

NEW JERSEY REGISTER



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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: AUGUST 16, 1993
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT SEPTEMBER 20, 1993

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INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **November 17, 1993**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

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RULE PROPOSALS

AGRICULTURE

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE Notice of Administrative Correction and Extension of Comment Period Acquisition of Development Easements Proposed Amendment: N.J.A.C. 2:76-6.11

Take notice that the State Agriculture Development Committee (SADC) has discovered an error in the notice of proposed amendment at N.J.A.C. 2:76-6.11, published in the September 7, 1993 New Jersey Register at 25 N.J.R. 3890(a).

The identification of the landowner's asking price method for determining the SADC's percent cost share for providing a grant to the board for the purchase of a development easement was incorrectly submitted to the Office of Administrative Law.

Inadvertently, a portion of the mathematical formula for calculating the percent SADC cost share was omitted at N.J.A.C. 2:76-6.11(d)1. The formula is intended to identify an incremental scale of SADC cost share amounts for each range of the landowner's asking price. The omission of this text results in an inaccurate accounting of the SADC's percent cost share. In view of this error, the SADC is providing for a new 30 day comment period.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Submit comments by November 17, 1993 to:

Donald D. Applegate, Executive Director
State Agriculture Development Committee
CN 330
Trenton, New Jersey 08625

Full text of the proposal is found at N.J.A.C. 2:76-6.11, published in the September 7, 1993 New Jersey Register at 25 N.J.R. 3890(a). The corrected text at N.J.A.C. 2:76-6.11(d)1 as it should have appeared in the notice of proposal is as follows (proposed additions indicated in boldface **thus**; proposed deletions indicated in brackets [thus]):

2:76-6.11 Final committee review

- (a) (No change.)
- (b) (No change from proposal.)
- (c) (No change.)

(d) The Committee shall not authorize a grant for an amount greater than 80 percent of the Committee's certified fair market value of the development easement.

1. The percent Committee cost share shall be based upon the [applicant's formula index as follows] **higher cost share percentage determined pursuant to the following two methods:**

The landowner's formula index method:

Landowner's formula index	Percent committee cost share
Less than 0.10	60
0.10 up to less than 0.20	65
0.20 up to less than 0.30	70
0.30 up to less than 0.40	75
0.40 or greater	80

(or)

The landowner's asking price method:

Landowner's asking price	Percent committee cost share
From \$0.00 to \$1,000 =	80% above \$0.00
From >\$1,000 to \$3,000 =	\$800 + 70% above \$1,000
From >\$3,000 to \$5,000 =	\$2,200 + 60% above \$3,000
From >\$5,000 to \$10,000 =	\$3,400 + 50% above \$5,000
From >\$10,000 to \$15,000 =	\$5,900 + 25% above \$10,000
From >\$15,000 to \$20,000 =	\$7,150 + 10% above \$15,000
From >\$20,000 =	\$7,650

i. If the [landowner] **landowner's** asking price is greater than the certified fair market value, the Committee's cost share grant shall be based upon the Committee's certified fair market value.

ii. **Notwithstanding (d)1 above, the board may choose which of the two methods the Committee shall use to determine the percent cost share.**

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

HUMAN SERVICES

(b)

DIVISION OF FAMILY DEVELOPMENT

Food Stamp Program

Proposed Readoption with Amendments: N.J.A.C. 10:87

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4B-2; 7 CFR Parts 271, 272, 273, 274, 275, and 278; and the Americans With Disabilities Act (P.L. 101-336).

Proposal Number: PRN 1993-455.

Submit comments by November 17, 1993 to:

Marion E. Reitz, Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "sunset" provisions of Executive Order No. 66(1978), the Department of Human Services proposes to readopt N.J.A.C. 10:87, which will otherwise expire on January 27, 1994.

N.J.A.C. 10:87-1 sets forth the purpose of the Food Stamp Program and provides general rules regarding its administration. The subchapter further provides rules delineating discrimination on the basis of age, race, color, sex, disability, religious creed, national origin, or political belief and describes the complaint procedures for persons who feel they have been subjected to discrimination. The subchapter also provides regulations prohibiting the release of confidential information about program applicants and recipients.

N.J.A.C. 10:87-2 provides procedural requirements for the processing of an application for food stamp benefits. Rules regarding household composition, the filing of an application, the provision of expedited service, interview and verification requirements, and application processing standards are furnished. In addition, the subchapter provides special procedures for recipients of Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI), categorically eligible AFDC, SSI, and General Assistance households, and residents of drug and alcohol treatment centers, group living arrangements and shelters for battered women.

N.J.A.C. 10:87-3 details the nonfinancial requirements for receipt of program benefits such as residency, citizenship, alien status, and the provision of social security numbers. The subchapter also provides special procedures for the eligibility determination for students of institutions of higher education. Additionally, the subchapter addresses the Income and Eligibility Verification System.

N.J.A.C. 10:87-4 defines resources for program purposes and specifies those that are counted and those that are excluded from consideration in the eligibility process. The rules also provide for the disqualification of individuals from the Food Stamp Program for knowingly transferring resources for the purpose of qualifying for program benefits.

N.J.A.C. 10:87-5 defines income for program purposes, specifying that which is counted and that which is excluded. Income deductions are also defined, such as allowances for medical expenses for the elderly and

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disabled, expenses for dependent care, and shelter costs. Eligibility for the standard and heating utility allowances is also detailed in this subchapter.

N.J.A.C. 10:87-6 prescribes procedures for the certification of eligibility. The length of time of program certification and the treatment of resources, income, and income deductions within the certification period are also detailed.

N.J.A.C. 10:87-7 provides instructions pertinent to the treatment of special situations such as self-employed households, income from disqualified or other nonhousehold members, and residents of drug and alcoholic rehabilitation centers, group living arrangements, battered women's shelters, homeless meal providers, and the eligibility of sponsored aliens.

N.J.A.C. 10:87-8 details procedures for fair hearings, including information on how to apply for a fair hearing; actual procedures at a hearing; household rights; continuation of food stamp benefits pending the outcome of the hearing; hearing decisions; and the county welfare agency (CWA) rights and responsibilities.

N.J.A.C. 10:87-9 contains other certification-related procedures including recertification procedures, changes in household circumstances, notices to clients, issuance of identification cards, replacement of Authorizations to Participate (ATPs) and coupons, record-keeping requirements, and security and control of ATPs.

N.J.A.C. 10:87-10 details program requirements related to work registration and the food stamp employment and training (E&T) requirements. Special procedures for applicant households containing striking members, as well as applicants and recipients who have voluntarily quit employment, are also addressed in this subchapter.

N.J.A.C. 10:87-11 provides procedures to be followed when a household has received an incorrect issuance of food stamps. The subchapter explains the circumstances whereby a restoration of lost benefits is possible and how to compute that amount; defines intentional program violation, inadvertent household error and agency error claims; prescribes the calculation to be applied for the amount of a claim and the process to collect the overissuance; and addresses the hearing process and disqualifications to be applied upon recipients determined to have committed an intentional program violation.

N.J.A.C. 10:87-12 provides the formula, tables and allowable deductions necessary to determine financial eligibility for the Food Stamp Program and the level of benefits.

N.J.A.C. 10:87, Appendix A, addresses the administrative procedures to be applied to the inventorying and reconciliation of ATPs.

N.J.A.C. 10:87 is under continual review by the staff of the Department's Division of Family Development. The Division of Family Development conducted an internal review and evaluation of the rules prior to this proposal for readoption. After such review of the rules, that agency determined them to be adequate, reasonable, and responsive to the purposes for which they are promulgated.

Those sections of N.J.A.C. 10:87-8 and 10:87-11 which set forth procedures for the conduct of the hearing have been deleted. Hearing procedures are set forth in the Office of Administrative Law's Special Rules for Division of Family Development cases, N.J.A.C. 1:10, and in the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

The following are significant changes to N.J.A.C. 10:87 since the last readoption.

1989

N.J.A.C. 10:87-9.7 was repealed, and a new rule was adopted, to reflect new rules concerning the replacement of food stamp coupons and ATPs.

N.J.A.C. 10:87-2.13, 2.30, 2.33, 2.36, 2.37 and 6.2 were amended to specify that the food stamp date of application for a resident of an institution who jointly applies for food stamp and SSI benefits prior to his or her release from the institution shall be the date of his or her actual release from the institution, rather than the date the application is filed with the CWA.

N.J.A.C. 10:87-4.8 and 5.9 were amended to specify that payments received under the Wartime Relocation of Civilians Act are to be excluded from countable resources and income for food stamp purposes.

The amendment at N.J.A.C. 10:87-5.9 excluded earned income tax credits made in the form of advanced payments after January 1, 1989 from countable food stamp income.

The amendment at N.J.A.C. 10:87-2.30 required that any ATP issued after the 19th of the month be valid until the last day of the following month.

1990

N.J.A.C. 10:87-2.20 was repealed, the mandatory verification elements previously at N.J.A.C. 10:87-2.21 were recodified under N.J.A.C. 10:87-2.20, and the remaining elements of N.J.A.C. 10:87-2.21 were recodified. Language was added at N.J.A.C. 10:87-2.20 to address the mandatory verification of disability, and failure to comply with quality control reviews.

N.J.A.C. 10:87-4.8, 5.4 and 5.9 were amended to delete all references to the Comprehensive Employment and Training Act.

N.J.A.C. 10:87-5.4 and 5.9 were amended to stipulate that only certain payments issued under the Job Training Partnership Act are to be treated as earned income for food stamp purposes.

N.J.A.C. 10:87-2.17 was amended to specify that households must cooperate with Federal and State quality control reviews, or otherwise lose eligibility for the Food Stamp Program.

The amendment at N.J.A.C. 10:87-2.19(e) expanded the categories of households that are entitled to have their food stamp eligibility interview conducted outside of the CWA office.

The amendments at N.J.A.C. 10:87-2.23 and 2.31 required that CWAs assist households in obtaining verification, that the CWA require only documentation which is not contained in the household's case record, and that the household be provided with a written statement which specified what (if any) documentation the household must provide to the CWA to complete the certification process.

The amendment at N.J.A.C. 10:87-2.28 clarified under what circumstances the household must report changes in deductible expenses.

The amendment at N.J.A.C. 10:87-2.35(a)5 clarified how to process a joint application for AFDC and food stamp benefits.

The amendment at N.J.A.C. 10:87-2.36 addressed the categorical eligibility for food stamp benefits of households receiving AFDC and SSI.

The amendment at N.J.A.C. 10:87-2.38 expanded the definition of disability for food stamp purposes.

The amendments at N.J.A.C. 10:87-4.8 and 4.12 granted a one-year resource exclusion to the income producing assets of a farming household which is in the process of transition to another form of employment.

The amendment at N.J.A.C. 10:87-7.6 permitted a household engaged in farming to annualize its costs of producing income for the purpose of arriving at net food stamp income.

The amendment at N.J.A.C. 10:87-7.16 deleted language which denied food stamp eligibility to residents of drug or alcoholic treatment facilities and group living arrangements when those facilities were disqualified from acting as retailers for the purpose of redeeming food stamp coupons.

The new rule at N.J.A.C. 10:87-2.29 addressed the process which CWAs are to follow when denying an application for food stamp benefits.

The amendment at N.J.A.C. 10:87-10.7(b) clarified under what conditions an individual is exempt from the food stamp work registration requirement when the individual is receiving another type of public assistance.

The amendment at N.J.A.C. 10:87-11.31 required CWAs to suspend all actions to recover overissued food stamp benefits from a household that has filed for bankruptcy.

The amendment at N.J.A.C. 10:87-1.14(b)9 specified that CWAs are to release information to school districts for the purpose of verification of eligibility for the Free Schools Meals Program. The proposed amendment clarified that recipients of AFDC or food stamp benefits are categorically eligible to receive free school meals.

The amendment at N.J.A.C. 10:87-4.3(a)1 corrected a cross-reference concerning lump sum payments.

The amendments at N.J.A.C. 10:87-5.9(a)7 and 8 clarified income exclusions of educational funds.

The amendment at N.J.A.C. 10:87-5.10 clarified that CWAs need not adjust certain household medical expenses when the annual adjustment to food stamp allotments takes place.

The amendment at N.J.A.C. 10:87-5.11(b) corrected the definition of an institution of post-secondary education.

The amendments at N.J.A.C. 10:87-5.11(d), (e), (f), (g) and (i) clarified that moneys "made available" for educational expenses are excluded as income and resources for food stamp purposes. Language was also added at N.J.A.C. 10:87-5.11(e) stating that origination fees and insurance premiums on student loans are excludable charges.

The amendment at N.J.A.C. 10:87-6.3 specified that any household receiving a notice of expiration at the time of certification shall not be

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subject to proration for the first month of its certification period, if the deadline for filing the recertification application occurs after the end of its current certification period.

The amendments at N.J.A.C. 10:87-7.14(a) and (c) specified how to treat the income and resources of individuals who fail to attest to their citizenship or alien status when determining the eligibility and benefit level of remaining household members.

The amendment at N.J.A.C. 10:87-7.14(c)3 stipulated that the dependent care deduction is to be applied separately from the shelter deduction when determining the food stamp income of a household containing an ineligible member.

The amendment at N.J.A.C. 10:87-10.2 required that the number of persons disqualified from the Food Stamp Program for failure to comply with an Employment and Training Program (ETP) requirement, or the number of ETP participants who become employed, are not to be identified on the FNS-583 Report.

The amendments at N.J.A.C. 10:87-10.10(a) and (b) deleted all references to quitting the "most recent" job.

The amendment at Appendix A required the Division of Family Development or the CWAs to complete Form FNS-135, Affidavit of Return or Exchange of Food Coupons, when forwarding returned coupons to the United States Department of Agriculture.

The amendments at N.J.A.C. 10:87-5.10, 6.15, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6 and 12.7 revised the presentation of the food stamp net and gross income standards, the 165 percent of Poverty Level Table, the Maximum Coupon Allotment Table, the Food Stamp Allotment Proration Table, the Standard Deduction, the Maximum Shelter Deduction, the Standard Utility Allowance, the Heating Utility Allowance, and the Uniform Telephone Allowance. The "Dependent Care Deduction" section was moved to N.J.A.C. 10:87-5 in this amendment.

1991

The amendments at N.J.A.C. 10:87-2.3(a)2 and (c)4 provided technical clarification of an excluded household member as an individual who fails to comply with the various work registration provisions in N.J.A.C. 10:87-10. Such an individual is considered to be an excluded household member, rather than a "nonhousehold" member.

The amendment at N.J.A.C. 10:87-2.3(c)3 emphasized that a failure to attest to citizenship shall result in excluded household member status.

The amendment at N.J.A.C. 10:87-2.6(b)1 specified that if the household has the option of designating who will act as its head, that designation cannot be transferred to a different household member should the designee fail to comply with a work registration requirement.

The amendment at N.J.A.C. 10:87-2.23 required the CWA to advise the applicant that verification is needed to complete the food stamp certification process.

The amendment at N.J.A.C. 10:87-2.30(b)1 expanded the validity period of ATPs. The amendment at N.J.A.C. 10:87-9.7(b)1 also reflected that validity period.

The amendment at N.J.A.C. 10:87-2.30(b)3 stated that an individual applying for food stamp benefits after the 15th day of the month and who is found eligible for the first and second month's benefits within the normal or expedited processing standard timeframes, shall receive both month's benefits at the same time.

The amendments at N.J.A.C. 10:87-2.31(e)2 and (g)1ii stated that if a household delays providing required verification until after specified timeframes, the household may receive benefits starting with the month in which the verification is provided.

The amendment at N.J.A.C. 10:87-3.6 revised the cross-reference to N.J.A.C. 10:87-2.21(b).

The amendments at N.J.A.C. 10:87-4.8(a)17xiii and 5.9(a)15xiv corrected the title of Public Law 100-383 from the Wartime Relocation of Civilians Act to the Civil Liberties Act of 1988.

The amendment at N.J.A.C. 10:87-5.5 provided clarification consistent with N.J.A.C. 10:87-2.3(b)6 and 5.9(a)10ii, which states that a foster person may be included in the household at the household's option; and, income intended for the foster individual shall be excluded, if the household elects not to include the foster individual in the household for food stamp purposes.

The amendment at N.J.A.C. 10:87-5.6 stated that the income of an individual who fails to comply with a food stamp work registration requirement is counted in its entirety as available to the remaining household members.

The amendment at N.J.A.C. 10:87-5.9(a)3 stated that utility allowance payments made by a public housing authority are considered as excluded income for food stamp purposes.

The amendment at N.J.A.C. 10:87-5.10(a)5iv changed the term "utility standard" to "utility allowance," which is cited in N.J.A.C. 10:87-12.

The amendment at N.J.A.C. 10:87-5.10(a)5iv(8) restricted the provision of utility allowances to only those households whose utility expenses exceed the amount of excluded energy assistance received.

The amendment at N.J.A.C. 10:87-7.14 clarified how to treat the income and resources of an individual who refuses to comply with a food stamp work registration requirement.

The amendment at N.J.A.C. 10:87-9.5(b) required CWAs to establish a toll-free, local, or collect-call telephone number, which recipients may use to report changes in circumstances.

The amendment at N.J.A.C. 10:87-9.5(c)2ii(3) required CWAs to establish claims if a household received an overissuance in food stamp benefits as a result of a reported change.

The amendment at N.J.A.C. 10:87-9.7 stated that losses of combined benefit issuances shall be treated as only one incident of loss for the purpose of determining the number of ATPs and/or coupons lost by the household for replacement purposes.

The amendment at N.J.A.C. 10:87-10.3 addressed the number of recipients who are to be considered in the calculation of ETP statistics.

The amendment at N.J.A.C. 10:87-10.9 established a \$160.00 reimbursement, per dependent, for households who incur dependent care costs while participating in an ETP activity.

The amendment at N.J.A.C. 10:87-10.10 provided a technical correction to clarify the voluntary quit provisions.

The amendment at N.J.A.C. 10:87-10.21 provided a technical correction concerning a change in the composition of the household.

The amendment at N.J.A.C. 10:87-10.24(b)4 provided a technical clarification which aligned N.J.A.C. 10:87 with Federal regulations at 7 CFR 273.7(h)(4).

The amendment at N.J.A.C. 10:87-11.23 required that CWAs identify at certification whether households owe outstanding payments on a previously established claim determination.

The amendment at Appendix A distinguished the procedures which must be followed when examining coupon booklets that have been stapled together from those that have been glued together.

1992

The amendment at N.J.A.C. 10:87-2.4(a)3 revised the definition of an individual who qualifies to be eligible for food stamp benefits when the individual resides in an institution.

The amendment at N.J.A.C. 10:87-2.6(b)1ii permitted certain food stamp households to select the member who will act as the household's head.

The amendment at N.J.A.C. 10:87-2.31(c)3 addressed the specific form to be provided to applicants for food stamp benefits when information is necessary to complete the eligibility certification process.

The new rule at N.J.A.C. 10:87-2.39 established the criteria under which households comprised entirely of General Assistance recipients, would be categorically eligible for the Food Stamp Program.

The amendment at N.J.A.C. 10:87-3.8(a)8 clarified that an individual who is aged, blind, or disabled, and who has been admitted into the United States for temporary (as opposed to permanent) residence under Section 245A(b)1 of the Immigration and Nationality Act, shall be considered an eligible alien for food stamp purposes.

The amendment at N.J.A.C. 10:87-3.8(a)12 allowed family members of certain eligible aliens to be included in the food stamp household of the eligible alien.

The amendment at N.J.A.C. 10:87-3.14(a) further clarified the definition of a student in an institution of higher education. The amendment reduced the maximum age criteria from 60 years of age to 50.

The amendments at N.J.A.C. 10:87-4.1(b) and 5.1 excluded resources and income from the eligibility determination process for categorically eligible households.

The amendments at N.J.A.C. 10:87-4.8 established additional resource exclusions for Radiation Exposure Compensation Act payments, and assets of AFDC and SSI recipients.

The amendment at N.J.A.C. 10:87-4.8(a)17 excluded earned income tax credits from countable resources in the month of receipt, as well as the month following the month of receipt.

The amendment at N.J.A.C. 10:87-5.9(a)3 clarified that utility allowance payments, rebates, and reimbursements need not be issued by a

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public housing authority in order for those moneys to be excluded from income.

The amendments at N.J.A.C. 10:87-5.9(a)15 excluded: Carl D. Perkins payments; transitional child care payments; dependent care adjustments made when calculating AFDC benefits; SSI payments deferred into a Plan for Achieving Self-Support accounts; and Radiation Exposure Compensation Act payments.

The amendment at N.J.A.C. 10:87-5.10(a)4 clarified that child care vendor payments made by the agency do not qualify the household for a dependent care deduction, and that child care payments taken into account when calculating AFDC benefits do qualify the household for the dependent care deduction, provided that an out-of-pocket payment is made.

The amendment at N.J.A.C. 10:87-5.10(a)5iv(1)(E) described how Home Energy Assistance payments permit eligibility for the food stamp utility allowances. N.J.A.C. 10:87-5.10(a)5iv(4) was also revised and re-codified to remove confusing language.

The amendment at N.J.A.C. 10:87-5.10(a)5v established the Food Stamp Homeless Shelter Allowance, which is a shelter deduction that a homeless household may receive when calculating food stamp household shelter expenses, provided that the household incurs an out-of-pocket shelter expense. A concurrent amendment at N.J.A.C. 10:87-12.1(f) prescribed the amount of the Homeless Shelter Allowance, which is subject to annual updates as specified by the United States Department of Agriculture.

The amendments at N.J.A.C. 10:87-6.9(c) and (g) described how to treat energy assistance payments and student income for the purpose of determining food stamp eligibility and benefit level.

The new rule at N.J.A.C. 10:87-6.20 established procedures to be followed when a household of three or more individuals that is found to be categorically eligible for the Food Stamp program and is subsequently entitled to no actual benefit, because the household's income exceeds the level at which benefits are issued.

The amendments at N.J.A.C. 10:87-10.3(e), 10.6(h) and 10.18(c) reflected minor administrative and reporting changes to the ETP.

The amendment at N.J.A.C. 10:87-11.26(c)1 affected households that received overissuances due to administrative or inadvertent household error. Under the amendment, those households have 10 days, rather than 30 days, to respond to a demand letter to recover the overissued benefits.

The amendment at N.J.A.C. 10:87-11.29(c)1 affected households that received overissuances due to an intentional program violation. Under the amendment, those households must respond immediately to a demand letter to recover those benefits.

In accordance with the Americans With Disabilities Act (P.L. 101-336), an amendment is proposed at N.J.A.C. 10:87-1.11 which would eliminate the word "handicap," and replace it with the word "disability." A similar amendment is also proposed for N.J.A.C. 10:87-1.12(d)4. In addition, those sections of N.J.A.C. 10:87-8 and 11 which set forth procedures for the conduct of hearings have been deleted. Hearing procedures are set forth in the Office of Administrative Law's Special Rules for Division of Family Development cases, N.J.A.C. 1:10, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Social Impact

The Food Stamp Program was established by Congress in order to promote the general welfare and to safeguard the health and well-being of the population by raising the levels of nutrition among low-income households. The program is authorized by the United States Congress, and is regulated by the United States Department of Agriculture. These rules were enacted to delineate the policies and procedures applicable to the determination of eligibility and issuance of food stamp benefits for all households which apply for participation in the Program.

The Department of Human Services is responsible for amending these rules as necessary to ensure that policies and procedures for the administration of the Food Stamp Program are revised in accordance with amendments to the Food Stamp Act and Federal regulations governing the program.

The Food Stamp Program provides an opportunity for low-income households to receive benefits, in the form of food stamp coupons, to supplement the household's budget for the purchase of food. The most recent data available indicates that 523,243 individuals, comprising 226,609 households, participate in the Food Stamp Program. If the Program were not available, a significant number of those individuals would lack sufficient means to purchase adequate food to meet their nutritional needs.

The proposed amendments at N.J.A.C. 10:87-1.11 and 1.12 change the term "handicap" to "disability," and are in accordance with the Americans With Disabilities Act (P.L. 101-336). The proposed re-adoption will not adversely affect recipients or the general population.

Economic Impact

The Food Stamp Program provides for a positive economic impact on both individual recipients and the economy of the State, as food stamp benefits are 100 percent Federally funded and the Federal matching of administrative expenses is 50 percent.

Individual recipients receive an average benefit of \$73.35 per month. In terms of Federal funds coming into the State, benefit dollars for State Fiscal Year 1992 exceeded \$417,300,000. It is anticipated that benefit dollars for State Fiscal Year 1993 will exceed \$463,200,000.

The amendments contained in this proposed re-adoption will not impact significantly on the administrative costs of the Department or county governments. Additionally, the Federal government fully funds expenditures for food stamp benefits.

Regulatory Flexibility Statement

The rules proposed for re-adoption and the proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for re-adoption and proposed amendments impose no reporting, recordkeeping, or other compliance requirements on small businesses; therefore, a regulatory flexibility statement is not required. The rules govern a public assistance program designed to certify eligibility for the Food Stamp program by a governmental agency rather than a private business establishment.

Full text of the proposed re-adoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:87.

