are submitted to and approved by the Commission *(or its authorized designee).* *A casino shall not change the maximum additional wager being offered at a table unless, at least one-half hour in advance of such change, it announces the change to patrons at the table and posts notice of such change on the table, and so advises the principal inspector or his or her designee.*
ENVIROMENTAL PROTECTION

PUBLIC NOTICES

ENSIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES
Notice of Receipt on Petition to Amend the Standards for Individual Subsurface Sewage Disposal Systems

Petitioner: Normandeau Associates, Inc.

Take notice that on September 21, 1990, the Department of Environmental Protection (Department) received a petition for rulemaking concerning the amendment of the standards for individual subsurface sewage disposal systems. The Petitioner requests that the Department amend the standards for individual subsurface sewage disposal systems at N.J.A.C. 7:9A to identify a leaching chamber as an accepted treatment and disposal alternative, thus eliminating the need for a Treatment Works Approval pursuant to N.J.A.C. 7:9A-3.9.

DIVISION OF WATER RESOURCES
Notice of Action on Petition for Rulemaking

N.J.A.C. 7:9, 7:14, and 7:14A

Petitioner: Association of Environmental Authorities.

Take notice that on December 5, 1990, the Department of Environmental Protection (Department) received a petition concerning N.J.A.C. 7:9, the Department's rules governing wastewater control, N.J.A.C. 7:14, the rules concerning wastewater treatment and sludge quality assurance pursuant to the Water Pollution Control Act, and N.J.A.C. 7:14A, the rules regarding effluent parameters for New Jersey Pollution Discharge Elimination System (NJPDES) permits. Public notice of this petition was published in the January 22, 1991 New Jersey Register at 23 N.J.R. 222(a).

In accordance with N.J.A.C. 1:30-3.6 and after thorough review of the petition, the Department has determined that the matter will receive further deliberation and consideration in conjunction with comments received in connection with the readoption of N.J.A.C. 7:9, and rulemaking necessitated by the Clean Water Enforcement Act (N.J.S.A. 58:11-64 et seq.) both of which are now in progress. Upon the conclusion of the Department's deliberations, on or about April 5, 1991, the decision will be mailed to the petitioners and published in a future New Jersey Register. A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

DIVISION OF WATER RESOURCES
Notice of Action on Petition for Rulemaking

N.J.A.C. 7:14-4

Petitioner: Public Interest Research Group.

Take notice that on December 18, 1990, the Department of Environmental Protection (Department) received a petition for rulemaking concerning the amendment of regulations related to sludge quality assurance. Public notice of this petition was published in the February 4, 1991 New Jersey Register at 23 N.J.R. 316(b).

In accordance with N.J.A.C. 1:30-3.6 and after thorough review of the petition, the Department has determined that the matter will receive further deliberation and consideration in conjunction with an ongoing evaluation of these issues including examination of the existing sludge management alternatives and policies through an independent review by experts in the New Jersey academic community, development of the Department’s “White Paper on Beneficial Use of Sewerage Sludge”, updating of the Statewide Sludge Management Plan, and third party mediation of conflicts utilizing the contracted services of the Department of the Public Advocate, all of which processes are currently in progress and in which the Petitioner already takes part. Upon the conclusion of the Department's deliberations, on or about October 1, 1991, the decision will be mailed to the petitioners and published in a future New Jersey Register.

DIVISION OF WATER RESOURCES
Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that on January 9, 1991, pursuant to the provisions of the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.), and the State wide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Atlantic County Water Quality Management Plan was adopted by the Department. This amendment changes the alignment of the sanitary sewer line to serve the site of the Atlantic County Utilization Authority's Environmental Park solid waste facility from that specified in the Egg Harbor Township Wastewater Management Plan to a more northerly alignment. The new alignment will run from the Park in the rights-of-way of Pleasant Avenue, Mill Road and Ohio Avenue.