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

10:87-1.11 Policy of nondiscrimination

CWAs shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings or any other program service, for reasons of age, race, color, sex [handicap] **disability**, religious creed, national origin or political belief.

10:87-1.12 Complaint procedures

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

(d) If a person alleges verbally that a discriminatory act has been committed and does not (or cannot) put it in writing, the CWA worker receiving the complaint shall do so. If possible, the following information shall be obtained from the complainant:

1.-3. (No change.)

4. Reason: The reasons for the alleged discrimination (i.e., age, race, color, sex, [handicap] **disability**, religious creed, national origin or political belief);

5.-6. (No change.)

(e) (No change.)

10:87-8.12 Hearing procedures

[The date, time and place of the hearing shall be set such that the hearing is accessible to the household. The hearing shall be scheduled during normal agency business hours.] **The hearing shall be conducted pursuant to the Special Hearing Rules for Division of Family Development cases, N.J.A.C. 1:10, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

10:87-8.13 [General hearing procedures] (Reserved)

[(a) A fair hearing shall be conducted in the following manner:

1. Written notice of hearing: Written notice shall be sent by the State Agency to all parties involved at least 10 calendar days prior to the date of the hearing. However, the household may request less advance notice to expedite the scheduling of the hearing.

2. Attendance at hearing: The hearing shall be attended by a representative of the CWA and by the household and/or its representative. The hearing may also be attended by friends or relative of the household if the household so chooses. The hearing official shall have authority to limit the number of persons in attendance at the hearing if space limitations exist.

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Interested Persons see **Inside Front Cover**

HUMAN SERVICES

3. Conduct of the fair hearing: The fair hearing shall, in all respects, be informal and conducted in an atmosphere conducive to the full development of facts. The hearing shall take into account the requirements of due process. An effort shall be made to conduct the hearing in such a manner that all parties will feel free and able to present all relevant aspects of the situation. At the beginning of the hearing, the household or its representative shall be given the opportunity to make a statement of the situation as it sees it. The hearing official shall state the point(s) at issue, subject to amendment or correction by the household or any of the other parties concerned. At the end of the hearing, the hearing official shall summarize the point(s) at issue.

4. Consideration of the point(s) at issue: The hearing shall be concerned only with such facts as are relevant to the point(s) at issue. If it develops that the real issue differs from that on which the request for fair hearing was based, then the hearing need not adjourn but the real point(s) at issue shall be considered, subject to adjournment as may be necessary for proper development of the new questions presented.

5. Documents used during hearing proceedings: Documents relied upon as evidence by parties to the appeal shall be retained in the official record, unless the submission of such documents is extraordinarily time consuming. Copies of documents shall be made available, upon request, to parties to the appeal.

6. Elements to be considered during a hearing: The fair hearing shall include consideration of the following elements: any county welfare agency action with regard to eligibility: basis of issuance, denial, suspension, collection or overissuance, discontinuance of program benefits, or any undue delay on the part of the county welfare agency regarding a determination of eligibility or an adjustment in benefits.

7. Household request for postponement: The household may request and is entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed 30 days.

i. Extension of limit on final action: The time limit on implementation of the hearing decision shall be extended for as many days as the postponement (see N.J.A.C. 10:87-8.25).

8. Adjournment of a hearing: At any time during the proceedings, the hearing official at his or her discretion, may declare an adjournment at the request of the household or the CWA or on his or her own initiative. The total of all such adjournments in one case shall in no event exceed 30 days.

i. Effect of adjournment on final action: Adjournments requested by the household will extend the time limit on final action as provided for in (a)7 above. Adjournments initiated by the CWA or the fair hearing officer shall not extend the time limit on final action.]

10:87-8.15 Household rights

(a) The household shall have the following rights:

1. Examination of documents: Prior to and at the time of the hearing, the household shall have the right to examine all documents and records which are to be used during the hearing.

2. Contents of case record: The contents of the case record, including the application form and documents of verification used by the CWA to establish the household's ineligibility or eligibility and allotment, shall be made available, provided that confidential information such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions is protected from release. Free copies of relevant portions of the case record shall be furnished if requested by the household or its representative.

3. Confidential information: Confidential information which is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

[4. Presentation of case: The household shall have the option of personally presenting the case or of being represented by legal counsel or any other person of its choosing.

5. Introduction of witnesses: The household shall have the right to introduce witnesses to support the appeal.

6. Advancement of arguments: The household shall be permitted to advance arguments without undue interference.

7. Submission of evidence: The household shall have the right to submit evidence to establish all pertinent facts and circumstances of the appeal.

8. Refutation of evidence or testimony: The household shall have the right to question or refute testimony or evidence and may confront and cross-examine adverse witnesses.]

10:87-8.17 [Subsequent medical reports] (Reserved)

[If the hearing involves medical issues requiring a diagnosis or a report from an examining physician, the hearing official may rule that a medical assessment, by someone other than that of the person making the original medical determination, shall be obtained from a source mutually satisfactory to the household and the State Agency. Such assessment subsequently shall be made part of the hearing record. The CWA shall pay for such medical assessments.]

10:87-8.18 [The fair hearing report and decision] (Reserved)

[The hearing decision shall be based on content of the report on the hearing, taking into consideration all documents and records presented during the hearing. The decision shall be binding upon the CWA.]

10:87-8.19 [The hearing report] (Reserved)

[(a) The administrative law judge shall prepare a report summarizing the point(s) at issue and evidence presented during the hearing. The report shall include findings of fact and a recommended decision based exclusively on the hearing evidence and governing regulations.

(b) Judicially noticeable facts: In preparing the report in the hearing, notice may be taken of judicially noticeable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or the administrative law judge. Parties shall be notified either before or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The experience, technical competence, and specialized knowledge of the agency or the administrative law judge may be utilized in the evaluation of the evidence.

(c) Filing of recommended decision: The findings of fact and conclusions of law and recommended decision by the administrative law judge shall be filed with the State Division of Public Welfare, and on the same date mailed to the household and its representative and the county welfare agency. The report shall be part of the record in the case.

(d) Exceptions to the report: If the parties in interest wish to take exception to the hearing report, such exception must be submitted in written form to the administrative law judge with copies to the Division of Public Welfare and to all concerned parties and to be considered, must be received in the Office of Administrative Law no later than seven working days after the mailing date of the hearing officer's report.

(e) Final decision: The Director of the Division of Public Welfare, upon review of the record submitted by the administrative law judge, shall adopt, reject or modify the report and recommended decision. Unless the Director modifies or rejects the report within seven days after the due date of written exception, the decision of the administrative law judge shall be deemed adopted as the final decision. A decision different from that recommended by the administrative law judge shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The household and the county welfare agency shall be notified by mail of any decision or order.]

10:87-8.20 Decision on fair hearing

[(a) A decision based on the evidence at the hearing will be rendered in writing with reasonable promptness and may incorporate by reference any or all of the recommendations of the administrative law judge. The decision shall be final and binding upon all parties concerned.]

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[(b)] Effective date of decision: The fair hearing decision shall be effective on the date of final decision unless another effective date is designated in the final fair hearing decision.

10:87-11.7 Administrative disqualification hearing procedures

(a) Administrative disqualification hearings will be conducted [by the CWA in accordance with the requirements of this section.] pursuant to the **Special Rules for Division of Family Development cases, N.J.A.C. 1:10, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

(b) Hearings will be scheduled by the Office of Administrative Law (OAL) and will be conducted by an administrative law judge [(hearing officer)] assigned by the Director of OAL.

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

[(f)] Attendance at hearing: The hearing shall be attended by a household member and/or his or her representative. The hearing may also be attended by friends or relatives of the household member if the member so chooses.

(g) Rights of household member: The household member must be given adequate opportunity to:

1. Examine documents and records under the requirements of N.J.A.C. 10:87-8.15(a)1;

2. Present the case or have it presented by a legal counsel or other person;

3. Bring witnesses;

4. Advance arguments without undue interference;

5. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses;

6. Submit evidence to establish pertinent facts and circumstances in the case.

(h) Right to refuse to answer questions: At the administrative disqualification hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(i) Decision within 90 days: Within 90 days of the date the household member is notified in writing that an administrative disqualification hearing has been scheduled, the OAL shall conduct the hearing, arrive at a decision and initiate administrative action which will make the decision effective.

1. Postponement: The household member or representative is entitled to a postponement of up to 30 days provided that the request for postponement is made at least 10 days in advance of the schedule date of the hearing. If the hearing is postponed, the above limits shall be extended for as many days as the hearing is postponed.]

[(j)](f) Advance notice of hearing: The CWA shall provide written notice to the household member suspected of intentional program violation at least 30 days in advance of the date an administrative disqualification hearing has been scheduled. The notice shall be mailed by certified mail—Return Receipt Requested.

1. The advance notice shall contain at a minimum:

i.-vi. (No change.)

vii. A listing of the household member's rights [as contained in N.J.A.C. 10:87-11.7(g);] to:

(1) **Examine documents and records under the requirements of N.J.A.C. 10:87-8.15(a)1;**

(2) **Present the case or have it presented by a legal counsel or other person;**

(3) **Bring witnesses;**

(4) **Advance arguments without undue interference;**

(5) **Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses;**

(6) **Submit evidence to establish pertinent facts and circumstances in the case.**

viii.-ix. (No change.)

2. (No change.)

[(k)] Scheduling of hearing: The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of intentional program violation.

(l) Household member cannot be located or fails to appear: If the household member or its representative cannot be located or

fails to appear at a hearing initiated by the CWA without good cause, the hearing shall be conducted without the household member represented.

1. Consideration of evidence: Even though the household member is not represented, the evidence submitted by the CWA shall be carefully considered and a determination if intentional program violation was committed shall be based on clear and convincing evidence.

(m) Good cause for failure to appear: If the household member is found to have committed intentional program violation but a determination is subsequently made by OAL that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid. A new hearing shall be conducted. The hearing official who originally ruled on the case may conduct a new hearing. A hearing official must enter the good cause decision into the hearing record.

1. Period to present good cause: The household member has 10 days from the date of the scheduled hearing to present reasons to OAL indicating a good cause for failure to appear.]

10:87-11.9 [Decision format] (Reserved)

[The decision of the administrative law judge shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent regulation, and respond to reasoned arguments made by the household member or representative.]

CORRECTIONS

(a)

THE COMMISSIONER

Keep Separate Status

Forms; Procedures for Tracking Transfers of Inmates in Keep Separate Status

Proposed Amendment: N.J.A.C. 10A:3-1.4

Proposed New Rule: N.J.A.C. 10A:3-2.3

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

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

Proposal Number: PRN 1993-565.

Submit comments by November 17, 1993 to:

William H. Fauver, Commissioner

Department of Corrections

CN 863

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Keep separate status is 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. The Department of Corrections is proposing a new rule which will establish policies and procedures to be followed by the correctional facility staff for verification of the current locations of all correlated inmates in keep separate status prior to transfer; updating of all correlated keep separate status inmate records; and ensuring the proper handling and filing the Form 173-III TRANSFER OF KEEP SEPARATE STATUS INMATE. Form 173-III has been added at N.J.A.C. 10A:3-1.4.

Social Impact

Safety, stability and order can be maintained at the correctional facility when certain inmates are kept separate. The proposed new rule will ensure maximum safety for inmates who are in fear of retaliation from certain other inmates by maintaining their complete separation. The requirements to timely inform each correctional facility housing a correlated keep separate status inmate(s), prior to the transfer of a keep separate status inmate(s), and the timely update of all correlated keep separate status inmate(s) records will help ensure measures to promote the complete separation of keep separate status inmates. The proposed

amendment and new rule are not expected to have an adverse social impact because these amendments promote the Department of Corrections' intent to maintain safe conditions for keep separate status inmates and correctional facility staff.

Economic Impact

The proposed amendment and new rule will have no economic impact because additional financial resources will not be required to implement and maintain these rules. However, the adoption of the proposed amendment and new rule will assist correctional facility staff to deter aggressive assaultive and/or destruction behavior between certain inmates. This type of behavior could lead to the unwarranted and unnecessary expenditure of State funds. Therefore, it is economically beneficial to implement procedures that will ensure a more thorough procedure to diminish the possibility of retaliation between certain inmates.

Regulatory Flexibility Statement

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

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

10A:3-1.4 Forms

(a) The following forms related to Security and Control shall be reproduced by each facility from originals that are available by contacting the Standards Development Unit:

1.-7. (No change.)

8. 173-III Transfer of Keep Separate Status Inmate

[8.]9. 285-1 Request for Polygraph Examination.

10A:3-3.2 Procedures for tracking transfers of inmates in keep separate status

(a) **The Inter-Institutional Classification Committee (I.I.C.C.) or Special Classification Committee (S.C.C.) shall authorize the transfer of an inmate in keep separate status to another correctional facility when such transfer is warranted and appropriate. Emergency transfer procedures shall be followed in accordance with N.J.A.C. 10A:9-6.5 or 7.5.**

(b) **Prior to the transfer of any inmate in keep separate status, the Senior Classification Officer shall:**

1. Confirm the current location via the Department of Corrections' computerized Offender Based Correctional Information System (O.B.C.I.S.) of the other correlated keep separate status inmate(s);

2. Complete Form 173-III Transfer of Keep Separate Status Inmate who is to be transferred;

3. Advise by telephone and FAX a copy of Form 173-III to each correctional facility(s) housing the other correlated keep separate status inmate(s); and

4. Forward, within three days, a hard copy of Form 173-III to each correctional facility(s) housing the other correlated keep separate status inmate(s).

(c) **The original Form 173-III, along with supporting documentation shall be filed in the chronological section of the transferred inmate's classification folder and shall be attached to Form 173-I. A copy of Form 173-III shall be added to the chronological section of each correlated inmate's classification folder, and shall be attached to Form 173-I.**

(d) **The Computerized Inmate Progress Notes shall be updated with the information recorded on Form 173-III.**

Recodify existing N.J.A.C. 10A:3-2.3 and 2.4 as N.J.A.C. 10A:3-2.4 and 2.5 (No change in text.)

(a)

STATE PAROLE BOARD

Parole Board Rules

Future Parole Eligibility Terms

Proposed Amendment: N.J.A.C. 10A:71-3.21

Authorized By: New Jersey State Parole Board, Mary Keating DiSabato, Chairman.

Authority: N.J.S.A. 30:4-123.48(d) and 123.56(a).

Proposal Number: PRN 1993-575.

Submit comments by November 17, 1993 to:

Robert M. Egles

Executive Director

New Jersey State Parole Board

CN 862

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 10A:71-3.21 provide for the restructuring of the schedule utilized for the establishment of future parole eligibility dates in adult inmate cases from four crime categories to nine crime categories; utilize the offense terminology of the Comprehensive Drug Reform Act, N.J.S.A. 2C:35-1 et seq.; provide for an increase in the presumptive future parole eligibility terms that could be imposed upon denial of parole in certain crime categories; provide for a decrease in the presumptive future parole eligibility terms that could be imposed upon denial of parole in certain crime categories; establish time periods by which certain future parole eligibility terms may be increased or decreased; and provide that the proposed amendments to the presumptive future parole eligibility terms are applicable in the cases of adult inmates whose offenses are committed on or after the effective date of the amendments.

Social Impact

Certain adult inmates, upon parole release being denied, will be required to serve longer periods of incarceration prior to their next consideration for parole release. Further, certain adult inmates, upon parole release being denied, will be required to serve lesser periods of incarceration prior to their next consideration for parole release. The length of time required to be served upon denial of parole is contingent on the crime committed by the adult inmate and the category to which the crime has been assigned.

Economic Impact

The economic impact of the proposed amendments cannot be readily measured. It is anticipated that the entire economic impact will be incurred by the Department of Corrections which will be required to house certain adult inmates for a longer period of time than under current practice. The proposed amendments would apply to the cases of adult inmates who commit offenses on or after the effective date of the amendments. The economic impact on the Department of Corrections therefore may not be realized for several years from the effective date of the amendments. The economic impact incurred as a result of housing adult inmates who have committed serious offenses for longer periods of time would be ameliorated to a certain extent due to the decrease in the presumptive future parole eligibility term for adult inmates who have committed less serious offenses.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments pertain to the establishment of future parole eligibility terms upon inmates being denied parole release. A regulatory flexibility analysis is, therefore, not required.

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

10A:71-3.21 Board panel action; schedule of future parole eligibility dates for adult inmates

(a) Upon determining to deny parole to [a prison] an adult inmate, a two-member adult Board panel shall, based upon the

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following schedule, establish a future parole eligibility date upon which the inmate shall be primarily eligible for parole.

1. [Except as provided herein, a prison] **An adult** inmate serving a sentence for murder[, manslaughter, aggravated sexual assault or kidnapping or serving any minimum-maximum or specific sentence in excess of 14 years for a crime not otherwise assigned pursuant to this section] shall serve [27] **60** additional months.

2. [Except as provided herein, a prison] **An adult** inmate serving a sentence for [armed robbery or robbery or serving any minimum-maximum or specified sentence between 8 and 14 years for a crime not otherwise assigned pursuant to this section] **aggravated manslaughter, aggravated sexual assault or kidnapping first degree** shall serve [23] **40** additional months.

3. [Except as provided herein, a prison] **An adult** inmate serving a sentence for [burglary, narcotic law violations, theft, arson or aggravated assault or serving any minimum-maximum or specific sentence of at least four but less than eight years for a] **robbery first degree or a first degree** crime not otherwise assigned pursuant to this section shall serve [20] **30** additional months.

4. [Except as provided herein, a prison] **An adult** inmate serving a sentence for [escape, bribery, conspiracy, gambling or possession of a dangerous weapon or serving any minimum-maximum or specific sentence less than four years for a crime not otherwise assigned to this section] **manslaughter or kidnapping second degree** shall serve [17] **27** additional months.

5. **An adult inmate serving a sentence for robbery second degree or sexual assault shall serve 23 additional months.**

6. **An adult inmate serving a sentence for leader of narcotics trafficking, maintaining or operating a controlled dangerous substance production facility, manufacturing, distributing or dispensing a controlled dangerous substance first or second degree, possession with intent to manufacture, distribute or dispense a controlled dangerous substance first or second degree, strict liability for drug induced deaths, or a second degree crime not otherwise assigned pursuant to this section shall serve 20 additional months.**

7. **An adult inmate serving a sentence for bribery second degree, conspiracy second degree, or escape second degree shall serve 17 additional months.**

8. **An adult inmate serving a sentence for a crime of the third degree shall serve 14 additional months.**

9. **An adult inmate serving a sentence for a crime of the fourth degree shall serve 12 additional months.**

(b) **The future parole eligibility dates required pursuant to (a) above may be increased or decreased when, in the opinion of the Board panel, the severity of the crime for which the inmate was denied parole and the prior criminal record or other characteristics of the inmate warrant such adjustment. The increase or decrease shall be established by the Board panel and, except as provided in (e) below, not exceed the following:**

1. **Twenty months in the case of the offense of murder;**
2. **Fifteen months in the case of an offense specified in (a)2 above.**
3. **Ten months in the case of an offense specified in (a)3, 4, 5, 6 or 7 above;**
4. **Six months in the case of an offense specified in (a)8 or 9 above.**

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

[(c)](d) **The future parole eligibility dates required pursuant to [(a) and (b)] (c) above may be increased or decreased by up to nine months when, in the opinion of the Board panel, the severity of the crime for which the inmate was denied parole and the prior criminal record or other characteristics of the inmate warrant such adjustment.**

[(d)](e) **A three-member Board panel may establish a future parole eligibility date which differs from that required by the provisions of (a) [or] and (b) [and] or (c) and (d) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.**

1. **If, in the opinion of a two-member Board panel denying parole, the future parole eligibility date which would be established pursuant**

to (a) [or] **and** (b) [and] **or** (c) **and** (d) above is clearly inappropriate as provided herein, the two-member Board panel shall adjourn the hearing for participation of the third Board panel member. In such instances, the third Board panel member shall review all records and the hearing shall be reconvened within 90 days for the purpose of establishing a future parole eligibility date.

2. **The two-member Board panel shall, pursuant to N.J.A.C. 10A:71-3.18, notify the inmate in writing that parole has been denied, that a future parole eligibility date pursuant to (a) [or] and (b) [and] or (c) and (d) above has not been established and the reasons therefor, and that a three-member Board panel hearing will be scheduled for the purpose of establishing a future parole eligibility term which differs from the provisions of (a) [or] and (b) [and] or (c) and (d) above.**

3. **The three-member Board panel shall, upon disposition of the case, state in writing to the inmate the reasons for the establishment of a future parole eligibility date which differs from the provisions of (a) [or] and (b) [and] or (c) and (d) above.**

4. **The decision of the three-member Board panel to establish a future parole eligibility date which differs from that required by the provisions of (a) [or] and (b) [and] or (c) and (d) above shall be by unanimous decision only. Failure to establish a future parole eligibility date pursuant to this subsection by unanimous decision shall result in the referral of the inmate's case to the Board for the establishment of a future parole eligibility date.**

5. (No change.)

6. **The Board's establishment of a future parole eligibility date shall be based on the review of all records of the panel hearing(s). Upon disposition of the case, which shall not occur earlier than 14 days from the date of the panel referral to the Board, the Board shall state in writing to the inmate the reasons for the establishment of a future parole eligibility date which differs from the provisions of (a) or [or] and (b) [and] or (c) and (d) above.**

[(e)](f) **The Board, upon conclusion of a hearing conducted pursuant to N.J.A.C. 10A:71-3.16(c) or 3.18(b), may establish a future parole eligibility date which differs from that required by the provisions of (a) [or] and (b) [and] or (c) and (d) above if the future parole eligibility date which would be established pursuant to such subsections is clearly inappropriate in consideration of the circumstances of the crime, the characteristics and prior criminal record of the inmate and the inmate's institutional behavior.**

1. **The Board shall include in the notice issued pursuant to N.J.A.C. 10A:71-3.20 the reasons for the establishment of a future parole eligibility date which differs from the provisions of (a) [or] and (b) [and] or (c) and (d) above.**

[(f)](g) **If a three-member Board panel or the Board establishes, in the case of an inmate sentenced pursuant to N.J.S.A. 2A:113-4 for a term of life imprisonment, N.J.S.A. 2A:164-17 for a fixed minimum and maximum term or N.J.S.A. 2C:1-1(b), a future parole eligibility date which differs from that required by the provisions of (a) and [(c)] (d) above, the inmate shall be scheduled for an annual review hearing. The first annual review hearing shall be scheduled within 18 months from the month in which the decision to deny parole was rendered. Thereafter, annual review hearings shall be scheduled every 12 months until the inmate is within seven months of the actual parole eligibility date.**

1.-6. (No change in text.)

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

[(h)](i) **The prior provisions of [(b)] (a) and (d) above shall apply to [young] adult inmates whose offenses were committed prior to [May 6, 1985] the effective date of the amendments and shall continue in effect for that purpose. The amendments to (a) and (b) above shall be applicable to [young] adult inmates whose offenses were committed on or after [May 6, 1985] the effective date of the amendments.**

[(j)] **The amendments to (d) above shall apply to the cases of adult inmates in which a decision to deny parole has been rendered on or after May 6, 1985.]**

(a)

STATE PAROLE BOARD

Parole Board Rules

Victim Input

Proposed Amendment: N.J.A.C. 10A:71-3.47

Authorized By: New Jersey State Parole Board, Mary Keating DiSabato, Chairman.

Authority: N.J.S.A. 30:4-123.48(d) and 123.55 (P.L. 1992, c.59).

Proposal Number: PRN 1993-574.

Submit comments by November 17, 1993 to:

Robert M. Eagles
Executive Director
New Jersey State Parole Board
CN 862
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Effective July 23, 1992, pursuant to legislation (P.L.1992, c.59) signed by the Honorable James Florio, Governor, State of New Jersey, a victim of a first or second degree crime, or a murder victim's nearest relative, has the right to testify in person before the State Parole Board panel that will conduct the inmate's parole hearing. The State Parole Board promulgated and adopted regulations implementing the legislation and promulgated and adopted extensive revisions to the existing procedures pertaining to the victim input process (see 24 N.J.R. 4483(a) and 25 N.J.R. 3826(b)). However, in the promulgation and adoption process the words "victim or" were inadvertently omitted from the intended phrase of "victims or nearest relative of murder/manslaughter victim" in several subsections. The proposed amendments correct the omissions.

Social Impact

The Board had previously promulgated and adopted regulations implementing legislation (P.L. 1992, c.59) and revising existing procedures for the in person testimony by victims or the nearest relative of a murder/manslaughter victim in the parole hearing process. As previously reported at 24 N.J.R. 4483(a), by permitting in person testimony before a Board panel or Board, the board believed that a greater number of victims or relatives of certain victims will participate in the parole hearing process and, thereby, provide the Board panel or Board the opportunity to receive relevant information regarding the impact of the crime and the offender's case. The active participation in the parole process by victims/relatives of certain victims of crime will also serves as a means to impart information regarding parole procedures and provide a better understanding by victims and relatives of the laws pertaining to the parole process.

The proposed amendments will have no impact on the Board or the Department of Corrections because the basic procedures of the victim input process are already in place.

Victim input has been a component of the parole process since 1984. The previously adopted regulations merely modified the method by which victim input is received by the Board. It is, therefore, not anticipated that the proposed amendments will impact on the general prison population.

Economic Impact

It is anticipated that the proposed amendments will have no economic impact on the State Parole Board or the inmate population. However, as previously reported at 24 N.J.R. 4483(a), 4484, victims or the nearest relatives of certain victims will incur the cost of travel to the designated hearing location and, if parole release is denied in the case of certain inmates as a result of victim input, the Department of Corrections will be required to house a number of inmates for a longer period of time.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments correct omissions in previously adopted procedures for victim input at parole hearings. A regulatory flexibility analysis is, therefore, not required.

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

10A:71-3.47 Victim input

(a)-(j) (No change.)

(k) Upon the victim or nearest relative of a murder/manslaughter victim informing the Board subsequent to notice being provided pursuant to (g) above that such person intends to testify before the Board panel, the case shall be processed as follows:

1.-2. (No change.)

3. Notice of the time, place and date of the Board panel hearing shall be provided to the **victim** or nearest relative of a murder/manslaughter victim in writing and shall be mailed at least 14 days prior to the hearing date.

4. The **victim** or nearest relative of a murder/manslaughter victim shall be required to confirm with the Board their appearance before the Board panel seven days prior to the hearing date.

5. Upon confirmation by the **victim** or nearest relative of a murder/manslaughter victim of their appearance before the Board panel, the Board shall notify the Department of the identities of the person(s) who will appear before the Board panel on the scheduled hearing date.

6. The Board shall notify the **victim** or nearest relative of a murder/manslaughter victim that appropriate personal identification is required by the Department in order to enter the institution.

7. During the victim input segment of the Board panel hearing, the Board panel shall permit the **victim** or nearest relative of a murder/manslaughter victim a reasonable opportunity to present information relative to the factors outlined in (f) above or any other information relevant to the Board panel's consideration of the inmate's case. The Board panel shall, in recognition of the number of hearings to be conducted on the hearing date, be permitted to establish a reasonable time period(s) for the presentation of information.

8. (No change.)

9. If a Board panel hearing is cancelled, the Board panel shall provide immediate notification of the cancellation to the **victim** or nearest relative of a murder/manslaughter victim. The Board panel shall provide reasonable notice of the time, place and date of the Board panel hearing upon the hearing being rescheduled.

10. In the victim input segment of the Board panel hearing, only the Board members, appropriate Board personnel and **victim** or nearest relative of a murder/manslaughter victim shall be present in the hearing room. If deemed necessary by the Board panel, a translator may be permitted to assist in the hearing or a family member may be permitted to assist a minor, elderly or infirm **victim** or nearest relative of a murder/manslaughter victim in the hearing. The Board panel may also permit an individual to be present in the hearing room for the limited purpose of providing emotional support to the **victim** or nearest relative of a murder/manslaughter victim.

11. If a **victim** or nearest relative of a murder/manslaughter victim provides notice of their inability to attend the Board panel hearing on the scheduled date, the hearing shall be conducted as scheduled. However, if the hearing on the scheduled date is cancelled, the Board panel shall provide reasonable notice of the time, place and date of the Board panel hearing upon the hearing being rescheduled.

12. Upon the conclusion of the victim input segment of the Board panel hearing, the Board panel shall reconvene the hearing with the inmate present in the hearing room designated by the Department. In the inmate segment of the Board panel hearing, the **victim** or nearest relative of a murder/manslaughter victim shall not be present in the hearing room.

(l)-(r) (No change.)

INSURANCE**(a)****DIVISION OF ADMINISTRATION****Medical Fee Schedules: Automobile Insurance****Personal Injury Protection and Motor Bus Medical****Expense Insurance Coverage****Order of Benefit Determination Between Automobile****Personal Injury Protection and Health Insurance****Proposed Amendments: N.J.A.C. 11:3-29.2 and 37.10**

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

Authority: N.J.S.A. 39:6A-4.3 and 4.6.

Proposal Number: PRN 1993-571.

Submit comments by November 17, 1993 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The purpose of these proposed amendments is to apply the New Jersey medical fee schedules and rules, set forth at N.J.A.C. 11:3-29, to acute care hospitals and other facilities which were excepted by the Department of Insurance from application of the schedules and rules at the time of original adoption.

The Diagnosis Related Group (DRG) rate setting methodology, administered by the New Jersey Department of Health, was eliminated by enactment of P.L. 1992, c. 160, as a means of deregulating the hospital reimbursement system, effective January 1, 1993. Until then, acute care hospitals had been subject to rates established and administered by the Department of Health. The Department of Insurance had, therefore, refrained from incorporating such rates into the medical fee schedules and rules. (See Summary statement appearing in the December 17, 1990 New Jersey Register at 22 N.J.R. 3809, 3810.)

The Department of Insurance has determined that the medical fee schedules and rules, including the prohibition against balance billing, apply to acute care hospitals without any amendments to the fee schedules or fee schedule rules being required. N.J.S.A. 39:6A-4.6 requires the Commissioner of Insurance to "promulgate 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 to be made by an automobile insurer under personal injury protection coverage" pursuant to N.J.S.A. 39:6A-1 et seq., "or by an insurer under medical expense benefits coverage" pursuant to N.J.S.A. 17:28-1.6. No providers are excepted from this statutory requirement.

"Personal injury protection coverage" is defined at N.J.S.A. 39:6A-4a to mean and include medical expense benefits. "Medical expenses" are defined at N.J.S.A. 39:6A-2e to mean "expenses for medical treatment, surgical treatment, dental treatment, professional nursing services, hospital expenses, rehabilitation services, X-ray and other diagnostic services, prosthetic devices, ambulance services, medication and other reasonable and necessary expenses resulting from the treatment prescribed by persons licensed to practice medicine and surgery pursuant to R.S. 45:9-1 et seq., dentistry pursuant to R.S. 45:6-1 et seq., psychology pursuant to P.L. 1966, c.282 (C.45:14B-1 et seq.) or chiropractic pursuant to P.L. 1953, c.233 (C.45:9-41.1 et seq.) or by persons similarly licensed in other states and nations or any nonmedical remedial treatment rendered in accordance with a recognized religious method of healing."

"Hospital expenses" are defined at N.J.S.A. 39:6A-2f to mean:

- (1) The cost of a semiprivate room, based on rates customarily charged by the institution in which the recipient of benefits is confined;
- (2) The cost of board, meals and dietary services;
- (3) The cost of other hospital services, such as operating room; medicines, drugs, anesthetics; treatments with X-ray, radium and other radioactive substances; laboratory tests, surgical dressings and supplies; and other medical care and treatment rendered by the hospital;

- (4) The cost of treatment by a physiotherapist;
- (5) The cost of medical supplies, such as prescribed drugs and medicines; blood and blood plasma; artificial limbs and eyes; surgical dressings, casts, splints, trusses, braces, crutches; rental of wheelchair, hospital bed or iron lung; oxygen and rental of equipment for its administration."

Dollar amounts on the fee schedules define the insurer's upper limit of liability for medically necessary services and/or equipment provided. Reimbursement is based on what is usual, customary and reasonable within the upper limits.

For medical services and equipment not set forth in the fee schedules, the insurer's limit of liability shall not exceed the usual, customary and reasonable fee. N.J.A.C. 11:3-29.4(e). The Department suggests that upon adoption of these proposed amendments, insurers use the rates acute care hospitals billed for medical services and equipment as of December 31, 1992, as a basis for comparison in their determination of "usual, customary and reasonable" fees in cases involving these hospitals. A new comprehensive fee schedule for acute care hospital services is being prepared and is expected to be proposed in the near future.

In order to clarify the application of existing laws and regulations and to contain rapidly increasing health care costs resulting from deregulation, the Department is proposing at N.J.A.C. 11:3-29.2 an expanded definition of the word "provider" as used in the medical fee schedule rules. The Department is also proposing removal of the last sentence of N.J.A.C. 11:3-37.10(a)6 relating to Explanation of Benefits since the assertion made in that sentence is no longer true. One further change to the Explanation of Benefits language is the added reference to copayments which had been inadvertently omitted from earlier versions of N.J.A.C. 11:3-37.10(a)4.

Social Impact

Persons who will benefit most from these proposed amendments are New Jersey residents who have had the misfortune to be auto accident injured patients in acute care hospitals, trauma centers, rehabilitation facilities, other specialized hospitals, residential alcohol treatment facilities and nursing homes since the end of the last year. No longer should these persons be exposed to unreasonable and frequently severe increases in fees charged for services provided by these facilities, or to the balance billing practices that have often accompanied the increases.

Health care providers in general will benefit from the proposed amendment of the Explanation of Benefits rule which will require insurers to include reference to copayments. Deductibles and copayments are the responsibility of the patient/insured and are not included in the balance billing prohibition.

Economic Impact

The proposed amendments will have the effect of relieving auto accident injured patients from the trauma of escalating hospital costs by preventing hospitals and similar facilities from engaging in cost shifting and balance billing practices that have resulted from hospital deregulation.

By clarifying that the medical fee schedules and rules apply to acute care hospitals and similar facilities, the Department is bringing a measure of stability and cost containment to the institutionalized health care arena. Resulting reductions in reimbursement amounts paid by insurers should be reflected in lower auto insurance premiums charged to New Jersey resident insureds.

Regulatory Flexibility Analysis

These proposed amendments will impact on "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These small businesses include insurers authorized to write private passenger automobile insurance. Less than 10 of the more than 200 automobile insurers in New Jersey qualify as "small businesses."

"Small businesses" also include a significant number of entities that may be described as hospitals, trauma centers, rehabilitation facilities, residential alcohol treatment facilities and nursing homes.

The proposed amendments do not impose new reporting or recordkeeping requirements on any of these entities, including insurers, that may be small businesses. However, all of these entities will be required to comply with the medical fee schedules and rules which have been in effect since January 1, 1991, as amended from time to time. Such compliance on the part of all providers (as defined at N.J.A.C. 11:3-29.2) will require adherence to a billing standard based on "usual, customary and reasonable" charges wherein reimbursement by insurers will not

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exceed the upper limit amounts appearing on the fee schedules. In all such cases, the practice of "balance billing" is prohibited both by existing statute (N.J.S.A. 39:6A-4.6) and rule (N.J.A.C. 11:3-29.5).

Cost of compliance on the part of newly affected providers is expected to be minimal since they already have in place the billing services necessary to comply with these requirements. Additional costs will be incurred, however, as a result of initial implementation of the fee schedules into existing billing systems.

Neither the statute nor the rules make any distinction between "small businesses" and other entities to which these laws apply.

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

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.

...
 "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 or **medical expense benefits coverage pursuant to N.J.S.A. 17:28-1.6 including, but not limited to, medical doctors, osteopathic physicians, medical laboratories, chiropractors, physical therapists, dentists, nurses, home health aides, home health agencies, live-in attendants, speech therapists, occupational therapists, ambulance service providers, medical equipment suppliers, acute care hospitals, trauma centers, rehabilitation facilities, other specialized hospitals, residential alcohol treatment facilities and nursing homes.**

11:3-37.10 Explanation of Benefits

(a) Automobile insurers shall develop and utilize an explanation of benefits form to be provided with the payment of benefits for expenses incurred for treatment of injuries which clearly identifies and explains the following:

- 1.-3. (No change.)
4. [The] **Any deductible or copayment** applied;
5. (No change.)
6. A statement to insureds that no health care provider may demand or request any payment from any person in excess of those permitted by the medical fee schedules, and that no person is liable to any health care provider for any amount of money which results from the charging of fees in excess of those permitted by the medical fee schedules pursuant to N.J.S.A. 39:6A-4.6. [The statement should note the medical fee schedules do not apply to hospitals or rehabilitation facilities regulated by the New Jersey Department of Health.]

(a)

NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM

**Individual Health Coverage Program Board
 Temporary Plan of Operation**

Proposed New Rules: N.J.A.C. 11:20-2

Authorized By: Samuel F. Fortunato, Commissioner,
 Department of Insurance.
 Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), and 17B:27A-2 et seq.,
 as amended by P.L. 1993, c.164, section 7.
 Proposal Number: PRN 1993-569.

Submit written comments by October 4, 1993 to:
 Verice M. Mason
 Assistant Commissioner
 Legislative and Regulatory Affairs
 New Jersey Department of Insurance
 20 West State Street
 CN 325
 Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

These rules are being proposed pursuant to the Individual Health Insurance Reform Act, N.J.S.A. 17B:27A-2 et seq., enacted November 30, 1992 and amended June 30, 1993, P.L. 1993, c.164 ("The Act").

The Department of Insurance (Department) is promulgating regulations in accordance with N.J.S.A. 17B:27-10e, as amended, and P.L. 1993, c.164, section 9, which provides that the Commissioner of Insurance (Commissioner) shall adopt a Temporary Plan of Operation (Temporary Plan) for the Individual Health Coverage Program (IHC Program) pursuant to the procedure set forth in P.L. 1993, c.164, Section 7a-f. That section provides a special procedure by which the Commissioner shall promulgate the Temporary Plan. Pursuant to that procedure, the Department is required to publish notice of its intended action in three newspapers of general circulation, which shall include procedure for obtaining a detailed description of the intended action and the time, place and manner by which interested persons may present their views. Notice of the intended action is additionally required to be provided by mail or other means to affected trade and professional associations, carriers subject to N.J.S.A. 17B:27A-2 et seq. and such other interested persons or organizations which may request notification. Concurrently, the Department is further required to forward the notice of its intended action to the Office of Administrative Law (OAL) for publication in the New Jersey Register. P.L. 1993, c.164, section 7 further provides a minimum 15-day comment period to all interested persons to comment in writing on the intended action. Following the expiration of the comment period, the Department may adopt the intended action, and the adopted action is submitted to OAL for publication in the New Jersey Register. The adopted action becomes effective on the date of the submission, or on such later date as the Department may establish. Within a reasonable time after submission of the comments, the Department is also required to prepare a report for public distribution listing all parties who provided comments, summarizing the content of the comments, and providing the Department's response to the data, views and arguments contained in the comments. A copy of this report is also filed with the OAL for publication in the New Jersey Register.

These proposed new rules implement various provisions of the Act. The Act substantially revises the requirements governing the provision of individual health insurance benefits in this State. In accordance with the Act, insurers, health service corporations, and health maintenance organizations (collectively "carriers") must offer individual health benefits plans promulgated by the IHC Program, created by N.J.S.A. 17B:27A-2 et seq., as amended, on a guaranteed issue, community rated basis to New Jersey residents, and/or pay assessments to cover the losses incurred, if any, under such health benefits plans by carriers issuing such health benefits plans.

Pursuant to the Act, a Board of Directors (Board) is given broad authority to oversee the IHC Program, in accordance with a Plan of Operation which must be approved by the Commissioner. The Plan of Operation shall establish procedures for: (1) the handling and accounting of assets and monies of the IHC Program, and annual fiscal reporting to the Commissioner; (2) collecting assessments from members to provide for sharing of IHC Program losses and administrative expenses; (3) approving coverage, benefit levels, and contract forms for individual health benefits plans in accordance with the Act; (4) the imposition of an interest penalty for late payment of assessments; and (5) any additional matters at the discretion of the Board.

Pursuant to N.J.S.A. 17B:27A-10d, the Board submitted a Plan of Operation to the Commissioner for approval on May 28, 1993. Amendments were submitted on June 11, 1993. On July 12, 1993, the Commissioner disapproved the Board's Plan of Operation pursuant to N.J.S.A. 17B:27A-10d, because it did not provide all of the elements specified by statute (N.J.S.A. 17B:27A-10f), and the Commissioner determined that the Board's Plan of Operation was not suitable to assure the fair, reasonable and equitable administration of the IHC Program.

Pursuant to N.J.S.A. 17B:27A-10e and section 9 of P.L. 1993, c.164, the Commissioner is required to adopt a temporary plan of operation in accordance with the procedures set forth in section 7 of P.L. 1993, c.164, pending approval by the Commissioner of a Plan of Operation prepared by the Board pursuant to N.J.S.A. 17B:27A-10. In accordance with those statutory provisions, the Department, through proposal of these rules, proposes a Temporary Plan of Operation ("Temporary Plan") for the IHC Program. The Temporary Plan established by these rules will provide for the fair, reasonable, and equitable administration

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of the IHC Program while the Board continues to work on its Plan of Operation. These rules will remain in effect until a Plan of Operation is adopted by the IHC Program Board and approved by the Commissioner in accordance with the Act. At that time, this Temporary Plan shall be amended or rescinded and these rules amended or repealed accordingly.

A summary of the provisions of the Temporary Plan as set forth in the proposed new rules follows:

Proposed N.J.A.C. 11:20-2.1 sets forth the purpose and structure of the IHC Program.

Proposed N.J.A.C. 11:20-2.2 sets forth definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:20-2.3 sets forth the general powers of the IHC Program and the Board.

Proposed N.J.A.C. 11:20-2.4 provides that the Temporary Plan established by these rules becomes effective upon adoption by the Commissioner and submission of final action to OAL for publication, and that upon submission of a Plan of Operation by the Board and approval of it by the Commissioner, the Commissioner shall either amend or rescind the Temporary Plan.

Proposed N.J.A.C. 11:20-2.5 sets forth requirements with respect to the Board of Directors of the IHC Program including, but not limited to, the appointment of members of the Board, procedures for meetings to be held by the Board, and procedures by which actions may be taken by the Board.

Proposed N.J.A.C. 11:20-2.6 provides specific requirements regarding the establishment of various committees, appointment to such committees, and actions taken by those committees.

Proposed N.J.A.C. 11:20-2.7 provides procedures by which the financial activities and the funds of the IHC Program shall be administered.

Proposed N.J.A.C. 11:20-2.8 provides that the Board shall have an annual audit of its operations conducted by a qualified independent certified public accountant, and sets forth other requirements regarding such audits.

Proposed N.J.A.C. 11:20-2.9 provides the procedures for the maintenance and retention of the IHC Program's official records.

Proposed N.J.A.C. 11:20-2.10 provides procedures by which the Board shall establish standard health benefit plans, including the procedures by which policy and contract forms and benefit levels, and revisions to such forms and benefit levels are established, and the review of policy forms and rates submitted by members of the IHC Program.

Proposed N.J.A.C. 11:20-2.11 through 2.14 establish the procedures by which assessments adopted by the Board shall be apportioned and collected. The Board at a recent meeting determined to assess members to reimburse for losses incurred in 1992, and to cover administrative expenses of the IHC Program.

Proposed N.J.A.C. 11:20-2.15 provides procedures for the imposition of penalties and for the resolution of certain disputes.

Proposed N.J.A.C. 11:20-2.16 generally provides that the Board shall not be liable for any obligation of the IHC Program, and that Directors and employees of the Board or the Department shall not be liable for any action taken or omission made by them in the performance of their powers and duties under the Act, except where the action or omission constitutes willful misconduct or gross negligence.

Social Impact

The Temporary Plan established by these rules will implement the requirements of the Act as amended, and will assure the fair, reasonable and equitable administration of the IHC Program, pending the adoption of a Plan of Operation by the Board, approved by the Commissioner. The rules will therefore ensure that organizational and operational structure and procedures for the IHC Program are in place to provide for the provision of individual health benefits plans. This, in turn, will implement the intent of the Legislature as set forth in the Act as amended, benefiting all members of the IHC Program and the public generally.

Economic Impact

The Department does not believe that any adverse economic impact is directly imposed by this Temporary Plan of Operation established by these proposed new rules. These proposed new rules merely establish temporary operating procedures for the administration of the IHC Program to provide for the issuance of new individual health benefits plans which are being marketed with effective dates on or after August 1, 1993, in accordance with the requirements set forth in the Act as amended.

Thus, these rules merely set forth the organization and operating practices and procedures for the administration of the IHC Program pending formal adoption of a Plan of Operation by the Board and approval by the Commissioner. To the extent any economic impact is imposed on members, such impact is imposed by the Act itself and other rules implementing the act (see N.J.A.C. 11:20-1 and 11:20-3 through 9, 25 N.J.R. 2945(a)).

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these proposed new rules 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. These rules establish a Temporary Plan of Operation for the fair, reasonable and equitable administration of the IHC Program. The rules generally impose compliance requirements upon the IHC Program Board, which is created by the Act as amended, and which is not a "small business" as defined in the Regulatory Flexibility Act. To the extent that small businesses may be impacted through the promulgation of this Temporary Plan, any impact would be that directly imposed by the Act and implementing rules. A description of these impacts may be found in the notice of emergency adoption and concurrent new rules of the IHC Program Board, N.J.A.C. 11:20-2.1, and N.J.A.C. 11:20-2.3 through 2.9 (see 25 N.J.R. 2945(a)).

Full text of the proposed new rules follows:

**SUBCHAPTER 2. INDIVIDUAL HEALTH COVERAGE
PROGRAM TEMPORARY PLAN OF
OPERATION**

11:20-2.1 Purpose and structure

(a) The "IHC Program," created pursuant to the N.J.S.A. 17B:27A-2 to 16, amended by P.L. 1993, c.164, has as its members all insurance companies, health service corporations and health maintenance organizations that issue or have in force health benefits plans in this State. The IHC Program's purpose is:

1. To assure the availability of standardized individual health benefits plans in New Jersey on an open enrollment, community-rated basis; and

2. To reimburse certain losses of member companies for the calendar year ending December 31, 1992 pursuant to N.J.S.A. 17B:27A-13 and for calendar years ending December 31, 1993 and thereafter pursuant to N.J.S.A. 17B:27A-12.

(b) The Board of the IHC Program has been charged pursuant to the Act to administer the IHC Program reasonably and equitably under law.

(c) The IHC Program Temporary Plan of Operation sets forth as completely as possible the fair, reasonable and equitable manner in which the Board will administer the IHC Program under law. The Commissioner has adopted the Temporary Plan of Operation pursuant to N.J.S.A. 17B:27A-10e as amended by P.L. 1993, c.164, section 5 and the Temporary Plan will continue in effect until amended or rescinded by the Commissioner.

(d) The Board shall consist of nine directors, including the Commissioner or his or her designee, who shall serve ex officio.

(e) The Board shall appoint an insurance producer licensed to sell health insurance pursuant to N.J.S.A. 17:22A-1 et seq. to advise the Board on issues related to sales of individual health benefits plans issued pursuant to the Act.

(f) Neither the Temporary Plan of Operation nor the IHC Program creates any contractual or other rights and obligations between the IHC Program and any entity or other person insured by any carrier.

(g) The IHC Program shall continue in existence subject to termination in accordance with the laws of this State or of the United States. In the event of enactment of a law or laws which, in the determination of the Board and the Commissioner, shall result in the termination of the IHC Program, the IHC Program shall terminate and conclude its affairs. Any funds or assets held by the IHC Program following the payment of all claims and expenses of the IHC Program shall be distributed to the member carriers at that time and in accordance with the then existing assessment formula.

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(h) All documents or other communications directed to the Board shall be sent the Interim Administrator of the IHC Program at the following address:

The Individual Health Coverage Program Board
 c/o Interim Administrator
 The Prudential Insurance Company of America
 P.O. Box 4080
 Iselin, NJ 08830

11:20-2.2 Definitions

(a) Words and terms defined in N.J.S.A. 17B:27A-2 as amended by P.L. 1993, c.164, and N.J.A.C. 11:20-1, when used in this subchapter, shall have the meanings as defined therein, unless more specifically defined in (b) below or unless the context clearly indicates otherwise.

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

“Action” means an action by the Board adopted, in the Board’s discretion, in accordance with the procedures set forth either in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or in sections 7 and 8 of P.L. 1993, c.164. “Action” includes, but is not limited to: the establishment and modification of health benefits plans; procedures and standards for assessment of members and the apportionment thereof, policy form filings, rate filings, evaluation of material submitted by carriers with respect to loss ratios, and establishment of refunds to policyholders or contract holders; and the promulgation or modification of policy forms. “Action” shall not include the hearing and resolution of contested cases, personnel matters or applications for exemptions.

“Basic health benefits plan” means the health benefits plan designed by the Board in accordance with N.J.S.A. 17B:27A-4c as amended by P.L. 1993, c.164, section 3.

“Deferral” means a deferment, in whole or in part, of payment by a member of any assessment issued by the IHC Program Board, granted by the Commissioner pursuant to N.J.S.A. 17B:27A-12a(3) and N.J.A.C. 11:20-11.

“Director” means a Director of the Individual Health Coverage Program who:

1. Has been elected by the members of the Individual Health Coverage Program and approved by the Commissioner;
2. Has been appointed by the Governor and confirmed by the Senate; or
3. Sits ex officio on the Board of Directors, as applicable, in accordance with N.J.S.A. 17B:27A-10 as amended by P.L. 1993, c. 164, section 5.

“Financially impaired” means a carrier which, after the effective date of the Act, is not insolvent, but is deemed by the Commissioner to be potentially unable to fulfill its contractual obligations; or a carrier which is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

“HMO” means a health maintenance organization authorized in accordance with N.J.S.A. 26:2J-1 et seq.

“Plan” means the plan of operation of the IHC Program.

“Reasonable administrative expenses” means actual expenses, including commissions, or a maximum of 25 percent of premium (including commissions), whichever amount is less.

“Standard health benefits plan” means a health benefits plan, including the basic health benefits plan, adopted by the IHC Program board.