DIVISION OF WATER RESOURCES
Amendment to the Cape May County Water Quality Management Plan

Public Notice

Take notice that on January 14, 1991, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Cape May County Water Quality Management Plan was adopted by the Department. This amendment was for the Dennis Township Wastewater Management Plan (WMP). This WMP identifies the use of individual subsurface sewage disposal systems for wastewater treatment facilities within the township. The WMP also provides for the utilization of on-site wastewater treatment facilities provided that they comply with the NJPDES permit requirements. Environmentally sensitive areas are shown as not to be served.

DIVISION OF WATER RESOURCES
Amendment to the Lower Delaware Water Quality Management Plan

Public Notice

Take notice that an amendment to the Lower Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow the Sunnyside Vegetable Packing Company facility, located at Block 172, Lots 11-14 in Deerfield Township, Cumberland County, to construct a treatment works to upgrade and expand its existing on-site spray irrigation discharge to 72,000 MGD. In addition, a subsurface disposal system is proposed to accommodate the facility's wastewater discharge during freezing weather.

This notice is being given to inform the public that a plan amendment has been developed for the Lower Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Ed Frankel, Bureau of Water Quality Planning, at the NJDEP...
address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

DIVISION OF WATER RESOURCES
Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for the Borough of Alpha, Warren County. This WMP would supersede the information contained in the Town of Phillipsburg, Borough of Alpha, Pohatcong Township, Lopatcong Township WMP dated May 1988. The Alpha WMP identifies an expanded Town of Phillipsburg Sewage Treatment Plan sewer service area within its municipal borders.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

DIVISION OF WATER RESOURCES
Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Raritan Water Quality Management (WQM) Plan has been submitted for approval. This amendment would identify a proposed discharge to groundwater treatment facility serving the TM Enterprises commercial development. The facility consists of four individual subsurface sewage disposal systems each serving a single commercial building.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Raritan WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Mr. Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

HUMAN SERVICES
OFFICE OF EDUCATION
Notice of Availability of State Funds
Title of Funding Source: State Facilities Education Act (P.L. 1979, c. 207)

Take notice that, in compliance with N.J.S.A. 52:14-34.4 et seq., the Department of Human Services, Office of Education hereby announces the availability of the following State funds.

Name of program: Educational Related Services for fiscal year 1992.

Purpose: To provide the delivery of physical, occupational and speech/language therapy services in State-operated facilities located throughout New Jersey. These facilities provide special education programs to severely handicapped children, ages 3 through 21.

Amount of money in the program: Approximately $4,500,000.

Organizations which may apply for funding under the program: Individuals, agencies, hospitals, clinics, and any other interested third-party providers.

Qualifications needed by an applicant to be considered for funding: Physical therapists must be licensed and school certified. Speech/language therapists must be licensed and school certified. Occupational therapists must be registered and school certified. All therapists must carry malpractice insurance.

Procedure for eligible organizations to apply: All interested applicants should write to the address listed below or call 609-588-3164 for a Request for Proposal (RFP) package.

Address to which application must be submitted:
Dr. Patricia Holliday, Director
Department of Human Services
Office of Education
10 Quakerbridge Plaza, CN 700
Trenton, NJ 08625

Deadline by which applications must be submitted: April 5, 1991.

Date by which applicant shall be notified of approval or disapproval: April 26, 1991.
Petitioner: Marina Associates, d/b/a Harrah's Casino Hotel, Atlantic City
Authority: N.J.S.A. 5:12-69(c) and N.J.S.A. 52:14B-4(f).

Take notice that on January 4, 1991, petitioner filed a petition with the Casino Control Commission requesting amendments to N.J.A.C. 19:45-1.37(a), 19:45-1.40A, and 19:46-1.26(a) concerning slot machine jackpot payouts of merchandise or other things of value.

The amendments requested by petitioner would permit a casino licensee to establish a time limit for offering a jackpot of merchandise or other thing of value subsequent to the initial offering of the merchandise or other thing of value.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69(c).
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 January 7, 1991 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1991 d.1 means the first rule adopted in 1991.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT DECEMBER 17, 1990
NEXT UPDATE: SUPPLEMENT JANUARY 22, 1991

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.
# N.J.R. Citation Locator

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**Most recent update to Title 1: TRANSMITTAL 1990-6 (supplement November 19, 1990)**

AGRICULTURE—TITLE 2

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