“Temporary Plan” means the temporary plan of operation for the IHC Program adopted by the Commissioner in accordance with N.J.S.A. 17B:27A-10 as amended by P.L. 1993, c.164, section 5.

11:20-2.3 Powers of the IHC Program and Board

(a) The IHC Program shall have the general powers and authority granted under the laws of this State to insurance companies, health service corporations and health maintenance organizations licensed or approved to transact business in this State, except that the IHC Program shall not have the power to issue health benefits plans directly to either groups or individuals.

(b) The Board shall have the power to do the following:

1. Define the provisions of standard health benefits plans in accordance with the requirements of the Act and this Temporary Plan;
2. Establish benefit levels, including any optional deductibles and copayments, and exclusions and limitations for standard health benefits plans in accordance with law;
3. Establish standard policy forms for standard health benefits plans and rider packages;
4. Establish a procedure for the joint distribution of information on standard health benefits plans issued pursuant to N.J.S.A. 17B:27A-4 as amended by P.L. 1993, c.164, section 3;
5. Establish reasonable guidelines for the purchase of new individual health benefits plans by persons who are already enrolled or insured by another individual health benefits plan;
6. Review rate applications and form filings submitted by carriers in accordance with the Act and this Temporary Plan;
7. Establish standards for a means test for standard health benefits plans issued pursuant to N.J.S.A. 17B:27A-4 as amended by P.L. 1993, c.164, section 3;
8. Promulgate, in conjunction with the New Jersey Small Employer Health Benefits Program, a standard claim form for the standard health benefits policies;
9. Establish minimum requirements for performance standards for carriers that are reimbursed for losses submitted to the IHC Program and provide for performance audits;
10. Make application on behalf of member carriers for benefits, subsidies, discounts or funds that may be provided either by any health care provider or under State or Federal law or regulation;
11. Appoint from among its members appropriate legal, actuarial and other committees necessary to provide technical and other assistance in the operation of the IHC Program, in policy and other contract design and any other functions within the authority of the Board;
12. Enter into contracts which are necessary or proper to carry out the provisions and purposes of the Act and this Temporary Plan;
13. Employ or retain such persons, firms or corporations to perform such administrative functions as are necessary for the Board’s performance of its duties;
14. Provide procedures for receiving oral and written comments from the public, which may include rules relating to the time and place of any public hearing, and for the length and format of testimony from individuals, groups and organizations;
15. Establish rules, conditions and procedures pertaining to the sharing of IHC Program losses and administrative expenses among the members of the IHC Program;
16. Calculate assessments and assess member carriers their proportionate share of IHC Program losses and administrative expenses in accordance with N.J.S.A. 17B:27A-12 and this Plan, and make advance interim assessments, as may be reasonable and necessary for organizational and reasonable operating expenses and estimated losses;
 - i. An interim assessment shall be credited as an offset against any regular assessment due following the close of the fiscal year;
 - ii. The Board may provide for other credits against assessments as appropriate;
17. Establish and maintain the appropriate accounts necessary to administer the IHC Program;
18. Impose interest penalties upon members for late payment of assessments;
19. Recommend to the Commissioner that actions be instituted in accordance with the Commissioner’s authority to impose penalties for violations of the Act;
20. Sue or be sued, including taking any legal actions necessary or proper for recovery of an assessment for, on behalf of, or against the IHC Program or a member carrier;
21. Pursuant to P.L. 1993, c.164, adopt “actions” necessary to execute the Board’s powers pursuant to the provisions of N.J.S.A. 17B:27A-2 through 16;

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22. Borrow money to effect the purposes of the IHC Program;
 i. Any notes or other evidence of indebtedness of the Program not in default shall be legal investments for carriers and may be carried as admitted assets; and

23. Contract for an independent actuary and any other professional services the Board deems necessary to carry out its duties under N.J.S.A. 17B:27A-2 et seq. as amended.

11:20-2.4 Temporary Plan of Operation

(a) The Temporary Plan shall become effective upon adoption by the Commissioner and submission of final action to OAL for publication. The Commissioner may amend the Temporary Plan by providing written notice to the Board of amendments and their effective dates and upon adoption of amendments in accordance with applicable law.

(b) Upon the submission of a Plan by the Board and approval of the Plan by the Commissioner pursuant to N.J.S.A. 17B:27A-10(d) and (e) as amended by P.L. 1993, c.164, section 6, the Commissioner shall amend or rescind the Temporary Plan.

11:20-2.5 Board of Directors

(a) The Board shall consist of nine Directors, including the Commissioner or his or her designee, who shall sit ex officio.

1. Four Directors shall be appointed by the Governor, with the advice and consent of the Senate.

i. One of the Governor's appointees shall be a representative of an employer, appointed upon the recommendation of a business trade association, who has experience in the management or administration of an employee health benefits plan. One of the Governor's appointees shall be a representative of organized labor, appointed upon the recommendation of the AFL-CIO, who has experience in the management or administration of an employee health plan. Two of the Governor's appointees shall be consumers of a health benefits plan who are reflective of the population in the State.

ii. The term of the initial appointment shall be for the period as set forth in the appointment.

2. Four Directors shall represent carriers and shall be elected by the members subject to the approval of the Commissioner.

i. To the extent a Carrier elected by the members is willing to serve on the Board, a representative of each of the following types of carrier shall be elected:

- (1) A health service corporation;
- (2) A health maintenance organization;
- (3) A mutual insurer of this State subject to Subtitle 3 of Title 17B of the New Jersey Statutes; and

(4) A foreign health insurance company authorized to do business in this State.

ii. The initial term of Directors representing carriers shall be determined by vote of the members of the IHC Program.

iii. The Board shall hold a meeting, at least annually, of the members of the IHC Program for the purpose of electing Directors to fill any vacancies among the Directors who represent carriers which exist or which will exist within 10 business days following the date of the election meeting pursuant to a resolution of the Board or the expiration of a Director's normal term of office.

(1) On or about 60 days prior to the date of the election meeting, the Board shall send written notice to the IHC Program members setting forth the time, date and place of the election meeting, stating the positions for which a vote is to be taken, soliciting written nominations of candidates for those positions, and stating the last date that written nominations shall be accepted, which shall be no less than 10 business days following the date of the written notice.

(2) Following the close of the nomination period, the Board shall determine from among the carriers nominated those carriers that are eligible and willing to serve in the position for which nominated.

(3) At least 30 calendar days prior to the date of the election meeting, the Board shall send a written notice to members setting forth the candidates to be considered for purposes of voting at the election meeting, along with a ballot by which the member carrier may vote absentee on or before a date specified by the Board, which shall be no earlier than three business days prior to the date of the election meeting.

(4) Affiliated carriers shall have no more than one vote for each position subject to vote.

(5) Elections shall be by a simple majority of those ballots properly cast in person and absentee.

(6) The Board shall maintain a written record of each election, including copies of all notices sent, ballots received and the tally sheets in accordance with its record retention procedures set forth at N.J.A.C. 11:20-2.9.

iv. Prior to the Board's annual meeting set forth at (c) below, or no later than 30 calendar days subsequent to the date of the election meeting, whichever date is later, the Board shall send a written notice to IHC Program members of the names of the Directors of the Board, their respective designees, if any, and the means by which Directors may be contacted during normal business hours by IHC Program members.

3. The Commissioner shall file with the Board a letter naming his or her designee, if any.

4. A carrier elected to the Board shall file with the Board a letter naming the person authorized to vote on behalf of the carrier and may name one or more alternates.

5. Appointed Directors shall promptly notify the Board of any change in circumstance that may affect the representative capacity in which they were appointed. Upon receipt of such notice, the Board shall notify the Governor of the appointed Director's change in circumstance.

6. The Directors representing carriers on the Board shall promptly notify the Board of any change in circumstance that may affect the representative capacity of the entity elected by the members. Upon receipt of such notice, the Board shall provide notice of the same to the members of the IHC Program.

7. Directors shall serve their terms of office until their replacements are duly appointed or elected, as appropriate.

(b) The Board shall elect a Chair and Secretary from among its Directors, and may elect other officers it deems appropriate. As authorized by the Board, such officers may act as signatories on behalf of the Board and perform other ministerial functions necessary and proper to effectuate the actions of the Board.

(c) The Board shall hold an annual meeting at which it shall:

- 1. Elect officers of the Board;
- 2. Adopt a schedule of regular meetings for the year;
- 3. Appoint Directors and other persons to committees of the Board;
- 4. Ratify the budget; and
- 5. Take action on such other matters that it deems appropriate.

(d) A majority of the Directors shall constitute a quorum for the transaction of business.

1. Each Director shall have one vote. The acts of a majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board, except as provided in (d)2 below.

2. The affirmative votes of five Directors shall be required to act upon the following:

- i. Amendments to the Plan of Operation;
- ii. Amendments to the standard health benefits plans;
- iii. Adoption of any actions, as defined by P.L. 1993, c.164, sections 7 and 8, or amendments to the actions of the IHC Program;
- iv. Removal of any Director from membership on any committee;
- v. Recommendations by the Board to the Legislature regarding amendments to the Act; and
- vi. An assessment or interim assessment.

(e) Directors may vote at meetings by written proxy delivered to the Secretary of Board and stating their vote on any particular resolution or action before the Board known to the Director prior to the meeting.

(f) All meetings of the Board, including special meetings, shall be subject to the provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6 to 21.

(g) In addition to the annual meeting and any regularly scheduled meeting, the Board may hold special meetings upon the request of the Chair or of three or more Directors.

(h) Appointed Directors shall receive compensation for attendance at Board and Committee meetings of \$150.00 per meeting, not

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to exceed \$150.00 per day. Directors may be reimbursed for reasonable unreimbursed travel expenses incurred in attending Board and Committee meetings using the State Travel Regulations issued by the Department of the Treasury as a guide.

(i) The Board shall hold meetings either in person or by teleconference.

(j) The Board shall provide for the taking of written minutes of each Board meeting, including teleconferences and closed sessions, and distribute a copy of the minutes to the Directors and two copies to the Commissioner. The Board shall retain the original of the minutes.

1. The Secretary shall take and maintain the written minutes of the proceedings of the Board meetings, including teleconferences and closed sessions. Board meeting minutes shall set forth as a minimum the following:

- i. The time, date and place of the meeting;
- ii. The names of all persons attending the meeting, the organizations they represent, if any, and the identity of the person presiding;
- iii. A narrative describing what occurred at the meeting including subjects considered and actions taken;
- iv. The recorded votes of each member on each matter including abstentions;
- v. The complete text of any resolutions adopted by the Board;
- vi. As attachments, the agenda for the meeting and accompanying materials; and
- vii. Any other information required to be shown in the minutes by law.

11:20-2.6 Committees

(a) The Board shall make appointments to standing and other committees from among Directors and IHC Program members. Each of the standing committees shall include no more than four Directors, but the Chair may appoint additional Directors as needed subject to ratification by the Board at the next subsequent meeting.

(b) The Board may, by resolution:

- 1. Determine the size of a standing committee, appoint Directors, and fill a vacancy;
- 2. Appoint a Director to serve as an alternate member of any standing committee to act in the absence of a committee member with all the powers of such absent member;
- 3. Abolish any standing committee;
- 4. Remove any person, other than a Director, from any standing committee at any time, with or without cause; and
- 5. Appoint or authorize the use of IHC Program staff, consultants, or other advisors to work with any standing committee.

(c) Committees may not take final action; however, within the scope of their purpose and duties, committees may make recommendations and reports to the Board for decision.

(d) Standing committees shall include the following:

- 1. A Technical Advisory Committee, which shall make recommendations to the Board with respect to:
 - i. Methods for calculating assessments;
 - ii. Standards for information requested for rate filings and for review of such rate filings;
 - iii. Standards of review of loss ratios and incurred losses;
 - iv. A uniform Audit Program to be utilized by independent auditors retained by carriers in their review of items related to assessments for each affected carrier;
 - v. Performance standards for carriers that are reimbursed for losses submitted to the IHC Program, and for performance audits that may be conducted from time to time;
 - vi. Conditional and final exemptions from assessments;
 - vii. Whether acts of members are not in compliance with the Act and any rules promulgated thereunder;
 - viii. Reviews of informational rate filings submitted to the Board pursuant to N.J.A.C. 11:20-6;
 - ix. Whether an informational rate filing is complete;
 - x. Reviews of loss ratio reports submitted to the Board pursuant to N.J.A.C. 11:20-7;
 - xi. A member carrier's plan for refunds to policy and contract holders, if necessary;

xii. Any other reports or recommendations to the Board as may be appropriate regarding rates, rate filings and loss ratio reports; and

xiii. Reviews of assertions of non-member status.

2. A Legal Committee, which shall make reports to recommendations to the Board with respect to:

- i. Rules to be promulgated by the Board pursuant to the Act;
- ii. Amendments to the Plan of Operation and the various individual health benefits plans proposed by the Board;
- iii. Any proposed amendments to the Act;
- iv. Contracts and legal documents for the IHC Program;
- v. All litigation and other disputes involving the IHC Program and its operations;
- vi. Coordination with the Office of the Attorney General on matters relating to IHC Program operations; and
- vii. Any legal actions necessary or proper for recovery of an assessment for, on behalf of, or against the IHC Program or a member.

3. A Marketing and Communications Committee, which shall make recommendations to the Board with respect to:

- i. Rules for implementation and administration of the Act and standards to provide for the fair marketing and broad availability of individual health benefits plans to eligible persons;
- ii. Marketing and communication plans for the IHC Program, as needed;
- iii. Rules to determine "good faith" marketing efforts by members applying for exemptions;

iv. The insurance producer to be appointed by the Board pursuant to N.J.S.A. 17B:27A-10g, and assist in liaison efforts between the Board and the appointed producer; and

v. A buyers' guide to be distributed to consumers which describes the individual health benefits plans available to eligible persons pursuant to the Act.

4. A Forms Committee, which shall make recommendations to the Board with respect to:

- i. Reviews of policy forms submitted to the Board pursuant to N.J.A.C. 11:20-3.2 and application forms submitted to the Board pursuant to N.J.A.C. 11:20-4;
- ii. The disapproval of any policy form or application form that is not in substantial compliance with the Act and the Board's rules;
- iii. Changes to the Board's standard policy forms, application form and claim form and develop new forms as may be necessary from time to time; and
- iv. Whether acts of members are in compliance with the Act and any rules promulgated thereunder.

5. An Operations Committee, which shall make recommendations to the Board with respect to:

- i. The engagement of independent financial consultants, including, but not limited to, examiners, auditors, accountants and actuaries;
- ii. The Plan of Operation and amendments thereto;
- iii. Standards of acceptability for the selection of auditing firms;
- iv. The review of reports prepared by independent auditors and other audit-related matters the Board deems necessary; and
- v. Contracts which are necessary or proper to carry out the provisions and purposes of the Act and this Plan.

6. A Complaint Committee, which shall make recommendations to the Board with respect to:

- i. Consumer, policyholder and member carrier inquiries, complaints and disputes arising in connection with the IHC Program;
- ii. The manner by which the Board may address inquiries, complaints and disputes brought to its attention;
- iii. Procedures for receiving, logging and handling inquiries, complaints and disputes;
- iv. The design of inquiry, complaint and dispute forms;
- v. Procedures for making inquiries and complaints and for carriers to use in notifying the Board of complaints and disputes; and
- vi. Whether and how to respond to interpretations of the Board's rules made by member carriers and inquiries and complaints received from consumers, policyholders, member carriers or others.

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(1) Recommendations by the Complaint Committee may include requesting that the Board issue a statement interpreting its regulations, seek declaratory or injunctive relief as may be appropriate, or other administrative or legal remedies as may be available.

(2) In an effort to answer any inquiry or resolve any dispute or complaint, the Complaint Committee or Interim Administrator or subsequently appointed Administrator may seek the input of another appropriate Committee in order to assist the Complaint Committee in reaching a recommendation.

(3) The Complaint Committee may refer matters as necessary to any other Committee which may also make recommendations to the Board.

(4) The Complaint Committee or Interim Administrator or subsequently appointed Administrator may compile statistics on complaints, disputes and appeals received and resolved and submit an annual report to the Board and the Commissioner detailing the volume of complaints, disputes and appeals categorized by type, carrier and disposition.

(5) Nothing contained in this paragraph shall be deemed to impair or otherwise affect the authority of the Commissioner to investigate and resolve any complaint or dispute or to take any regulatory or enforcement action with respect to any violations of any State insurance statutes or rules which come to the Commissioner's attention.

(e) The Board may by resolution establish and appoint other committees.

11:20-2.7 Financial administration

(a) The fiscal year of the IHC Program shall run from July 1 to June 30 of each year.

(b) All funds of the IHC Program shall be deposited and disbursements made from the General Treasury in accordance with procedures established and approved by the Department of Treasury, Office of Management and Budget.

1. Monies pertaining to the IHC Program shall be deposited into a dedicated account within the State's General Fund.

2. Monies may be credited from the General Fund to IHC bank accounts upon request by the Board through the Department, which request shall include justification for the request with supporting documentation, and shall be pursuant to the approval of the Director of the Division of Budget and Accounting.

(c) Bank checking accounts shall be established separately in the name of the IHC Program and shall be approved by the Board.

1. The Board shall authorize individuals to sign checks on behalf of the Board.

2. All cash and other assets shall be invested in accordance with the investment policy developed and approved by the Board as permitted by applicable law. All investment income earned shall be credited to the IHC Program and shall be applied to reduce future assessments of members for IHC Program losses and administrative expenses, except as provided in N.J.A.C. 11:20-2.11(g) and 2.12(h).

(d) No disbursements shall be made from IHC bank accounts without the approval of the Board, except that the Board may authorize the Interim Administrator or subsequently appointed Administrator to make disbursements of less than \$1,000 per disbursement for administrative purposes subject to such conditions as the Board may prescribe.

(e) All financial records shall be kept in accordance with the State's prescribed policies and procedures. The Board shall maintain the books and records of the IHC Program at a location in New Jersey in a manner so that financial statements may be prepared to satisfy the Act and other requirements of New Jersey law.

1. The receipt and disbursement of cash for the IHC Program shall be recorded as it occurs.

2. Non-cash transactions shall be recorded when assets or liabilities should be realized by the IHC Program in accordance with generally accepted accounting principles.

3. Assets and liabilities of the IHC Program, other than cash, shall be accounted for and described in itemized records.

4. The net balance due to or from the IHC Program shall be calculated for each carrier either when deemed appropriate by the Board or when requested by the carrier. The Board shall maintain

records of each carrier's financial transactions with the IHC Program as necessary to ensure compliance with the Act and this Temporary Plan, which records shall include at least the following:

- i. Net losses of the IHC Program based upon the assessments calculated in accordance with this Plan;
- ii. Any adjustments as set forth in this Plan;
- iii. Adjustments to the amount due to or from the IHC Program based upon corrections to carrier submissions;
- iv. Interest charges due from a carrier for late payment of amounts due to the IHC Program; and
- v. Other records required by the Board.

5. The Board shall maintain a general ledger which shall be used to produce the IHC Program's financial statements in accordance with generally accepted accounting principles. The balances in the general ledger shall agree with the corresponding balances in subsidiary ledger journals.

(f) The Interim Administrator or subsequently appointed Administrator shall prepare an annual financial report to be delivered to the Commissioner and each member of the Board by September 30 of each year beginning in 1994. The annual report shall fairly present the financial condition of the IHC Program for the preceding fiscal year.

1. All accounts shall be reconciled and trial balances shall be determined monthly.

2. Financial statements in a form approved by the Board shall be prepared and delivered to each member of the Technical Advisory Committee and the Commissioner on a quarterly basis.

11:20-2.8 Audits

(a) The Board shall have an annual audit of its operations conducted by a qualified independent certified public accountant.

1. The auditor shall be selected and approved by the Board through a competitive bidding process of certified public accountants qualified in New Jersey to perform audits of the type of entity.

2. The annual audit shall include the following items:

- i. A review of the handling and accounting of assets and monies of the IHC Program;
- ii. A determination that administrative expenses have been properly allocated and are reasonable;
- iii. A review of the internal financial controls of the IHC Program;
- iv. A review of the annual financial report of the IHC Program; and
- v. A review of the calculation by the IHC Program of any assessments of carriers for net losses.

3. A copy of the annual audit and related management letters shall be delivered to each Director and to the Commissioner. The annual audit report shall be reviewed by the Technical Advisory Committee, which shall present its recommendations to the Board for implementation of findings and recommendations made by the auditor. The actions adopted shall be reported to the Commissioner.

(b) The Board may, from time to time, direct that a member carrier arrange, or the Board may arrange, to have an audit conducted by an independent certified public accountant and a copy of the audit report of the member carrier delivered to the Board. All information regarding an audit of a member carrier conducted pursuant to this subsection shall be confidential and protected from disclosure by the member carrier, by the auditing firm, by the Board and the Commissioner.

11:20-2.9 Records

(a) The Board shall provide for the maintenance and retention of its official records, and may delegate this function to the Interim Administrator or subsequently appointed Administrator.

(b) The Board's records shall include the following:

- 1. Minutes of all Board meetings;
- 2. Written reports and recommendations of committees to the Board;
- 3. Informational and other filings made by carriers with the Board pursuant to the Act or the Board's rules, including rate and form filings, loss ratio filings, reports of net earned premium and reports of net paid losses;

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4. The rulemaking file on rules proposed or adopted by the Board, including all comments received;

5. The Plan of Operation and any amendments thereto;

6. Records concerning the election of Directors and appointment of committees and committee members;

7. Determinations on requests for exemption by carriers;

8. All dispositions on matters of complaints and disputes;

9. Other actions by the Board required by the Act; and

10. Such other specific records as the Board may from time to time direct or as may be required by law.

(c) The records set forth in (b) above shall be subject to public inspection and copying pursuant to the "Right-To-Know" Act, N.J.S.A. 47:1A-1 et seq., except that information in filings determined by the Board by regulation to be confidential and proprietary shall not be subject to public inspection and copying.

(d) For the purpose of disseminating information about the IHC Program, the Board shall maintain a mailing list of carriers and other interested parties.

1. The mailing list of member carriers initially shall be based upon the member carriers' addresses filed with the Department pursuant to N.J.A.C. 11:1-25. The Board may proceed to develop its own list of member carriers.

i. Upon any change in name or mailing address, a member carrier shall notify the Board in writing no later than 10 days from the date the new name or address becomes effective.

ii. Unless the Board is notified otherwise as provided above, the name and mailing address of a member carrier shall be deemed correct and communications mailed to the name and address on file shall be deemed received by the member carrier.

2. Persons other than member carriers who wish to receive communications from the Board, including proposed rules, actions and public notices, may request to be placed on the Board's mailing list as an interested party. Until the Board receives written notice of a change in name or address from an interested party, communications mailed to the name and address on file shall be deemed to be properly received. The Board shall not charge any fee for placement upon the mailing list, but the Board may charge a fee for copies of communications from the Board, which fee shall not be in excess of the actual cost of reproducing and mailing the copies.

11:20-2.10 Standard health benefits plans

(a) The Board shall establish the policy and contract forms and benefit levels (standard health benefits plans) to be made available by members.

1. In designing the standard health benefits plans, the Board shall give consideration to the types of coverage currently in force and/or available in the marketplace, individuals' preferences and the evolution of the marketplace towards managed care.

2. A committee may design or revise the standard health benefits plans, but the Board shall discuss the design and any changes thereto at a meeting open to the public prior to any vote by the Board to adopt, or modify any aspect of, a standard health benefits plan design.

3. The Board shall hold a public hearing on the standard health benefits plans or any revisions thereto prior to adopting or changing a standard health benefits plan.

i. The Board shall provide to all members and interested parties reasonable advance notice of a public hearing in accordance with the procedures set forth in the Act as amended.

ii. The Board may establish procedures for a public hearing pursuant to Article III of this Temporary Plan and publish them with the notice of the public hearing.

iii. The Board shall maintain a written record of any public hearing and make it available for inspection at the office of the Interim Administrator.

4. The Board shall adopt or amend a standard health benefits plan in accordance with the procedures set forth in the Act, as amended.

i. In accordance with the procedures for taking action set forth in the Act, as amended, the Board may adopt a standard health benefits plan or modifications thereto and thereafter shall address in writing such comments as were received within a reasonable

period following the adoption of the proposed action. The Board shall give due consideration to all comments received. Pursuant to the Act as amended, the Board shall, within a reasonable period of time following submission of the comments, prepare for public distribution a report listing all parties who provided written submissions concerning the intended action, summarizing the content of the submissions and providing the Board's response to the data, views and arguments contained in the submissions. A copy of the report shall be filed with the Office of Administrative Law for publication in the New Jersey Register.

(1) The Board shall identify whether it made a change in the action proposed at its own initiative or in response to one or more comments.

ii. Except as may be required by law, members shall implement amendments to the standard health benefits plans in the time prescribed by the Board.

5. The Board shall take action as necessary to keep the standard health benefits plans in compliance with State and Federal law.

6. The Board shall consider, at least annually, whether to revise the standard health benefits plans. Such consideration shall take into account comments and complaints from covered individuals, members, and producers; trends in the small employer group and large employer group markets; actions of State and Federal agencies; and actions of the New Jersey Legislature and Congress.

(b) Members shall submit to the Board, in the care of the Interim Administrator or subsequently appointed Administrator, a certification that sets forth that the standard policy and application forms will be used in accordance with the requirements of N.J.A.C. 11:20-3.2 and 4.1.

1. As a transitional measure, members may, for a period of time, use alternative policy and application forms which are in substantial compliance with the standard policy and application forms. If alternative forms are to be used, or if the member offers a standard health benefits plan through or in conjunction with a managed care network, the member shall file the forms with the Board, in the care of the Interim Administrator or subsequently appointed Administrator, along with a certification that the forms are in substantial compliance with N.J.S.A. 17B:27A-2 et seq. and N.J.A.C. 11:20. The filing shall also include an identification of the differences between the filed forms and the standard forms.

2. No member shall issue a standard or alternative health benefits plan until a full schedule of corresponding rates has been filed with the Board in accordance with N.J.A.C. 11:20-6.

3. The Interim Administrator or subsequently appointed Administrator shall forward each certification and/or policy form and application form to the Chair of the Forms Committee within five business days of its receipt and each rate filing to the Chair of the Technical Advisory Committee within five business days of its receipt. The Interim Administrator or subsequently appointed Administrator shall retain at least one copy of each certification and/or policy form and application form and each rate filing submitted on file for proper record retention.

4. The Chair of the Forms Committee shall present the Board with a list of all certifications and alternative policy and application forms filed.

5. The Forms Committee shall review all certifications and alternative policy and application forms filed. For each alternative policy and application form, the Forms Committee shall review the forms for a recommendation to the Board as to whether or not the forms are in substantial compliance with the standard health benefits plans and application forms. The following guidelines shall be used to evaluate whether alternative forms are in substantial compliance:

i. All coverage, coverage limits, and exclusions set forth in the standard forms are included;

ii. The inclusion of words, terms and descriptions not contained in the standard policy forms does not change the meaning or effect of any material aspect of the standard form;

iii. The exclusion of words, terms, and descriptions contained in the standard forms does not change the meaning or effect of any material aspect of the standard forms;

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iv. The application form includes all information on the standard form, even information which applicants are required to complete at their option; and

v. The formatting of the forms allows for easy comparison with the standard forms by consumers and the Board.

6. For any alternative form which the Forms Committee finds not to be in substantial compliance based on the guidelines of (b)5 above, the Forms Committee shall contact the submitting carrier in writing advising them of the finding including details of the noted discrepancies between the alternative form submitted and the standard form. The Carrier shall be provided the opportunity to amend the filing within a 30 day period. Any amended filing shall be reviewed according to the guidelines of (b)5 above for a recommendation to the Board.

7. The Chair of the Forms Committee shall present the Board with copies of the certifications and alternative policy and application forms reviewed. For each alternative and/or amended form, the Chair of the Forms Committee shall include a recommendation that, based on the guidelines of (b)5 above, the forms are or are not in substantial compliance with the standard forms.

8. The Board shall review those certifications, policy and application forms, along with any recommendations specific thereto presented by the Forms Committee and shall determine whether such forms are in substantial compliance with the standard health benefits plans and the standard application form.

(c) The Technical Advisory Committee shall review all rates filed, and shall compile separate lists of the rates filed according to their status as follows:

1. Rate filing complete; and
2. Rate filing incomplete, with a specific request for more information recommended.

(d) The Chair of the Technical Advisory Committee shall forward the lists established pursuant to (c) above, the rate filings assigned to those lists by the Technical Advisory Committee, and the recommendations specific to those rate filings to the Chair of the Board in a timely manner.

(e) The Board shall review those rate filings assigned to the list established pursuant to (c) above, and any recommendations specific to such rate filings and shall determine whether such rate filings are complete. Upon a determination by the Board that a rate filing is incomplete, the Board shall send notice of such determination to the affected member as specified at N.J.A.C. 11:20-6 through the Interim Administrator or subsequently appointed Administrator and shall return the lists and rate filings to the Interim Administrator or subsequently appointed Administrator to be placed on file for proper record retention.

(f) Following the return of each list established by the Technical Advisory Committee pursuant to (c) above, the Interim Administrator or subsequently appointed Administrator shall forward to the Commissioner and the Public Advocate a copy of the rate filings and a statement that the rate filings have been accepted as received or that additional information has been requested. The Interim Administrator or subsequently appointed Administrator shall forward additional information received to the Technical Advisory Committee, the Commissioner and the Public Advocate as soon as it is received.

11:20-2.11 Assessment for 1992 total reimbursable net paid losses

(a) The IHC Program Board may assess members for 1992 reimbursable net paid losses as an advance interim assessment, as may be necessary, pursuant to its authority under N.J.S.A. 17B:27A-11a and according to the procedures set forth in this Temporary Plan.

(b) The IHC Program Board shall determine the total reimbursable net paid losses, if any, for calendar year 1992 based upon the information submitted by members on or before June 28, 1993 to the IHC Program Board in the Carrier Market Share and Net Paid Loss Report, set forth as Exhibit K in the Appendix to N.J.A.C. 11:20, completed in accordance with N.J.A.C. 11:20-8. Such a determination shall be made by the IHC Program Board on or about July 8, 1993.

1. The reimbursable net paid losses for each member reporting net paid losses in 1992 shall not exceed the lesser of \$10,000,000 or 50 percent of the member's reported net paid losses.

2. No performance standards shall be applicable to any member for purposes of determining a member's reimbursable net paid losses for 1992.

3. The total reimbursable net paid losses for 1992 shall be the aggregate of the reimbursable net paid losses for all members reporting net paid losses in 1992.

(c) Every member shall be liable for a portion of the total reimbursable net paid losses for 1992 unless a member has reported a net paid loss amount that has been included by the IHC Program Board in the total reimbursable net paid losses for 1992.

1. The IHC Program Board provided notice to members in writing on July 8, 1993 of the total reimbursable net paid losses for 1992 and whether the member may or may not be liable for a portion of the total reimbursable net paid losses for 1992.

2. No later than 90 days following the preliminary notice by the IHC Program Board of a member's preliminary liability for a portion of the total reimbursable net paid losses for 1992, the IHC Program Board shall notify each member by invoice of the dollar amount being assessed on an interim basis against the member for its portion of the total reimbursable net paid losses for 1992.

3. The IHC Program Board shall provide notice to members in writing on or before November 1, 1993 of the first reconciliation of the assessment for 1992 reimbursable net paid losses which will include adjustments in market share and adjustments made for deferrals granted on or before October 20, 1993.

4. The IHC Program Board shall notify each member of the final reconciliation of the assessment and reimbursement for 1992 reimbursable net paid losses by invoice stating the dollar amount then due or credit, if any, against future assessments by April 1, 1994. As a result of the final reconciliation, any monies determined to be owed to or by Board, shall be calculated without provision for interest.

(d) Each member's assessment amount shall be determined by multiplying the member's adjusted market share, to be determined as described in (d)1 through 3 below, against the total reimbursable net paid losses for 1992, except that no member shall be liable for an assessment amount greater than 35 percent of the total reimbursable net paid losses for 1992.

1. The IHC Program Board shall determine each member's adjusted market share by comparing the member's net earned premium for calendar year 1992 to the net earned premium of all members excluding members with 1992 reimbursable net paid losses for calendar year 1992, as reported by each member on or before June 28, 1993 to the IHC Program Board in the Carrier Market Share and Net Paid Loss Report, set forth as Exhibit K of the Appendix to N.J.A.C. 11:20, and completed in accordance with N.J.A.C. 11:20-8. Should a member fail to submit a Carrier Market Share and Net Paid Loss Report as required by N.J.A.C. 11:20-8, the member's market share shall be determined by the IHC Program Board based upon the premium set forth in the member's most recent Annual Statement filed with the Department.

2. Assessment amounts for members granted a deferral by the Commissioner, or subject to dispute by a member wherein the dispute is settled in favor of the disputing member, shall be apportioned to other members based on their respective adjusted market shares.

3. A member's assessment in amounts exceeding the 35 percent limit shall be apportioned to other members, based upon their respective adjusted market shares, until such other members reach the 35 percent limit or the total reimbursable net paid losses for 1992 are fully assessed, whichever occurs first.

(e) Assessment amounts are due and payable upon receipt of an invoice by a member for the assessment. Payment shall be by bank draft made payable to the Treasury—State of New Jersey, IHC Program, c/o the New Jersey Department of Insurance, 20 W. State Street, CN-325, Trenton, N.J. 08625.

1. Members shall be subject to payment of an interest penalty on any assessment, or portion of an assessment, not paid within 30

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days of the date of the invoice for the assessment, unless the member has been granted a deferral by the Commissioner of the amount not timely paid.

i. The interest rate shall be 1.5 percent per month of the assessment amount or any portion thereof not timely paid, accruing from the date of the invoice for the assessment.

ii. Payment of an assessment, or portion of an assessment for which an interest penalty has accrued, shall include the interest penalty amount accrued as of the date of payment; otherwise, payment shall not be considered to be in full.

iii. Good faith errors that are reported to the Board by a member within 60 days of their occurrence shall not be subject to the interest penalty set forth in (e)1i above. If a carrier makes an error relating to or involving an assessment or any other error resulting in non-payment or underpayment of funds, the member shall make immediate payment of additional amounts due.

2. Members that dispute whether they are subject to an assessment, or dispute the amount of assessment for which they have been determined liable by the IHC Program Board, shall be liable for and make payment of the full amount of the assessment invoice when due, including any interest penalty accruing thereon, until such time as the dispute has been resolved in favor of that member, or, if a contested case, the IHC Program Board has rendered a final determination in favor of that member in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(f) A member may request that the Commissioner grant a deferral of its obligation to pay an assessment in accordance with N.J.A.C. 11:20-11.

1. If a member files a proper request for deferral within 15 days of the date of the invoice, that member may make payment of the amount of the assessment invoice pursuant to (e) above, to be held in an interest bearing escrow account in accordance with the procedures set forth in (g) below, pending final disposition by the Commissioner of the deferral request.

2. If the member withholds payment, as permitted pursuant to (f)1 above and the Commissioner denies the request for deferral, the member shall be subject to payment of the interest penalty set forth in (e)1 above, accruing from the date of the invoice for the assessment.

(g) The Interim Administrator (or Administrator) shall deposit all monies received from the Treasury pursuant to this section in an interest bearing account maintained by the IHC Program Board for that purpose. The Board shall approve the disbursement of all funds then in the account, and any payments to those members determined by the IHC Program Board as having reimbursable net paid losses for 1992. Disbursement shall be in proportion to the member's share of the total reimbursable net paid losses for 1992, until all such available funds have been paid out, or a member's reimbursable net paid losses for 1992 have been reimbursed, whichever comes first.

1. Amounts of assessment in dispute or subject to a deferral request shall not be disbursed to members having reimbursable net paid losses in 1992, until such time as the dispute has been settled or concluded with the disputing member, or the deferral denied, except that any portion of an assessment not in dispute or subject to the deferral request, or portions no longer disputed or subject to a deferral request, may be disbursed to members having reimbursable net paid losses in 1992 in accordance with (g) above, along with any applicable interest penalty amounts paid or interest earned while held in escrow by the Board.

2. Amounts of assessment disputed or subject to deferral wherein the dispute is resolved in favor of the disputing member, or a deferral is granted, shall be returned to the appropriate members within 15 days of the date that the Interim Administrator (or Administrator) receives notice of the determination by the IHC Program Board or the Commissioner, as applicable, along with the proportionate amount of interest penalty, if any, paid by the member for late payment of the amount, and the proportionate amount of the interest earned on that amount while the amount was held in escrow by the Board.

(h) An assessment for the 1992 reimbursable net paid losses, as an advance interim assessment, shall be credited as an offset against

any regular assessment due following the close of the following year as required by N.J.S.A. 17B:27A-11a.

11:20-2.12 Assessments for administrative expenses and organizational and operating expenses

(a) Every member shall be liable for a portion of the annual administrative expenses of the IHC Program. On or about April 15 annually the IHC Program Board shall notify each member by separate invoice of the dollar amounts being assessed against the member for its portion of the final administrative expense total for the preceding calendar year, if any.

1. Such notice shall include a brief summary of the final administrative expenses and shall credit the member for any interim administrative expense assessments paid.

2. If a member has advanced a sum or sums of money to the IHC Program to cover some portion of the IHC Program's administrative expenses, those sums advanced shall be credited against the member's assessment amounts.

3. Each member's final annual assessment for administrative expenses shall be reduced by any deferred assessment paid by assessed carriers in proportion to the original assessment made to cover the deferred amount.

(b) The Board, at its discretion, may make an interim assessment on a monthly basis or such other periodic basis as necessary to ensure the availability of funds to meet operating expenses as well as to cover estimated losses.

(c) All members shall be assessed for a proportionate share of final administrative expenses for the preceding calendar year on the basis of the ratio of the member's health benefits plans net earned premiums for that calendar year to the total of all members health benefits plans net earned premiums for that calendar year. Net earned premiums shall be determined as reported by each member to the IHC Program Board in the Carrier Market Share and Net Paid Loss Report as set forth as Exhibit K of the Appendix to N.J.A.C. 11:20, and completed in accordance with N.J.A.C. 11:20-8. Should a member fail to submit a Carrier Market Share and Net Paid Loss Report as required by N.J.A.C. 11:20-8, the member's market share shall be determined by the IHC Program Board based upon the premium set forth in the member's most recent Annual Statement filed with the Department.

(d) Interim assessments shall be made on the same basis as in (c) above, but shall use the net earned premium from the preceding calendar year.

(e) Assessment amounts for members granted a deferral by the Commissioner, or subject to dispute by the member wherein the dispute is settled in favor of the disputing member, shall be apportioned to other members on the same basis as set forth in (c) above.

(f) Assessment amounts are due and payable upon receipt by a member of an invoice for the assessment. Payment shall be by bank draft made payable to the Treasury—State of New Jersey, IHC Program, c/o the New Jersey Department of Insurance, 20 W. State Street, CN-325, Trenton, NJ 08625.

1. Members shall be subject to payment of an interest penalty on any assessment, or portion of an assessment, not paid within 30 days of the date of the invoice for the assessment, unless the member has been granted a deferral by the Commissioner of the amount not timely paid.

i. The interest rate shall be 1.5 percent per month of the assessment amount or any portion thereof not timely paid accruing from the date of the invoice for the assessment.

ii. Payment of an assessment, or portion of an assessment for which an interest penalty has accrued, shall include the interest penalty amount accrued as of the date of payment; otherwise, payment shall not be considered to be in full.

iii. Good faith errors that are reported to the Board by a member within 60 days of their occurrence shall not be subject to the interest penalty set forth in (f)1i above. If a member makes an error relating to or involving an assessment or any other error resulting in non-payment or underpayment of funds, the member shall make immediate payment of additional amounts due.

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2. Members that dispute whether they are subject to an assessment, or dispute the amount of assessment for which they have been determined liable by the IHC Program Board, shall be liable for and make payment of the full amount of the assessment invoice when due, including any interest penalty accruing thereon, until such time as the dispute has been resolved in favor of that member, or, if a contested case, the IHC Program Board has rendered a final determination in favor of that member in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(g) A member may request that the Commissioner grant a deferral of its obligation to pay an assessment in accordance with procedures established by the Commissioner.

1. If a member files a proper request for deferral within 15 days of the date of the invoice, that member may make payment of the amount of the assessment invoice pursuant to (f) above, to be held in an interest bearing escrow account in accordance with the procedures set forth in (h) below pending final disposition by the Commissioner of the deferral request.

2. If the member withholds payment, as permitted pursuant to (g)1 above, and the Commissioner denies the request for deferral, the member shall be subject to payment of the interest penalty set forth in (f)1 above, accruing from the date of the invoice for the assessment.

(h) The Interim Administrator (or Administrator) shall deposit all monies received from the Treasury pursuant to this section in an interest bearing account maintained by the IHC Program Board for that purpose.

1. Amounts of assessment in dispute or subject to a deferral request shall not be disbursed by the Board until such time as the dispute has been settled or concluded with the disputing member, or until final disposition of the request for deferral by the Commissioner, except that any portion of an assessment not in dispute or subject to the deferral request, or portions no longer disputed or subject to a deferral request, may be disbursed immediately, along with any applicable interest penalty amounts paid or interest earned while held in escrow by the Board.

2. Amounts of assessment disputed or subject to deferral wherein the dispute is resolved in favor of the disputing member, or a deferral is granted, shall be returned to the appropriate members within 15 days of the date that the Administrator receives notice of the determination by the IHC Program Board or the Commissioner, as applicable, along with the proportionate amount of interest penalty, if any, paid by the member for late payment of the amount, and the proportionate amount of the interest earned on that amount while the amount was held in escrow by the Board.

11:20-2.13 Notice of request for deferral

A member requesting a deferral from the Commissioner of an assessment amount shall concurrently provide notice of such request in duplicate to the Interim Administrator (or Administrator) in order to preserve its right to any monies paid pursuant to the invoice for assessment.

11:20-2.14 Failure to pay assessments

If a member is determined liable for an assessment fails to pay the full amount of the assessment and applicable interest, if any, within 60 days of the date of the invoice, and has neither submitted notice that it is seeking a deferral from the Commissioner, nor requested a hearing, the IHC Program Board may provide to the Commissioner a notice of the member's failure to make payment along with a recommendation to revoke the member's authority to write any health benefits plans or other health coverage in this State. A copy of this notice shall be sent to the member by registered mail at the same time that the notice is sent to the Commissioner. In accordance with the Act, failure to pay assessments shall be grounds for removal of a member's authority to write health coverage of any kind in this State.

11:20-2.15 Penalties/adjustments and dispute resolutions

(a) A member seeking to challenge the amount of an assessment must do so within 20 days of receiving the notice of the assessment following the procedures established by the Board.

(b) A member which disputes being subject to an assessment and wishes to contest that issue shall file its appeal with the IHC Program Board no later than 20 days of receiving the notice of assessment following the procedures established by the Board.

(c) Concurrent with its challenge to the assessment, a member shall advise the Board in detail of the reasons why the assessment is inaccurate or not appropriate and submit all documentation that supports or tends to support the member's position. The member shall also advise at this time whether a hearing is requested.

(d) If a hearing is requested, within 30 days of its receipt thereof, the Board shall determine whether the matter constitutes a contested case. If the matter is determined to be a contested case, the Board shall determine whether to hear the matter or refer it to the Office of Administrative Law for a 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. If the matter does not constitute a contested case, the Board will review the challenge itself or delegate this review to an appropriate Committee to make a recommendation to the Board.

(e) If the Board determines that the nature or extent of errors or conduct by a member evidence activity for which penalties or sanctions are appropriate, the Board shall refer the matter to the Commissioner, Attorney General, and/or other appropriate enforcement agency, for appropriate action including the assessment of penalties and sanctions as provided by the Act, as well as any other penalties permitted by law. Nothing herein shall be construed to limit the authority of the Commissioner, the Attorney General or any law enforcement agency to take appropriate regulatory or enforcement action with respect to violations of law and regulations.

11:20-2.16 Indemnification

(a) The participation in the IHC Program as a member, the establishment of rates, forms or procedures, or any other joint or collective action required by the Act shall not be the basis of any legal action, criminal or civil liability, or penalty against the IHC Program, member of the Board of Directors or any member carrier either jointly or separately except as otherwise provided in the Act.

(b) The Board shall not be liable for any obligation of the IHC Program. No Director, officer or employee of the Board or the Department shall be individually liable and no cause of action of any nature may arise against them, for any action taken or omission made by them unless their conduct was outside the scope of their employment or constituted a crime, actual fraud, actual malice or willful misconduct.

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Contracts

Debarment from Contracting: Conflict of Interest

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

12:3-1

Authorized By: Raymond L. Bramucci, Commissioner,
Department of Labor.

Authority: N.J.S.A. 34:1-20; 34:11-56.37; and the Governor's
Executive Orders No. 34(1976) and No. 189(1988).

Proposal Number: PRN 1993-576.

Submit written comments by November 17, 1993 to:

Linda Flores, Special Assistant
External and Regulatory Affairs
Office of the Commissioner
CN 110
Trenton, New Jersey 08625-0110

PROPOSALS

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LAW AND PUBLIC SAFETY

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:3, Contracts, comprised of N.J.A.C. 12:3-1, Debarment from Contracting: Conflict of Interest, is scheduled to expire on December 19, 1993. The rules set forth the causes and conditions which constitute grounds for debarment and the procedure and periods of debarment and also prohibit any conflicts of interest in contracts to supply goods or services to the New Jersey Department of Labor (Department). The Department has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. Accordingly, pursuant to the Department's general rulemaking authority and the Governor's Executive Orders No. 34(1976) and No. 189(1988), the Department is proposing for readoption the debarment from contracting rules found at N.J.A.C. 12:3. Readoption would enable the Department to continue to debar any individual responsible for violations of any laws governing hours of labor, minimum wage standards, discrimination in wages, child labor, other labor laws or the prohibition against conflict of interest.

N.J.A.C. 12:3-1.1 sets forth the purpose and scope of the subchapter.

N.J.A.C. 12:3-1.2 sets forth applicable definitions.

N.J.A.C. 12:3-1.3 specifies the causes and conditions for disbarment, namely, the violation of any labor law including, but not limited to, wage and hour, minimum wage, discrimination in wages and child labor laws. Pursuant to Executive Order No. 189(1988), the prohibition against conflict of interest is set forth as a cause for debarment. The rule also identifies factors which may be considered material by the Commissioner in determining whether to debar a person from contracting with the Department. The term "goods" has been added at N.J.A.C. 12:3-1.3(c)8 for consistency with the thrust of the rule and to clarify any confusion which may exist regarding the parameters of this factor; however, the rules at N.J.A.C. 12:3-1.3(c)9 implicitly include the failure to provide goods as a factor to be considered in the determination to debar.

N.J.A.C. 12:3-1.4 sets forth the procedures which will be followed by the Department when it seeks to debar a person as well as the procedure for the person to appeal the decision to debar by requesting a formal hearing pursuant to the Administrative Procedure Act and the Uniform Administrative Rules of Practice. The rules also establish three years as the debarment period.

N.J.A.C. 12:3-1.5 requires the Department to provide to the State Treasurer a list of names of all persons debarred and the period for which they are debarred from contracting with the Department.

N.J.A.C. 12:3-1.6 prohibits any conflict of interest between contractors and State officials and describes instances which present a conflict of interest.

The rules pertaining to debarment from contracting provide clear guidance to both State officials or employees and any potential contractors of the causes which may lead to debarment and the procedures governing debarment action. Because the Department considers the current text of the subchapter generally sufficient for the purpose of administering debarment and conflict of interest matters, the rules are being proposed for readoption with only limited amendment.

Social Impact

Readoption of the rules will benefit the public by ensuring that persons who violate State labor laws or conflict of interest rules will be precluded from contracting with the Department for the provision of goods and services, thereby enhancing the Department's enforcement efforts. The public will also benefit by the prohibition against conflicts of interest between State officials or employees and contractors, thereby ensuring that contracts for goods or services are entered into based upon the Department's business interests. Persons who contract with the State will be deterred from violating the State's labor laws and the prohibition against conflict of interest because of the potential for a three year debarment period. In addition, State officials, employees and contractors will benefit by the guidance the rules provide regarding instances presenting a conflict of interest.

Economic Impact

It is anticipated that readoption of the debarment rules will help to reduce the number of violations of the State's labor laws and conflict of interest rules. This reduction will ultimately benefit the general public by furthering compliance with the State's labor laws and implementing regulations. The Department is benefitted by the rules because of their deterrent effect, thereby conserving the Department's enforcement resources. Providers of goods and services are economically benefitted by

the rules because the rules help to eliminate the unfair economic advantage enjoyed by contractors who conduct business in violation of the State's labor laws and regulations. Persons who are debarred from doing business with the State will, to varying degrees, sustain a negative economic impact from the rules since they will be precluded from competing for State contracts.

Regulatory Flexibility Statement

Readoption will not place any reporting, recordkeeping or compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that are not already required under existing State labor laws. Thus, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:3.

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

12:3-1.3 Cause and conditions for debarment

(a) The Commissioner may debar a person from contracting with the Department or any agency within the control or jurisdiction of the Department for a definitely stated period of time for the violation of any labor law including but not limited to wage and hour, minimum wage, discrimination in wages and child labor laws **and the prohibition against conflict set forth at N.J.A.C. 12:3-1.6.**

(b) (No change.)

(c) The Commissioner may consider the following factors as material in each decision to debar:

1.-7. (No change.)

8. Failure to provide **goods and/or** services; and

9. Failure to comply with contract specifications.

(d) A violation of any labor law **or the prohibition against conflict of interest** shall be determined by the Commissioner. In the event an appeal taken from such determination results in a reversal, the debarment shall be removed unless the Commissioner determines that another cause for debarment exists.

LAW AND PUBLIC SAFETY

(a)

STATE ATHLETIC CONTROL BOARD

**Boxing and Combative Sports Events
Rules to Safeguard Health**

Proposed New Rule: N.J.A.C. 13:46-12.1

Proposed Amendments: N.J.A.C. 13:46-12

Authorized By: State Athletic Control Board, Larry Hazzard, Sr., Commissioner; Gerard Gormley, Chairman; Gary Shaw, Member; Albert Daniels, Member.

Authority: N.J.S.A. 5:2A-2(a), 5:2A-4, 5:2A-5(b), 5:2A-7(c), 5:2A-8.1, 5:2A-15(e) and 5:2A-18.2.

Proposal Number: PRN 1993-549.

Submit comments by November 17, 1993 to:

Wendy Alice Way
Deputy Attorney General/Counsel
State Athletic Control Board
CN-047
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The primary objective of these proposed amendments, and new rule is to ensure the "[p]rotect[ion of] the safety and well being of participants in boxing, wrestling, kick boxing and combative sports exhibitions, events, performances and contests . . ." held in the State of New Jersey. N.J.S.A. 5:2A-2(a). The health, safety and welfare of every participant in every boxing and combative sports event held in this State are the paramount concerns of the State Athletic Control Board ("SACB") and any perception to the contrary will not be tolerated. The SACB remains committed to ensuring the protection of the health, safety and welfare of every

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boxing and combative sports event participant. The SACB's concerns and commitment are now codified by the regulatory amendments set forth in this proposal.

Moreover, the SACB, in concert with its Medical Advisory Council, have determined that a comprehensive review of those rules regulating the health and safety of all participants in any boxing or combative sports event is warranted. The SACB has commenced the undertaking of regulatory initiatives to amend its rules in areas such as drug testing, AIDS testing, age limitations, standards of licensure, medical insurance and the overall operation of combative sports events in this State. The SACB anticipates that its initiatives will result in the near-future publication of regulatory amendments that further "[p]romote the public confidence and trust in the regulatory process and the conduct of boxing, wrestling, kick boxing and combative sports exhibitions, events, performances and contests" in New Jersey in accordance with N.J.S.A. 5:2A-2(b). This proposal is the first phase of the SACB's initiatives.

This proposal creates a new section, N.J.A.C. 13:46-12.1, which defines the scope of the SACB's rules to safeguard health. N.J.A.C. 13:46-12. The SACB's rules to safeguard health are amended through proposed N.J.A.C. 13:46-12.1(a) to apply to boxing and any other combative sports event at the SACB's discretion. N.J.A.C. 13:46-12.1(b) enables the Commissioner to order additional medical examinations of any licensee or applicant to determine that individual's continued fitness and qualification to participate in an event. N.J.A.C. 13:46-12.1(c) provides that any medical examination or laboratory procedure be performed and recorded by a qualified physician in accordance with this subchapter and the SACB standardized form. N.J.A.C. 13:46-12.1(d) provides that the licensee or applicant for licensure will bear the cost of such a medical examination.

N.J.A.C. 13:46-12.2, recodified from N.J.A.C. 13:46-12.1 by this proposal, is amended to eliminate the requirement that the medical examination, as a condition to licensure or renewal, be performed by a physician appointed by the SACB and to allow such examination to be performed by "any duly licensed physician." N.J.A.C. 13:46-12.2(a). Because many boxing and other combative sports contestants are not residents of New Jersey, it is impossible, as a practical matter, to have such contestant examined by a SACB appointed physician. However, since the SACB will rely upon the medical examinations of physicians not appointed by the SACB, the SACB requires that the examining physician complete a certification, prescribed by proposed N.J.A.C. 13:46-12.2(d), which will accompany any medical records filed via direct mailing to the Commissioner.

The SACB's permitting any duly licensed physician to provide the SACB or its Commissioner with medical reports and an accompanying certification thereof is also reflected in this proposal at N.J.A.C. 13:46-12.7(b)1, 12.8, 12.9(a) and 12.10(a).

N.J.A.C. 13:46-12.2(b) is amended to eliminate references to certain discretionary laboratory procedures: chest X-ray, skull X-ray, flat abdominal X-ray and serological examination for syphilis. The amendment, however, provides for "any other test which might be indicated by the past record or present condition of the applicant" to be completed at the discretion of the Commissioner or the physician.

N.J.A.C. 13:46-12.2(c) is amended to provide that the medical examination be made "within 180 days prior to licensure or renewal" to enable the Commissioner ample time to evaluate the fitness of the licensee or applicant as set forth in the medical records.

N.J.A.C. 13:46-12.3(a), as proposed, requires that the SACB physician receive the results of the boxer's pre-licensure medical examination before the boxer is permitted to enter the ring to engage in a boxing contest. N.J.A.C. 13:46-12.3(b) is amended to clarify that two pre-fight medical examinations will be given "on the day of the bout" at the weighing-in and a short while before the boxing program commences. Similar amendments concerning pre-fight medical examinations for referees are proposed in N.J.A.C. 13:46-12.9.

N.J.A.C. 13:46-12.3(b) is also amended to eliminate the urinalysis requirement as part of the pre-fight examination since, as a practical matter, the test results are not available in time to take any action before the bout. Requiring the urinalysis as part of the licensure procedure and as part of the post-fight medical examination, proposed in N.J.A.C. 13:46-12.6(a), are sufficient to protect the safety of the participants and the integrity of the event.

N.J.A.C. 13:46-12.4, recodified from N.J.A.C. 13:46-12.3 by this proposal, is amended to empower the Commissioner or a SACB physician to request that a participant in a boxing or other combative sporting event submit to a urinalysis at any time.

N.J.A.C. 13:46-12.5, recodified from N.J.A.C. 13:46-12.4 by this proposal, requires a ringside physician to be present and seated at "other combative sporting events" in addition to boxing bouts and wrestling exhibitions and contains a technical amendment that said physician be assigned, not appointed, by the Commissioner. N.J.A.C. 13:46-12.5(a).

N.J.A.C. 13:46-12.6, recodified from N.J.A.C. 13:46-12.5 by this proposal, is amended to eliminate the mandatory administration of a thorough ophthalmological, post-fight examination. Such examination, however, may be administered at the discretion of the SACB physician.

N.J.A.C. 13:46-12.7, recodified from N.J.A.C. 13:46-12.6 by this proposal, is amended to provide the Commissioner or ringside physician the authority to order any boxer who has sustained any severe injury or actual knockout in a bout within the State of New Jersey to be thoroughly examined by a SACB physician. N.J.A.C. 13:46-12.7(a). N.J.A.C. 13:46-12.7(b) is amended to provide for a 60-day suspension of any boxer knocked out in a boxing match "in any jurisdiction" and empowers the Commissioner with the discretion to extend the 60-day period of suspension until the Commissioner is satisfied that the boxer is physically and mentally fit for competition. Similar amendments are proposed in N.J.A.C. 13:46-12.7(c) to apply to any boxer who is technically knocked out in a boxing match in any jurisdiction.

N.J.A.C. 13:46-12.10(c), as proposed, provides for the immediate suspension of any boxer, promoter, manager, second or other licensee who fails to report immediately any illness or injury to the Commissioner.

N.J.A.C. 13:46-12.12(a), recodified from N.J.A.C. 13:46-12.11(a) by this proposal, will no longer require the Commissioner to provide a copy of the suspension list to each attending physician at each boxing contest conducted in New Jersey. The prior approval of the SACB and its Commissioner of each boxing contest conducted in this State—including the participants therein—and the on-site presence of the SACB, its Commissioner and/or their designees at such contests render this requirement unnecessary.

This proposal also includes technical amendments to N.J.A.C. 13:46-12.6(a), 12.7(a) and (c)1, 12.9(b) and (c), 12.10(b), 12.11 and 12.13 in order to ensure that the provisions of this subchapter conform to N.J.S.A. 5:2A-5(b).

Social Impact

These proposed amendments and new rule will have a positive social impact inasmuch as they are in furtherance of the public policy of New Jersey, declared in N.J.S.A. 5:2A-2, to "[p]rotect the safety and well-being of participants in boxing, wrestling, kick boxing and combative sports exhibitions, events, performances and contests" and to "[p]romote the public confidence and trust in the regulatory process and the conduct of boxing, wrestling, kick boxing and combative sports exhibitions, events, performances and contests." The amendments and new rule evince the SACB's continuing commitment to safeguard the health of all participants in every combative sports event held in New Jersey. The first phase of comprehensive regulatory amendments which this proposal represents are an effective means of ensuring that all participants in New Jersey combative sports events will be physically and mentally fit for competition in events where the safety has been enhanced.

Economic Impact

Because the proposed amendments and new rule provide for safer boxing and other combative sports events, thereby fostering increased public confidence in these sports, the economic impact will be positive. The physical examinations required by the amendments will protect boxers and other combative sports participants from the increased risk of injury caused by participating in such events while incapacitated. As a result, the medical expenses of these participants may actually be reduced. With the increased public confidence in the safety and integrity of all combative sports events, attendance at such events may increase, thereby economically benefitting the combative sports event community and the public through State tax revenue.

Regulatory Flexibility Analysis

The proposed new rules may impose some compliance requirements on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Since the SACB will rely upon the medical examinations of physicians not appointed by the SACB, the SACB requires that the examining physician complete a certification, prescribed by proposed N.J.A.C. 13:46-12.2(d), which will accompany any medical records filed via direct mailing to the Commissioner. The SACB's permitting any duly licensed physician to provide the SACB or its Commissioner with medical reports

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and an accompanying certification thereof is also reflected in this proposal at N.J.A.C. 13:46-12.7(b)1, 12.8, 12.9(a) and 12.10(a).

The proposal is designed to minimize any adverse economic impact upon small businesses inasmuch as it requires the use of standardized forms provided by the Commissioner. N.J.A.C. 13:46-12.1(c); N.J.A.C. 13:46-12.2(d). The filing of such forms is consistent with the legislative mandate to "[p]rotect the safety and well-being of participants in boxing, wrestling, kick boxing and combative sports exhibitions, events, performances and contests . . ." held in the State of New Jersey. N.J.S.A. 5:2A-2(a).

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

SUBCHAPTER 12. RULES TO SAFEGUARD HEALTH

13:46-12.1 Scope

(a) The rules to safeguard health set forth in this subchapter shall apply to all boxing shows and all persons who are licensed, or seek to be licensed, by the State Athletic Control Board for any boxing contest. At the discretion of the State Athletic Control Board, the following rules to safeguard health may be applicable, in whole or in part, to any wrestling or other combative sports event, and any person licensed or seeking licensure for any such event.

(b) In addition to any examination required by this subchapter, the Commissioner at his or her discretion may order such additional examinations, including a urinalysis, of any licensee or applicant for licensure, at any time for the purpose of determining that person's continued fitness and qualification to participate in any event. If any such examination is ordered, the Commissioner, in his or her discretion, may require that the examination be performed by a State Athletic Control Board physician.

(c) Any examination or laboratory procedure required by this subchapter, or otherwise ordered by the Commissioner or a State Athletic Control Board physician, shall be performed, and its results shall be recorded, in accordance with an examination form prepared and approved by the State Athletic Control Board. The examination form prepared and approved by the State Athletic Control Board shall also state the qualifications required of the physician performing a particular medical examination or laboratory procedure.

(d) The cost of any such examination required by the following rules, or ordered by the Commissioner or a State Athletic Control Board physician, shall be paid by the licensee or applicant for licensure.

13:46-[12.1]12.2 Pre-licensure medical examinations

(a) A boxer, as a condition to licensure or to the renewal of licensure by the State Athletic Control Board, shall undergo a thorough medical examination by [a] any duly licensed physician [or physicians appointed by the State Athletic Control Board, one of whom is certified in neurology or neurosurgery, to establish his physical and mental fitness for competition].

(b) An examination within the meaning of (a) above shall include [a complete history of the applicant (medical and ring record) and] any or all of the following laboratory procedures at the discretion of the Commissioner [and] or the physician[;]: [chest X-ray, skull X-ray, flat abdominal X-ray,] complete blood count for bleeding and coagulation time, [serological examination for syphilis] and any other test which might be indicated by the past record or present condition of the applicant. In all cases, the examination shall include the administration of an electrocardiogram and electroencephalogram, a urinalysis, and the conduct of a thorough ophthalmological examination. In appropriate cases upon the recommendation of the examining neurologist, a computerized tomography or any other test shall be administered and the results thereof and the recommendation of the examination neurologist, forwarded to the Commissioner.

(c) An examination shall be made [no earlier than 30] within 180 days [but no later than one day] prior to licensure or the renewal thereof.

(d) Any physician who performs an examination required by (a) above shall complete a certification of licensure and examination on forms provided by the Commissioner. The certification shall require the examining physician to:

1. Certify the examination date and results of the examination; and the accuracy of all the records of medical tests or procedures;

2. Provide the physician's name, business address and telephone number;

3. Identify the area of specialty of the examining physician and board certifications, if any;

4. Identify the jurisdiction in which the physician is licensed and indicate whether the physician is in good standing with the state medical board of the state in which the physician is licensed;

5. State whether in the past three years the physician's license to practice has been suspended, revoked, or otherwise limited in any manner by any State or professional board;

6. State that the individual examined is fit to engage in professional boxing in the State of New Jersey; and

7. Provide any other information concerning a specific examining physician or examination which the State Athletic Control Board may require.

(e) The original of all medical reports and opinions and the original of the certification shall be mailed directly to the Commissioner by the examining physician.

[(d)] In addition to the examination required by (a) above, the Commission at his discretion may order such additional examinations of a boxer at any time for the purpose of determining his continued fitness and qualification to engage in a boxing contest.]

[(e)](f) No applicant shall be granted a license unless the examining physician [appointed by the State Athletic Control Board] has certified his fitness to engage in a boxing contest.

13:46-[12.2]12.3 Pre-fight medical examinations

(a) No boxer shall be permitted to enter the ring unless a State Athletic Control Board physician has received a medical examination of the type set forth in N.J.A.C. 13:46-12.2(b) and such examination was performed within 180 days before the date of the boxing contest.

[(a)](b) All boxers in all bouts must be given a medical examination on the day of the bout by a State Athletic Control Board physician [appointed by the Commissioner on the day of the bout], both at the weighing-in and in the evening, a short while before the boxing program commences. All such examinations shall be conducted privately with no other persons present besides the physician and the boxer. This physical examination shall include as many of the procedures outlined in N.J.A.C. 13:46-[12.1]12.2(b) as the examining physician may decide are necessary. In all cases, the examination shall include the administration of a [thorough ophthalmological and] neurological examination [and a urinalysis].

[(b)](c) No boxer shall be permitted to enter the ring unless [the physician appointed by the Commissioner] a State Athletic Control Board physician has certified his fitness to engage in a boxing contest. The physician's decision that a boxer is not fit to engage in a boxing contest shall not be subject to change by any other official. A boxer may be disqualified for any medical reason.

13:46-[12.3]12.4 All drugs prohibited; drug testing

(a) (No change.)

(b) [The] A boxer, upon the request of the Commissioner or a State Athletic Control Board physician, must submit to any [pre-fight or postfight] urinalysis or other laboratory procedure [ordered by the physician appointed by the Commissioner] to detect the presence of any drug. Refusal to submit to any such test[ing] shall result in the immediate disqualification of the boxer from the match and an indefinite suspension from boxing.

(c) (No change.)

13:46-[12.4]12.5 Duties of ringside physician

(a) Ringside physicians shall be [appointed] assigned by the Commissioner. No boxing bout, [or] wrestling exhibition or other combative sports event may commence or proceed unless the ringside physician is present and seated at ringside.

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

13:46-[12.5]12.6 Post-fight medical examinations

(a) All boxers in all bouts must be given a physical examination by a State Athletic Control Board physician [appointed by the

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Commissioner] immediately following the bout. This physical examination shall include as many of the procedures outlined in N.J.A.C. 13:46-[12.1]12.2(b) as the examining physician may decide are necessary. In all cases, the examination shall include the administration of a [thorough ophthalmological and] neurological examination and a urinalysis.

(b) (No change.)

13:46-[12.6]12.7 Medical examination of boxer after severe injury or actual knockout

(a) Any boxer who has sustained any severe injury or actual knockout in a bout **within the State of New Jersey** shall, **if ordered by the Commissioner or the ringside physician**, [within 24 hours] be thoroughly examined by a [physician appointed by the] State Athletic Control Board **physician**. Such examination shall include any or all of the procedures as provided in N.J.A.C. 13:46-[12.1]12.2(b) as the examining physician may decide are necessary. In all cases, the examination shall include the administration of an electrocardiogram and electroencephalogram and the conduct of a thorough ophthalmological examination and a neurological examination.

(b) Any boxer who is knocked out in a boxing match **in any jurisdiction** shall be suspended from boxing for a 60-day period. [Upon the physician's order, the] **The Commissioner** [shall] **in his or her discretion** may extend the **period** of suspension [already imposed] **indefinitely until he or she is satisfied that the boxer is physically and mentally fit for competition**.

1. A boxer who is knocked out in a boxing match **in any jurisdiction** shall not be permitted to enter the ring again until a thorough medical examination of the type required by N.J.A.C. 13:46-[12.1]12.2(b) has been performed by a **duly licensed physician** [appointed by the State Athletic Control Board and said physician has certified the boxer's fitness to engage in a boxing contest] **and the examining physician has submitted the certification required by N.J.A.C. 13:46-12.2(d)**.

(c) Any boxer who is technically knocked out in a boxing match **in any jurisdiction** shall be suspended from boxing for a 30-day period. [Upon the physician's order, the] **The Commissioner** [shall] **in his or her discretion**, may extend the **period** of suspension [already imposed] **indefinitely until he or she is satisfied that the boxer is physically and mentally fit for competition**.

1. **The Commissioner, in consultation with a State Athletic Control Board** [attending] physician, shall determine the nature and extent of any medical examinations which a boxer, who is technically knocked out in a boxing match, must undergo as a precondition to entering the ring again. [Any medical examinations which are ordered must be performed by a physician appointed by the State Athletic Control Board.] The boxer shall not be permitted to enter the ring again until the medical examinations ordered by the [attending physician] **Commissioner** have been completed and [a] **the examining physician** [appointed by the State Athletic Control Board] has certified the boxer's fitness to engage in a boxing contest.

13:46-[12.7]12.8 Mandatory medical examinations of contestant losing six consecutive fights; inactivity for one year

(a) Any contestant who has lost six consecutive fights shall be automatically suspended from boxing. The boxer shall not be reinstated until he has submitted to a medical examination, of the type specified by N.J.A.C. 13:46-[12.1]12.2(b) [, conducted by a physician appointed by the Commissioner] **and the examining physician has complied with the requirements of N.J.A.C. 13:46-12.2(d)**.

(b) Any boxer who has not been active for one year or more shall be suspended from boxing until such time that he has submitted to a medical examination of the type specified by N.J.A.C. 13:46-[12.1]12.2(b) [, conducted by a physician appointed by the Commissioner] **and the examining physician has complied with the requirements of N.J.A.C. 13:46-12.2(d)**.

13:46-[12.8]12.9 Medical examination of judges and referees

(a) Annual medical examinations must be given to all licensed judges and referees by [a] **any duly licensed physician** [appointed by the Commissioner] and such examinations shall be of the same

type and thoroughness as specified by N.J.A.C. 13:46-[12.1]12.2(b) **and must include the certification required by N.J.A.C. 13:46-12.2(d)**.

(b) All referees must also submit to a pre-fight medical examination[,] **on the day of the bout** by a **State Athletic Control Board** physician [appointed by the Commissioner on the day of the bout], of the type specified by N.J.A.C. 13:46-[12.2]12.3(a).

(c) No referee shall be permitted to enter the ring unless the physician [appointed] **assigned** by the Commissioner has certified his fitness to perform his duties during the boxing contest.

13:46-[12.9]12.10 Inability to perform contract due to injury or illness

(a) Whenever a licensed boxer considers himself unable by reason of injury or illness to participate in a bout for which he is under contract, he shall immediately notify the Commissioner of this fact [and, before entering the ring again,]. [the] **The boxer** [must submit to] **shall not be permitted to enter the ring again until** a medical examination [performed by a physician appointed by the Commissioner] of the type specified by N.J.A.C. 13:46-[12.1]12.2(b) **has been performed by a duly licensed physician and the examining physician has submitted the certification required by N.J.A.C. 13:46-12.2(d)**.

(b) In the event that a boxer is treated for any serious injury or disabling illness, or has been hospitalized, by his personal physician for any reason, he or his manager shall immediately notify the Commissioner, who will refer the matter to a **State Athletic Control Board** physician [appointed by the Commissioner] for review. The boxer, thereafter, must submit to such medical examination as may be ordered in the discretion of the **Commissioner, after consulting with a State Athletic Control Board** physician [appointed by the Commissioner] before engaging in any boxing contest.

(c) Any boxer **promoter**, [or] manager, **second or any other licensee** failing to immediately report an illness or injury to the Commissioner as required by (a) and (b) above shall be immediately suspended for an indefinite period.

13:46-[12.10]12.11 Medical reports

(a) The physician [appointed] **assigned to a contest** by the Commissioner shall make a detailed written report record of each and every medical examination performed by him under this [Subchapter, N.J.A.C. 13:46-12.1 et seq.] **subchapter**, on forms provided by the Commissioner or on such other forms as may be necessary. The original of all such records shall be filed with the Commissioner within 24 hours of each such examination.

(b) The Commissioner shall provide copies of all medical records pertaining to an individual boxer to the **State Athletic Control Board** physician [appointed by the Commissioner] who is assigned to that boxer's next bout, at least one day in advance of said bout. No boxer shall be permitted to engage in a boxing contest unless the **State Athletic Control Board** physician [appointed by the Commissioner] who is assigned to that contest **by the Commissioner** has the boxer's [complete] medical [history] **records, prescribed by this subchapter** in his possession prior to the pre-fight examination.

(c) Physicians [appointed] **assigned** by the Commissioner to a **boxing show** must fill out and return to the Commissioner immediately after [a boxing] the show a printed injury insurance form, reporting serious injuries.

13:46-[12.11]12.12 Suspension notices

(a) The Commissioner shall maintain a current listing of all boxers who are under suspension in this State and in any other boxing jurisdiction. The Commissioner shall [provide a copy of the suspension list to each attending physician at each boxing contest conducted in this State and shall] promptly transmit a current copy of the suspension list to every other boxing jurisdictions. Under no circumstances shall a boxer on the suspension list be permitted to participate in a boxing contest.

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

13:46-[12.12]12.13 Compensation for physicians

(a) (No change.)

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(b) The compensation schedule set forth in (a) above shall not apply in a sanctioned championship boxing bout. The [Commissioner] **State Athletic Control Board** shall set the compensation to be paid to physicians assigned to perform pre-fight or ringside duties at sanctioned championship boxing bouts. In making this determination, the [Commissioner] **State Athletic Control Board** may consider any determinations, standards or recommendations made by a nationally recognized boxing association whose voting membership is composed of representatives of governmental agencies regulating boxing. A nationally recognized boxing association shall include, but not be limited to, the World Boxing Council, the North American Boxing Federation and the United States Boxing Association. Nevertheless, the [Commissioner] **State Athletic Control Board** shall retain full authority to set the compensation schedule for physicians in championship boxing bouts irrespective of a determination or a recommendation by such an association.

13:46-[12.13]12.14 Hygienic gloves for seconds, referees, ringside physicians and inspectors

(a) The [Commissioner] **State Athletic Control Board** shall provide, at each professional boxing show, an adequate supply of latex, disposable hygienic laboratory gloves of a type approved by the Commissioner, to be worn by Seconds, Referees, Ringside Physicians and Inspectors while involved with the boxing show.

(b) The [Commissioner] **State Athletic Control Board** shall provide, during the medical examination phase of the weigh-in, an adequate supply of latex, disposable hygienic laboratory gloves to be worn by Ringside Physicians and Inspectors.

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

(f) No inspector shall be permitted to perform his assigned duties during a boxing show, unless the Inspector is wearing the hygienic gloves specified in [(b)](a) above, except as the Commissioner in his discretion may authorize for Inspectors on certain assignments.

(a)

DIVISION OF CRIMINAL JUSTICE

Administration of Victim and Witness Advocacy Fund

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

13:78

Proposed New Rules: N.J.A.C. 13:78-2, 3 and 4

Authorized By: James F. Mulvihill, Director, Division of Criminal Justice.

Authority: N.J.S.A. 2C:43-3.1a(6)(c) and 52:4B-43.1.

Proposal Number: PRN 1993-573.

Submit written comments by 5:00 P.M., Wednesday, November 17, 1993 to:

Pamela J. Fisher, Chief
Office of Victim-Witness Advocacy
Division of Criminal Justice
Richard J. Hughes Justice Complex
CN 085
Trenton, N.J. 08625-0085

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the provisions of N.J.A.C. 13:78, establishing administrative regulations on the Administration of the Victim and Witness Advocacy Fund, will expire on March 20, 1994. The Director of the Division of Criminal Justice (hereafter Director) has reviewed these rules and has determined that they are necessary, reasonable, and proper for the purpose for which they were originally promulgated.

Accordingly, the Director proposes to: (1) readopt N.J.A.C. 13:78 in its entirety with certain amendments to conform to Sections 3 and 20 of Chapter 329 of the Public Laws of 1991 (N.J.S.A. 2C:43-3.1a(6)(c) and 52:4B-43.1); and (2) propose new rules at Subchapters 2, 3, and 4. The proposed readoption with amendments and new rules will continue these rules in full force and effect, thereby complying with the provisions of N.J.S.A. 2C:43-3.1a(6)(c) and 52:4B-43.1.

Should these rules not be readopted, the requirements imposed on the Division of Criminal Justice by the Legislature concerning the administration of funds for the benefit of victims and witnesses of crime, to support the development and provision of services to victims and witnesses of crimes and for the related administrative costs will not be capable of being fulfilled.

In 1989, the Director adopted new rules (see R.1989, d.156 at 21 N.J.R. 774(b)) to govern the administration of the Victim and Witness Advocacy Fund (hereafter "the Fund"), created pursuant to P.L. 1979, c.396, §2, N.J.S.A. 2C:43-3.1a. Those rules governed the distribution, disbursement and use of moneys from the Fund to the State Office of Victim-Witness Advocacy in the Division of Criminal Justice (hereafter Division), the county Offices of Victim and Witness Advocacy in the offices of the county prosecutors, and other public entities as deemed appropriate for implementation of the legislative mandates and the Attorney General Standards to Ensure the Rights of Crime Victims, N.J.S.A. 52:4B-44.

With the adoption of P.L. 1991, c.329, §20, N.J.S.A. 52:4B-43.1, the Legislature authorized the continued use of moneys from the Fund for county prosecutors and other public entities and expanded the types of public entities and not-for-profit organizations which could become eligible to apply for an award from the Fund. In particular, N.J.S.A. 52:4B-43.1c requires that the Director promulgate rules "to ensure that funds are given to qualified entities that will provide services consistent with this Act, [and] shall award grants to qualified public entities and not-for-profit organizations that provide direct services to victims and witnesses, including but limited to such [direct] services as: (1) shelter, food and clothing; (2) medical and legal advocacy services; (3) 24-hour crisis response services and 24 hour hotlines; (4) information and referral and community education; (5) psychiatric treatment programs; (6) expanded services for victim's families and significant others; (7) short and long term counseling and support groups; (8) emergency locksmith and carpentry services; or (9) financial services." The legislation continues, at N.J.S.A. 52:4B-43.1d, by identifying certain not-for-profit organizations as "eligible to apply for grants." The list of eligible not-for-profit organizations is not, however, limited to those found in the statutory list.

In order to satisfy the requirements of Executive Order No. 66(1978) and the amendments to the statutory mandate, the Director now proposes to readopt, with amendments, the existing rules at N.J.A.C. 13:78, and to propose new rules at subchapters 2, 3, and 4. The readoption, with amendments, and new rules, hereafter referenced as "the proposal," has been drafted to present a more comprehensive approach to administer moneys awarded from the Fund.

The proposal contains seven subchapters, entitled: Subchapter 1, General Provisions; (new rules) Subchapter 2, Eligibility—Public Entities and Not-for-profit Organizations; (new rules) Subchapter 3, Application for Moneys by Eligible Entities and Organizations; (new rules) Subchapter 4, Funding of Awards; Subchapter 5 (formerly Subchapter 3), Allocation and Disbursement from Fund; Subchapter 6 (formerly Subchapter 2), Use of Fund Distributions; and Subchapter 7 (formerly Subchapter 4), Accounting and Audit.

An overview of the amendments and new rules in the proposal follows.

Subchapter 1 clarifies the statutory authorities under which the rules are proposed, includes new language to conform to the 1991 amendments, and adds two new sections. The new sections are N.J.A.C. 13:78-1.3 which discusses the scope of the rules and N.J.A.C. 13:78-1.4 which adds definitions of terms used in the rules.

Subchapter 2 is new rules. It outlines the eligibility requirements to become an eligible qualified public entity or eligible qualified not-for-profit organization, including notification, appeals, and public notice of qualified public entities and qualified not-for-profit organizations determined to be eligible. This subchapter represents the first step of a two-step process, in which eligibility is determined by the Director on an annual basis, and then, under subchapter 5, awards can be made to eligible qualified public entities and eligible qualified not-for-profit organizations whose applications otherwise satisfy the statutory criteria of providing direct services to victims and witnesses of crimes.

Subchapter 3 is new rules. Once a qualified public entity or qualified not-for-profit organization has been determined by the Director to be eligible, this subchapter represents the next stage of the two-step process discussed in subchapter 2 and provides for an application process to apply for an award.

Subchapter 4 is new rules. This subchapter governs the availability of moneys to be utilized within this program.

Subchapter 5, formerly subchapter 3 under the current existing rules, is substantially amended. Existing N.J.A.C. 13:78-3.1(a) is deleted in its

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entirety. In its place there are six new sections, N.J.A.C. 13:78-5.1, 5.2, 5.3, 5.4, 5.5 and 5.6, dealing with the allocation and disbursement of moneys from the Fund, compliance with State and local laws, and notification and public notice of awards. N.J.A.C. 13:78-5.1 is amended and establishes the process by which the Director determines allocation from the Fund. New N.J.A.C. 13:78-5.2 and 5.3 deal with disbursements to public entities and reflect the rules formerly embodied in the deleted portion of N.J.A.C. 13:78-3.1. New N.J.A.C. 13:78-5.4 finalizes the two-step process described in subchapter 2 by permitting the Director to exercise discretion to make awards to eligible qualified public entities and eligible qualified not-for-profit organizations. New N.J.A.C. 13:78-5.5 requires that public entities comply with the Local Public Contracts Law and any other controlling State or local laws or ordinances. New N.J.A.C. 13:78-5.6 specifies the procedure for notification of awards and provides that a public notice of awards will be published in the New Jersey Register.

Subchapter 6, formerly Subchapter 2 under the current existing rules, is amended and a new section is proposed. N.J.A.C. 13:78-6.1, formerly N.J.A.C. 13:78-2.1, discusses the uses of the moneys made available to county prosecutors for the county Offices of Victim and Witness Advocacy as well as any other public entities which may qualify under this provision. A new section, N.J.A.C. 13:78-6.2, specifies the use of award moneys made to eligible qualified public entities and eligible qualified not-for-profit organizations.

Subchapter 7, formerly subchapter 4 under the current existing rules, is amended. It requires specific accounting and recordkeeping functions be performed by any public entity awarded moneys under these rules, requires monthly reports of fiscal activity, and establishes reasonable accounting and recordkeeping functions and reporting requirements for qualified eligible not-for-profit organizations awarded money under these rules. This subchapter also reserves the right to the State of New Jersey to conduct periodic audits of the records of recipients of awards.

Social Impact

When these rules were first proposed in 1988 (see 20 N.J.R. 2997(b), December 5, 1988), the focus of the Social Impact Statement was on the responsibility of persons involved in the criminal justice system to alleviate the burdens the criminal justice system can impose on victims and witnesses. With the enactment of P.L. 1991, c.329, that goal is restated and continued, but with a new emphasis. In particular it provides for a mechanism whereby qualified public entities and qualified not-for-profit organizations that provide direct services to victims and witnesses can apply for awards from the Victim and Witness Advocacy Fund. The legislation does not create an entitlement to an award, but it creates a mechanism for the Director to adopt rules to determine which of these public entities and not-for-profit organizations is eligible and qualified to apply for an award to provide direct services to victims and witnesses of crimes.

By granting awards from the Fund to qualified public entities and qualified not-for-profit organizations, the new legislative mandate to provide direct services to victims and witnesses can be fulfilled.

Economic Impact

The Legislature has determined that persons convicted on offenses shall be assessed fees in addition to the fines imposed by statute for specific violations of the law. Those fees are assessed pursuant to N.J.S.A. 2C:43-3.1. That statute creates a fund called the Victim and Witness Advocacy Fund, N.J.S.A. 2C:43-3.1a(6)(c). That Fund has been designated as "a separate, nonlapsing, revolving fund" administered by the Division of Criminal Justice, and "all moneys deposited in that Fund . . . shall be used for the benefit of victims and witnesses of crime" as provided in N.J.S.A. 52:4B-43.1 and for related administrative costs.

A 1991 amendment to N.J.S.A. 52:4B-43.1 (P.L. 1991, c.329, §20) authorized the Director to adopt rules and regulations "to ensure that funds are given to qualified entities that will provide services consistent with this Act, [and] shall award grants to qualified public entities and not-for-profit organizations that provide direct services to victims and witnesses, including but not limited to such [direct] services as: (1) shelter, food and clothing; (2) medical and legal advocacy services; (3) 24-hour crisis response services and 24 hour hotlines; (4) information and referral and community education; (5) psychiatric treatment programs; (6) expanded services for victim's families and significant others; (7) short and long term counseling and support groups; (8) emergency locksmith and carpentry services; or (9) financial services."

Awards of moneys from the Fund to qualified public entities and qualified not-for-profit organizations will provide an important adjunct

to existing victim and witness assistance and advocacy programs presently operating through the State Office of Victim-Witness Advocacy, county Offices of Victim and Witness Advocacy and other public entities. These awards will not increase the need for public expenditures for services to victims and witnesses and should broaden the ability to extend these services throughout the State.

Regulatory Flexibility Analysis

The rules proposed for readoption and the amendments to those rules impose requirements on county Offices of Victim and Witness Advocacy and public entities pursuant to N.J.S.A. 52:4B-43.1b. The proposed new rules impose requirements on eligible qualified public entities and eligible qualified not-for-profit organizations awarded moneys from the Fund pursuant to N.J.S.A. 52:4B-43.1c.

Some of the eligible qualified not-for-profit organizations awarded moneys from the Fund may be considered small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These eligible qualified not-for-profit organizations will be required to annually submit an eligibility application; to annually submit an application for an award of moneys from the Fund; to maintain detailed records which identify separately all receipts, expenditures and unexpended balances of moneys received from the Fund; and to file monthly reports and an annual report. The Director does not anticipate that the administrative cost of compliance with these requirements will be significant, nor does the Director believe that eligible qualified not-for-profit organizations receiving awards of moneys from the Fund will need to employ outside professional services to meet these requirements. As the Director considers the requirements imposed to be the minimum necessary for prudent maintenance and management of moneys awarded from the Fund, and to ensure proper and efficient use of the awards of moneys from the Fund, no lesser requirements or exemptions are provided based upon size of the eligible qualified not-for-profit organization.

Full text of the rules proposed for readoption, proposed amendments and proposed new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 78 ADMINISTRATION OF VICTIM AND WITNESS ADVOCACY FUND

SUBCHAPTER 1. GENERAL PROVISIONS

13:78-1.1 Purpose

The rules in this chapter govern the administration of the Victim and Witness Advocacy Fund, created pursuant to P.L. 1979, c.396, §2 (N.J.S.A. 2C:43-3.1a(6)(c)), as amended by P.L. 1991, c.329, §3 and P.L. 1991, c.329, §20 (N.J.S.A. 52:4B-43.1). This Fund is legislatively mandated to support the State Office of Victim-Witness Advocacy and county Offices of Victim and Witness Advocacy with the development and provision of services to victims and witnesses of crimes, and for related administrative costs. **The Director is also authorized to award moneys to qualified public entities and qualified not-for-profit organizations who provide specific direct services to victims and witnesses.** [All moneys] Moneys distributed to public entities according to this chapter shall be used to implement the legislative mandates and the Attorney General Standards to Ensure the Rights of Crime Victims, promulgated pursuant to [the provisions of] N.J.S.A. 52:4B-44[a and b].

13:78-1.2 Legal authority

The Director of the Division of Criminal Justice within the Department of Law and Public Safety is charged with the responsibility to establish rules deemed necessary to effectuate the purposes of the Fund under N.J.S.A. 2C:43-[3.1a(5)]3.1a(6)(c) and 52:4B-43.1.

13:78-1.3 Scope

The rules contained in this chapter shall govern the award of moneys from the Victim and Witness Advocacy Fund to the county Offices of Victim and Witness Advocacy and other public entities pursuant to N.J.S.A. 52:4B-43.1b and shall govern the determination of eligibility of applicant public entities and applicant not-for-profit organizations as eligible and qualified to apply for awards to provide direct services to victims and witnesses of crimes pursuant to N.J.S.A. 52:4B-43.1c.

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13:78-1.4 Definitions

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

"Act" means the provisions of N.J.S.A. 52:4B-43.1.

"Attorney General Standards" means the Attorney General Standards to Ensure the Rights of Crime Victims, N.J.S.A. 52:4B-44.

"Direct services" means the provision of assistance directly to victims and witnesses, including, but not limited to, one or more of the following as may be determined by the Director:

1. Shelter, food and clothing;
2. Medical and legal advocacy services;
3. 24-hour crisis response services and 24-hour hotlines;
4. Information and referral and community education;
5. Psychiatric treatment programs;
6. Expanded services for victim's families and significant others;
7. Short and long term counseling and support groups;
8. Emergency locksmith and carpentry services; or
9. Financial services.

"Director" means the Director of the Division of Criminal Justice.

"Fund" means the Victim and Witness Advocacy Fund as set forth at N.J.S.A. 2C:43-3.1.

"Not-for-profit organization" means any corporation or other organization organized under Title 15A of the New Jersey Revised Statutes or otherwise qualified for non-profit tax exemption providing direct services to victims or witnesses of crimes.

"Public entity" means any public corporation or political subdivision of this state or agency of local government of this state providing direct services to victims or witnesses of crimes.

"Qualified" means an entity or organization eligible, pursuant to N.J.S.A. 52:4B-43.1, to apply for moneys from the Victim and Witness Advocacy Fund.

"State Fiscal Year" or "SFY" means the fiscal year of the State of New Jersey, which begins on July 1 of a particular year and ends on June 30 of the following year.

"Victim" means a person who suffers personal physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime committed against that person, or in the case of a homicide, the nearest relative of the homicide victim.

"Witness" means a person who suffers personal physical or psychological injury or incurs loss of or injury to personal or real property or requires services as a result of the prosecution's intent to call the person to testify in any criminal matter.

SUBCHAPTER 2. ELIGIBILITY—PUBLIC ENTITIES AND NOT-FOR-PROFIT ORGANIZATIONS

13:78-2.1 Eligibility criteria and applications

Eligibility of a qualified public entity or qualified not-for-profit organization, as an applicant, shall be determined annually upon the submission of qualifying criteria to the Director. Eligibility will be determined pursuant to the criteria set forth at N.J.S.A. 52:4B-43.1c. The burden of demonstrating eligibility shall be on the applicant. To be eligible an applicant must annually submit an eligibility application, with supporting documentation, on forms provided by the Director.

13:78-2.2 Notification of eligibility or ineligibility

Within 90 days of the close of the annual eligibility application due date, the Director shall notify each applicant which has submitted a timely application for eligibility, of its eligibility or ineligibility. In the case of ineligibility the notice shall set forth the reasons for such ineligibility.

13:78-2.3 Notice of appeal of notification of ineligibility

Any applicant receiving notice of ineligibility shall have 15 days from receipt of such notice to file an appeal with the Director and submit to the Director any additional written information on eligibility.

13:78-2.4 Determination of appeals

Within 45 days of the receipt of any additional information the Director shall review the appeal based on any written documentation or written information submitted by an applicant appealing a notice of ineligibility. The Director shall make a decision in writing regarding the eligibility of the applicant and shall notify the applicant of the decision. The Director's decision shall be final.

13:78-2.5 Annual notice of application for eligibility

(a) In the New Jersey Register immediately following January 1 of each year, the Director will publish a notice to the public of the due date for receipt of annual eligibility applications under the provisions of N.J.S.A. 52:4B-43.1.

(b) Contemporaneously with the notice in (a) above, the Director will also notify qualified public entities and qualified not-for-profit organizations of the annual eligibility application due date, provided they have:

1. Previously received or applied for an award within the past two State Fiscal Years;
2. Made a written request to the Director to be given notice of the eligibility application; or
3. Are an organization deemed eligible pursuant to N.J.S.A. 52:4B-43.1d.

(c) The Director may also provide notice of the eligibility application due date through such other means as he or she may deem appropriate.

13:78-2.6 Notice of applicants determined to be eligible

The annual list of eligible qualified public entities and eligible qualified not-for-profit organizations, as determined by the Director, shall be published in the New Jersey Register.

SUBCHAPTER 3. APPLICATION FOR MONEYS BY ELIGIBLE QUALIFIED PUBLIC ENTITIES AND ELIGIBLE QUALIFIED NOT-FOR-PROFIT ORGANIZATIONS

13:78-3.1 Annual application for moneys

Each year, the Director shall provide application forms and information required to make application for moneys from the Victim and Witness Advocacy Fund to eligible qualified public entities and eligible qualified not-for-profit organizations. Application forms and related materials must be completed, in full, and returned to the Director no later than the due date as indicated on the application.

SUBCHAPTER 4. FUNDING OF AWARDS

13:78-4.1 Amount of moneys available for awards

(a) The amount of moneys available for awards each year is dependent upon the total amount collected and deposited into the Fund and designated by the State Treasurer as available for distribution.

(b) Moneys are available for expenditure during the State Fiscal Year (SFY) of award.

(c) Approved expenditures may be reimbursed retroactively to the beginning of the SFY, even though moneys may not be awarded until later in the SFY.

Agency Note: Subchapter 2 is recodified, with amendments, as subchapter 6.

SUBCHAPTER [3.]5. ALLOCATION AND DISBURSEMENT FROM FUND

13:78-[3.1]5.1 [Disbursement] Allocation of moneys available from Victim and Witness Advocacy Fund

[(a) Monies deposited in the Victim and Witness Advocacy Fund shall be distributed as follows:

1. To the State Office of Victim-Witness Advocacy as follows:
 - i. Moneys first shall be allocated to provide complete funding for the State Office of Victim-Witness Advocacy within the Division of Criminal Justice established pursuant to N.J.S.A. 52:4B-43, and shall be in an amount sufficient to provide for all staff salaries and any other necessary operational expenses.

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ii. After deductions are made from the Fund for the operation of the State Office of Victim-Witness Advocacy, any remaining moneys may be distributed, according to the Director's discretion, to the entities in (a)2 and 3 below that are in compliance with N.J.S.A. 52:4B-43 et seq.

2. To the county Offices of Victim-Witness Advocacy. In distributing monies to the 21 county offices of victim-witness advocacy within each county prosecutor's office established pursuant to N.J.S.A. 52:4B-44b and 52:4B-45 the following procedures shall be followed:

i. Each year, immediately preceding the fiscal year budget preparation period for county prosecutor's offices, the Director shall inform the county prosecutors of the monies available to assist with the operation of their county Office of Victim-Witness Advocacy for the next year.

ii. Upon receipt of this notification, each county prosecutor shall provide the State Office of Victim-Witness Advocacy, with an estimation of the costs to operate the county Office of Victim-Witness Advocacy, extracted to the extent possible from the overall budget to be submitted to the respective county governing body. These estimated figures shall be supplied on a form provided by the State Office of Victim-Witness Advocacy. The estimated budget request figures shall indicate the salary costs for the County Victim-Witness Coordinator and other personnel, as well as an approximation of other expenses such as equipment, motor vehicles, travel and training.

iii. The county prosecutor, in consultation with the county victim-witness coordinator, shall also provide to the State Office of Victim-Witness Advocacy a detailed description of proposals and associated projected costs intended to enhance the basic provision of services to victims and witnesses, which would be provided by an appropriation from the Fund; and which would be necessary to comply with the Attorney General's Standards.

iv. The Chief of the State Office of Victim-Witness Advocacy shall review the funding application submitted by each county prosecutor and, subject to the Director's approval, shall allocate monies to each county prosecutor for contribution toward the provision of services for victims and witnesses in that county. The Director may reject any costs deemed excessive or not integral to the implementation of the Attorney General Standards.

v. Monies from the Fund may be withheld from a county until that county's governing body approves the county prosecutor's budget request for the county Office of Victim-Witness Advocacy, as was furnished in the application form previously submitted to the State Offices of Victim-Witness Advocacy. If the county governing body appropriates an amount to the county prosecutor which differs from the original budget request, the prosecutor shall submit to the State Office of Victim-Witness Advocacy a revised funding application. In its discretion, the State office shall modify its allocation accordingly.

vi. The Chief of the State Office of Victim-Witness Advocacy, subject to the Director's approval, may allocate to a county additional funding for special projects or other such purposes over and above the regular award. A county seeking such additional funding shall comply with normal application procedures as provided above.

3. To other public entities. After the allocation of moneys as described in (a)2 and 3 above, the State Office of Victim-Witness Advocacy, with the Director's approval, may distribute funds to municipalities or other public entities as deemed appropriate for the implementation of the Attorney General Standards.]

(a) Available moneys deposited in the Fund shall be allocated by the Director as follows:

1. Moneys first shall be allocated to provide complete funding for the State Office of Victim-Witness Advocacy within the Division of Criminal Justice, established pursuant to N.J.S.A. 52:4B-43, and shall be in an amount sufficient to provide for all staff salaries and any other necessary operational expenses.

2. After the allocation of moneys to the State Office of Victim-Witness Advocacy, moneys shall be allocated to the county Offices of Victim and Witness Advocacy based on a formula that may include a base amount, a county's population, crime rate, and number of cases reviewed by the prosecutor's office. The Director

may allocate additional funding for special projects or other such purposes over and above the regular allocation.

3. After the allocation of moneys to the State Office of Victim-Witness Advocacy and the county Offices of Victim and Witness Advocacy, the Director may allocate moneys to eligible qualified public entities and eligible qualified not-for-profit organizations, and the allocation may be based on a formula which may take into account the population of the county in which the entity or organization provides direct services, and the crime rate in that county.

13:78-5.2 Disbursement of moneys to State and county Offices of Victim and Witness Advocacy

(a) The Director shall determine the amount required to fund the State Office of Victim-Witness Advocacy and authorize transfer of moneys for this purpose.

(b) In distributing moneys to the county Offices of Victim and Witness Advocacy within each county prosecutor's office, established pursuant to N.J.S.A. 52:4B-44b and 52:4B-45, the following procedures shall be followed:

1. Each county prosecutor shall provide the State Office of Victim-Witness Advocacy with an estimation of the costs to operate the county Office of Victim and Witness Advocacy, extracted to the extent possible from the overall budget to be submitted to the respective county governing body. These estimated figures shall be supplied on a form provided by the Director. The estimated budget request figures shall indicate the salary costs for the County Victim-Witness Coordinator and other personnel, as well as an approximation of other expenses such as supplies, equipment, motor vehicles, travel, training, and other operating expenses.

2. Each county prosecutor shall provide, to the Director, a detailed description of proposals and associated projected costs intended to enhance the basic provision of services to victims and witnesses, which would be provided from the Fund.

3. The Director, or Director's designee, shall review the funding application submitted by each county prosecutor. The Director may reject, in whole or in part, any funding application request deemed excessive or not integral to the implementation of the legislative mandates or the Attorney General Standards.

4. To ensure that moneys are available to be awarded to other public entities, pursuant to N.J.S.A. 52:4B-43.1b, and to eligible qualified public entities and eligible qualified not-for-profit organizations, pursuant to N.J.S.A. 52:4B-43.1c, the Director shall determine the appropriate amount for disbursement to each county prosecutor for contribution toward the provision of services for victims and witnesses in that county.

5. Moneys from the Fund may be withheld from a county until that county's governing body approves the county prosecutor's budget request for the county Office of Victim and Witness Advocacy, as was furnished in the application form previously submitted to the Director. If the county governing body appropriates an amount to the county prosecutor which differs from the original budget request, the prosecutor shall submit to the Director a revised funding application. In his or her discretion, the Director shall modify the disbursement authorized accordingly.

6. A committee designated by the Director shall review any funding application submitted by a county prosecutor for special projects or other such purposes other than the moneys awarded pursuant to N.J.S.A. 52:4B-44b and 52:4B-45, and shall make recommendations to the Director concerning the award of any additional moneys. The Director may allocate to a county prosecutor additional funding for special projects or other such purposes over and above the award granted pursuant to N.J.S.A. 52:4B-44b and 52:4B-45. A county prosecutor seeking such additional funding shall comply with application procedures specified for other public entities.

13:78-5.3 Disbursement of moneys to other public entities

After the allocation of moneys to the State Office of Victim-Witness Advocacy and county Offices of Victim-Witness Advocacy, a committee designated by the Director shall review any funding applications submitted by municipalities or other public entities, pursuant to N.J.S.A. 52:4B-43.1b, and make recommendations to the Director concerning the award of any available moneys. The Director

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may distribute funds to municipalities or other public entities, pursuant to N.J.S.A. 52:4B-43.1b, and as deemed appropriate for the implementation of the legislative mandates and the Attorney General Standards.

13:78-5.4 Disbursement of moneys to eligible qualified public entities and eligible qualified not-for-profit organizations

(a) A committee designated by the Director shall review the funding application (N.J.A.C. 13:78-3) submitted by each eligible qualified public entity and each eligible qualified not-for-profit organization and shall make recommendations to the Director concerning the award of moneys.

(b) At the discretion of the Director, moneys may be awarded to eligible qualified public entities and eligible qualified not-for-profit organizations whose funding applications will satisfy the statutory criteria (N.J.S.A. 52:4B-43.1c) to establish or enhance direct services to victims and witnesses.

(c) Moneys from the Fund may be withheld by the Director from eligible qualified public entities and eligible qualified not-for-profit organizations until all fiscal reporting requirements are met.

13:78-5.5 Compliance with State and local laws

Any public entity, receiving moneys for victim and witness assistance or advocacy from the Fund under this chapter, shall comply with and follow State of New Jersey procurement practices and procedures pursuant to the "Local Public Contracts Law," N.J.S.A. 40A:11-1 et seq., and any other controlling State or local laws or ordinances.

13:78-5.6 Notification of awards

(a) County prosecutors, other public entities, eligible qualified public entities and eligible qualified not-for-profit organizations whose funding applications have been found, by the Director, to satisfy the statutory criteria concerning victim and witness assistance or advocacy will receive notification in the form of a letter.

(b) In a notification of an award, the Director will include a contract which must be executed and returned to the Director before any moneys can be disbursed.

(c) In addition, the Director will publish a public notice in the New Jersey Register listing all awards made for a particular SFY.

SUBCHAPTER [2.]6. USE OF FUND DISTRIBUTIONS

13:78-[2.]6.1 Use of Victim and Witness Advocacy Fund [distributions] by county Offices of Victim and Witness Advocacy or other public entities

[Monies] Moneys from the Fund which are distributed to the county [prosecutors] Offices of Victim-Witness Advocacy or other public entities shall be [applied exclusively towards the implementation of the Attorney General Standards,] used to implement the legislative mandates and the Attorney General Standards and shall not supplant [regular county] budgeted funding or any other [outside] available funding currently in existence. These [monies] moneys may be used to establish or enhance victim-witness waiting rooms, to hire and train personnel to provide services in accordance with the legislative mandates and the Attorney General Standards, to purchase computer equipment to maintain communications with victims and witnesses, or for such other purposes as the Director [of the Division of Criminal Justice] may authorize.

13:78-6.2 Use of Victim-Witness Advocacy Fund by eligible qualified public entities and eligible qualified not-for-profit organizations

Moneys from the Fund which are distributed pursuant to N.J.S.A. 52:4B-43.1c shall be used to establish or enhance direct services to victims and witnesses.

SUBCHAPTER [4.]7. ACCOUNTING AND AUDIT

13:78-[4.]7.1 Accounting, reporting and audit

(a) [A] Any county [prosecutor's office] prosecutor, other public entity, or eligible qualified public entity which receives [monies] moneys from the [fund] Fund shall maintain a separate account in which such [monies] moneys shall be held, along with detailed

records of all receipts, expenditures and unexpended balances. Each county [office] prosecutor, other public entity, or eligible qualified public entity shall submit [to the State Office of Victim-Witness Advocacy], to the Director, a [quarterly] monthly report [documenting these figures], as well as an annual report at the end of each [fiscal year] State Fiscal Year identifying separately all receipts, expenditures and unexpended balances of moneys received from the Fund. Any unexpended balances at the end of the [fiscal year] SFY are subject to return to the State. For the purpose of uniformity the Director may prepare forms for these reports.

(b) Any eligible qualified not-for-profit organization which receives moneys from the Fund shall maintain detailed records which identify separately all receipts, expenditures and unexpended balances of moneys received from the Fund. Each eligible qualified not-for-profit organization shall submit, on forms provided by the Director, a monthly report, to the Director, as well as an annual report at the end of each State Fiscal Year. Any unexpended balances at the end of the State Fiscal Year are subject to return to the State.

[(b)](c) The [Division] State of New Jersey reserves the right to periodically audit any of the records [of any county Prosecutor's office receiving monies from the Fund] referenced in this subchapter.

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(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Restricted Parking and Stopping
Routes N.J. 17 in Bergen County; N.J. 27 in Union County; N.J. 28 in Somerset County; and N.J. 70 in Ocean County**

Proposed Amendments: N.J.A.C. 16:28A-1.9, 1.18, 1.19 and 1.37

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1993-572.

Submit comments by November 17, 1993 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend and establish parking restrictions along various highways as described in the following counties and municipalities:

1. N.J.A.C. 16:28A-1.9, Route 17, is being amended to add a no parking bus stop zone along Century Road in the Borough of Paramus, Bergen County. Additionally, this section is being amended at subsections (a) and (b) to conform with the Department's current format of rulemaking.

2. N.J.A.C. 16:28A-1.18, Route 27, is being amended to add revised no parking bus stop zones in the City of Rahway, Union County.

3. N.J.A.C. 16:28A-1.19, Route 28, is being amended to add a no stopping or standing zone during certain hours on school days in the Borough of Bound Brook, Somerset County.

4. N.J.A.C. 16:28A-1.37, Route 70, is being amended to add no stopping or standing zones in the Township of Manchester, Ocean County.

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Additionally, this section is being amended at subsections (a) and (b) to conform with the Department's current format of rulemaking.

These amendments are being proposed to improve traffic flow, enhance the safe off and on loading of passengers at established bus stops, and improve overall traffic safety. They were requested by the local governments affected as follows:

1. Resolution No. 89-2-100, adopted February 14, 1989 and Ordinance No. 89-10 adopted February 28, 1989, from the Borough Council of Paramus requesting no parking signs at certain bus stops along Route 17 (Century Road) in the Borough of Paramus, Bergen County.

2. Resolution No. AR-181-93, adopted August 8, 1993, from the Council and Mayor of the City of Rahway requesting certain locations be established as bus stops.

3. Resolution No. 93-56, adopted May 11, 1993, from the Borough Council of Bound Brook requesting standing or stopping be prohibited during certain hours on school days on certain streets in the Borough of Bound Brook, Somerset County.

4. Resolution unnumbered from the Township Council of Manchester requesting no stopping or standing restriction along the shoulder of State highway 70 at the intersection of County Route 539 in the Township of Manchester, Ocean County.

As a result of these requests, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. These investigations proved that the traffic rules proposed herein were warranted. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

The proposed amendments will establish "no parking bus stop" zones along Routes N.J. 17 in Paramus Borough, Bergen County, and N.J. 27 in the City of Rahway, Union County, and "no stopping or standing" zones along Routes N.J. 28 in the Borough of Bound Brook, Somerset County and N.J. 70 in the Township of Manchester, Ocean County. These rules will improve traffic flow, enhance the safe off and on loading of passengers at established bus stops, and improve overall traffic safety. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. Local governments will pay for the installation of "no parking bus stop" zone signs, and the Department will pay for the installation of "no stopping or standing" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments do not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 51:14B-16 et seq. The proposed amendments primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.9 Route 17

(a) The certain parts of State highway Route 17 described in this subsection are designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. **In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected by the Department.**

1.-6. (No change.)

(b) The certain parts of State highway Route 17 described in this subsection shall be designated and established as "no parking **bus stop**" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-3. (No change.)

4. Along the easterly (northbound) side in Paramus Borough, Bergen County:

i. [A & S Drive—far side] **Far side bus stops:**

(1) **A & S Drive**—Beginning at the southerly ramp of A & S Drive and extending 130 feet northerly therefrom.

(2) **Entrance Ramp to Century Road**—Beginning at the northerly curbline of Century Road and extending 105 feet northerly therefrom.

5.-12. (No change.)

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

16:28A-1.18 Route 27

(a) (No change.)

(b) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "no parking **bus stop**" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-10. (No change.)

[11. Along the northbound side in the City of Rahway, Union County:

i. Far side bus stops:

- (1) Colonia Boulevard (105 feet);
- (2) Jaques Avenue (105 feet);
- (3) West Inman Avenue (105 feet);
- (4) Pierpoint Street (105 feet);
- (5) West Lake Avenue (105 feet);
- (6) Maple Avenue (105 feet);
- (7) Central Avenue (105 feet);
- (8) West Grand Avenue (105 feet);
- (9) Harrison Street (105 feet);
- (10) River Road (105 feet);
- (11) West Scott Avenue (105 feet);
- (12) West Lincoln Avenue (105 feet);

ii. Near side bus stops:

(1) Linden Avenue (105 feet);

12. Along the southbound side in the City of Rahway, Union County:

i. Far side bus stops:

- (1) Ross Street (105 feet);
- (2) Apgar Terrace (105 feet);
- (3) West Scott Avenue (105 feet);
- (4) Rahway River Parkway (105 feet);
- (5) Harrison Street (105 feet);
- (6) Westfield Avenue (105 feet);
- (7) Central Avenue (105 feet);
- (8) West Hazelwood Avenue (105 feet);
- (9) West Lake Avenue (105 feet);
- (10) West Inman Avenue (105 feet);
- (11) Murray Street (105 feet).]

11. **Along the northbound (easterly) side (St. George Avenue) in the City of Rahway, Union County:**

i. Far side bus stops:

(1) **Colonia Boulevard**—Beginning at the prolongation of the northerly curb line of Colonia Boulevard and extending 135 feet northerly therefrom.

(2) **Inman Avenue**—Beginning at a point 154 feet from the northerly curb line of Inman Avenue and extending 105 feet northerly therefrom.

(3) **Pierpoint Street**—Beginning at the westerly curb line of Pierpoint Street and extending 105 feet northerly therefrom.

(4) **West Lake Avenue**—Beginning at the westerly curb line of West Lake Avenue and extending 115 feet northerly therefrom.

(5) **Central Avenue**—Beginning at the northerly curb line of Central Avenue and extending 115 feet northerly therefrom.

(6) **Harrison Street**—Beginning at the northerly curb line of Harrison Street and extending 115 feet northerly therefrom.

(7) **West Scott Avenue**—Beginning at the northerly curb line of West Scott Avenue and extending 115 feet northerly therefrom.

ii. Near side bus stops:

(1) **West Grand Avenue**—Beginning at the northerly curb line of West Grand Avenue and extending 105 feet southerly therefrom.

(2) **Linden Avenue**—Beginning at the southerly curb line of Linden Avenue and extending 105 feet southerly therefrom.

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12. Along the southbound (westerly) side (St. George Avenue) in the City of Rahway, Union County:

(a)

i. Far side bus stops:

(1) Ross Street—Beginning at the southerly curb line of Ross Street and extending 105 feet southerly therefrom.

(2) Appar Terrace—Beginning at the southerly curb line of Appar Terrace and extending 115 feet southerly therefrom.

(3) Westfield Avenue—Beginning at the southerly curb line of Westfield Avenue and extending 115 feet southerly therefrom.

(4) Central Avenue—Beginning at the southerly curb line of Central Avenue and extending 115 feet southerly therefrom.

(5) West Hazelwood Avenue—Beginning at the southerly curb line of West Hazelwood Avenue and extending 115 feet southerly therefrom.

(6) West Lake Avenue—Beginning at the southerly curb line of West Lake Avenue and extending 115 feet southerly therefrom.

(7) West Inman Avenue—Beginning at the southerly curb line of West Inman Avenue and extending 100 feet southerly therefrom.

(8) Murray Street—Beginning at the southerly curb line of Murray Street and extending 100 feet southerly therefrom.

ii. Mid-Block bus stops:

(1) West Scott Avenue—Beginning at the prolongation of the southerly curb line of West Scott Avenue and extending 135 feet southerly therefrom.

(2) Harrison Street—Beginning at the prolongation of the northerly curb line of Harrison Street and extending 135 feet southerly therefrom.

13.-24. (No change.)

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

16:28A-1.19 Route 28

(a) The certain parts of State highway Route 28 described in this subsection shall be designated and established as “no stopping or standing” zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-199, proper signs shall be erected.

1.-6. (No change.)

7. No stopping or standing in the Borough of Bound Brook, Somerset County:

i. (No change.)

ii. Along the southerly (eastbound) side (Union Avenue):

(1)-(7) (No change.)

(8) From 8:00 A.M. to 4:00 P.M. on school days—Beginning at a point 115 feet west of the westerly curb line of Windsor Street to a point 227 feet westerly therefrom.

8.-13. (No change.)

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

16:28A-1.37 Route 70

(a) The certain parts of State highway Route 70 described in this [section] subsection are designated and established as “no [parking] stopping or standing” zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected by the Department.

1.-7. (No change.)

8. No stopping or standing in Manchester Township, Ocean County.

i. Along the westbound (northerly) side:

(1) From a point 30 feet west of the center line of County Road 539 and extending 400 feet westerly therefrom.

(b) The certain parts of State highway Route 70 described in this [section] subsection shall be designated and established as “no parking bus stop” zones where parking is prohibited at all times. In accordance with the [provision] provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-3. (No change.)

**DIVISION OF PROCUREMENT
BUREAU OF CONSTRUCTION SERVICES,
PROCUREMENT**

Construction Services

Classification of Contractors and Prospective Bidders; Distribution of Standard Specifications; Distribution and Sale of Construction Plans and Supplementary Specifications; Advertising for Bids; Receipt of Bids; Contracts; Deferred Payment to Contractors for Materials Supplied and Work Performed in the Construction of State Highways and Related Projects; Debarment; Suspension and Disqualification of a Person(s); Corporate Reorganization of Contractors

Reproposed Readoption: N.J.A.C. 16:44

Proposed Amendments: N.J.A.C. 16:44-1.1 through 1.5, 1.8, 1.18 through 1.19, 2.1 through 2.2, 3.2 through 3.4, 8.5 and 8.8

Proposed Repeals: N.J.A.C. 16:44-1.18, 2.1, 2.4, 3.1, 4.1 through 4.2, 5.1 through 5.5, 6.1 through 6.4, 7.1, 8.1 and 9.2

Proposed New Rules: N.J.A.C. 16:44-1.9, 4.1, 5.1 through 5.3, and 6.1

Authorized By: William D. Ankner, Director, Division of Policy and Capital Programming.

Authority: N.J.A.C. 27:1A-5, 27:1A-6, 27:7-2.1, and 27:7-35.2 et seq.

Proposal Number: PRN 1993-577.

Submit comments by November 17, 1993 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the “sunset” and other provisions of Executive Order No. 66(1978), the Department of Transportation proposes to readopt N.J.A.C. 16:44 concerning Construction Services including the requirements for contractors. These rules were scheduled to expire on May 25, 1993; however, a one year extension of this expiration date, to May 25, 1994, was granted by the Governor (see 25 N.J.R. 2227(a)). This proposal supersedes the Department’s prior proposal (PRN 1993-286, 25 N.J.R. 1954(a) published on May 17, 1993, wherein no changes to N.J.A.C. 16:44 were proposed.

The comment period for that proposal closed on June 16, 1993, and no comments were received.

The rules provide criteria to be complied with by contractors/corporations in the contractual agreements with the Department regarding the bidding process in accordance with funding from State, Local and Federal Governments. Additionally, these rules provide necessary guidelines to be complied with pursuant to statutory requirements. These rules have provided an efficient and effective mechanism for the processing of contracts, the collection of fees and the preclusion of corporate reorganizations by contractors/corporations without following proper procedures.

These rules were reviewed by the Department’s Bureau of Construction Services, Procurement in compliance with Executive Order No. 66(1978) and were found adequate, reasonable, understandable and necessary for the purpose for which they were originally promulgated.

The chapter has been amended several times since the last readoption, which was effective May 25, 1988 and published in the New Jersey Register at 20 N.J.R. 1467(a).

Over the past five years the rule has been amended as follows:

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N.J.A.C. 16:44-1.2 was amended at 20 N.J.R. 380(b) to effect a procedural change in the manner in which prospective bidders were classified and was adopted at 20 N.J.R. 913(c); additionally amended at 20 N.J.R. 3004(a) to increase the current "unlimited range" from over \$500,000,000 to over \$99,999,999; added additional clarification dollar ratings to the present rating system; and deleted the Class "A" through Class "W" ratings and established ramps; and was adopted at 20 N.J.R. 309(a), and further amended at 21 N.J.R. 1023(a) to extend the time frame required for prequalified firms to renew their prequalification before expiration, and adopted at 21 N.J.R. 1933(a).

N.J.A.C. 16:44-1.4 was amended at 21 N.J.R. 1023(a) to extend the time frame required for prequalified firms to renew their prequalification before expiration; and adopted at 21 N.J.R. 1833(a).

N.J.A.C. 16:44-1.1 was amended at 21 N.J.R. 2240(a) to establish the composition of the pre-qualification committee and effected title changes within the committee to conform with organizational changes, and adopted at 21 N.J.R. 3314(a).

N.J.A.C. 16:44-5.5 was amended at 21 N.J.R. 2239(a) to transfer the verification of bid proposals from the Division of Accounting and Auditing for mathematical accuracy to the Bureau of Construction Services, Procurement Division and adopted at 21 N.J.R. 3314(a).

N.J.A.C. 16:44-5.1 was amended at 21 N.J.R. 3437(b) to effect administration and procedural changes in the receipt of bids as outlined in N.J.A.C. 16:44-5.1, and provided the time frame required for the Deputy Attorney General to make a determination that the proposal meets specific requirements for the Department, and deleted internal procedural references no longer appropriate, and adopted at 22 N.J.R. 245(b).

N.J.A.C. 16:44-8.1 through 8.3 were amended to effectuate the mandate of Executive Order No. 189(1988) and establish additional ethical standards in conformity with which renders must conduct themselves in doing business with the State.

N.J.A.C. 16:44-3.1 was amended at 22 N.J.R. 2247(a) to change the name of Department to the Department of Transportation.

N.J.A.C. 16:44-3.2 was amended at 22 N.J.R. 2247(a) to raise fees to accommodate current expenses and in conjunction with the requirements of N.J.A.C. 16:1-2.2(g).

N.J.A.C. 16:44-7.2 was amended at 22 N.J.R. 2247(a) to change the partial payment limit from 80 percent of the value of the material to 85 percent of the bid price for the pay item.

N.J.A.C. 16:44-7.3 was amended at 22 N.J.R. 2247(a) to delete and insert new text which lowers the deduction to be retained by the Department pending completion of the project from 10 percent to five percent.

N.J.A.C. 16:44-1.1 was amended at 23 N.J.R. 3270(a) to supply definition for "Aggregate Rating", "Current Bid Capacity", "Maximum Rating" and "Project Rating" and deleted the definition of "Pre-Qualification Committee."

N.J.A.C. 16:44-1.2 through 1.10 were added as new rules (see 23 N.J.R. 3270(a)) which delineated the manner in which the Department (D.O.T.) would evaluate a contractor/prospective bidder's financial capacity and engineering ability.

N.J.A.C. 16:44-1.8 was amended at 24 N.J.R. 703(a) to change the text at N.J.A.C. 16:41-1.8(c) to include all contractors, whatever performance rating they may have received. Previous text did not cover contractors with performance ratings between the average of all contractors who had received performance ratings from the Department within the last four years and five points below the average for all such contractors.

The amendments proposed as part of this readoption more accurately reflect the Department of Transportation's revised contractor/prospective bidder classification procedures. The revised procedures are the product of extensive analysis and review by NJDOT staff, coordinated by the Bureau of Construction Services in the Division of Procurement. The classification revisions were presented to the construction industry at the New Jersey Asphalt Paving Conference on March 13, 1990, and at the Construction Industry Advancement Program Conference on November 27, 1990, and were well received by industry representatives. The Federal Highway Administration, which provides the Department with major funding, has concurred with the proposal of these new rules.

The proposed amendments and new rules delineate the manner in which the Department will evaluate a contractor/prospective bidder's financial capacity and engineering ability. The financial ability is evaluated through the use of the Aggregate Rating, which factors in net working capital, net book value of equipment, and unsecured lines of credit. Engineering ability is evaluated through the use of the Project

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Rating, which factors in a complete review of the contractor/prospective bidder's work experience. The work experience evaluated includes DOT work, non-DOT work, and the work experiences of the contractor/prospective bidder's key personnel. Each contractor/prospective bidder will be assigned both an Aggregate and a Project Rating.

The contractor/prospective bidder must consider its Aggregate and Project ratings each time it bids on a DOT project. With the bid information supplied by DOT and the ratings, the contractor/prospective bidder will know if it can bid the job, prior to bidding. This is a major advantage of the proposed new rules. Under the existing rules, the Department performs a review after the bid is made, to evaluate whether the contractor has sufficient financial capacity to do the job. It is anticipated that this revised process will encourage competition among bidders and will decrease unnecessary expenditures on the part of contractors who would know in advance if they would not be eligible for particular bids.

The amendments to N.J.A.C. 16:44-1.1 incorporate the definitions of "affiliates," "project rating," "bond value," "classification," "corporate reorganization," "debarment," "key sheet," "NJDOT contracting," "person," "plans," "standard specifications," "supplementary specification," "suspension" and "vendor." These terms were previously used within the subchapters of this chapter. In addition, the definition for "potential liquid assets" is deleted as it is no longer necessary. Finally, the composition of the pre-qualification committee is deleted, since membership is at the discretion of the Commissioner.

N.J.A.C. 16:44-1.2(a)1 is being amended to add the specific requirements of a consolidated financial statement; at paragraph (a)5 to change the period evaluated from three years to four years, to afford the accumulation of additional data and to conform to the usual computer cycle; and to add, at paragraph (a)7, a requirement for a statement disclosing any punitive action against the contractor.

N.J.A.C. 16:44-1.8 is being amended to add the performance rating of 80 or above as a standard and incentive for contractors performing at such capacity, to increase their bidding capacity. This rating is one point above the average of contractors' performance ratings.

N.J.A.C. 16:44-1.9 is new, outlining the effective date of classification of a contractor.

N.J.A.C. 16:44-2.2 is amended to add the authority responsible for the distribution of other free copies of standard specifications to others not specifically authorized to receive same as outlined in the Chapter.

Subchapter 5 has been completely revised to outline the procedures on the receipt of bids, submission of multiple bids and the withdrawal thereof.

Subchapter 6 has been completely revised to implement current operational procedures regarding contractors.

Definitions have been moved from subchapters 7, 8 and 9 to N.J.A.C. 16:44-1.1, the chapter definitions; and typographical errors have been corrected at N.J.A.C. 16:44-8.5(a)2 and 8.8.

N.J.A.C. 16:44 is summarized as follows:

Subchapter 1, Classification of Contractors and Prospective Bidders, outlines the standards and prerequisites for the classification of contractors and prospective bidders and compliance with N.J.S.A. 18:25-1 pertaining to standards designed to advance equal employment opportunity.

Subchapter 2, Distribution of Standard Specifications, provides the method for the distribution and accounting for standards specification.

Subchapter 3, Distribution and Sale of Construction Plans and Supplementary Specifications, details the method of distributing plans and supplementary specifications and describes the fees to be charged for such materials.

Subchapter 4, Advertising for Bids, outlines the specific method used in the advertising of Departmental bids.

Subchapter 5, Receipt of Bids, prescribes the process to be followed when bids are received after being advertised.

Subchapter 6, Contracts, provides for the award of contracts, and the preparation, execution and distribution of the contracts to the contractors who have been selected to perform projects.

Subchapter 7, Deferred Payments to Contractors for Materials Supplied and Work Performed in the Construction of State Highways and Related Projects outlines the method of payment to contractors as the work progresses until completion; bond requirements for contractors; action required in cases of default; and payment of service charges.

Subchapter 8, Debarment, Suspension and Disqualification establishes causes for debarment, conditions affecting debarment; procedures,

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periods of debarment and scope of debarment; causes, conditions and procedures affecting suspension; and the effect on contracting with the State.

Subchapter 9, Corporate Reorganization of Contractors, established procedures and guidelines to be followed by contractors/corporations who effect any change in corporate structure while under contract with the Department.

Social Impact

Readoption of these rules will ensure the continued public confidence in State government's ability to ensure that the public's interest in awarding public contracts is adequately protected. These rules impact on all contractors/corporations performing contractual agreements with the Department, in that they stipulate procedures and guidelines to be adhered to in the efficient operation of the administration of contracts.

As these procedures have been in place for many years, the readoption will cause little or no impact on those being regulated or the general public. The contractors/corporations have worked with these rules, have contributed to effect changes in the past and understand their purposes. Little if any comment, either positive or negative is anticipated, as there is little change in impact on the parties concerned.

The proposed amendments and new rules will affect construction contractors who want to be classified to bid or perform as subcontractors on Department projects. There are currently 379 contractors. These contractors, and contractors who may be classified in the future, will benefit by knowing specifically how the Department will evaluate their engineering and financial capabilities. Also, they will know, prior to bidding, if their rated capacity is sufficient to bid the job. The general public will be served by the implementation of published and legally binding requirements that ensure through screening of contractors/prospective bidders.

Economic Impact

The Department will incur direct and indirect costs for personnel and equipment required for the collection of fees and for the production of plans and specifications required for bidding process. These fees range from \$1.00 to hundreds of dollars, based upon the Department's cost of producing the particular copies for a particular bidder. Except for the copying charges, which are paid by the bidders, the public ultimately pays the costs for the bidding process, through the budgeting of general revenues for the Department's expenses in the bidding process.

Bidders seeking contracts must be prequalified by the Department annually, in accordance with the rules in this chapter. The prequalification involves an expenditure on the bidder's part for an audited financial statement, the cost of which varies according to the size and complexity of the bidder's business. While the statement is part of the Department's requirements, the bidder needs such a statement for other entities as well, such as banks and issuers of construction or performance bonds. Therefore, the Department cannot be said to be the exclusive source of this requirement. Bidders, upon purchasing the plans and specifications from the Department of the particular project for which they wish to bid, prepare the bid based upon their knowledge of current prices and costs, through their contacts with subcontractors and suppliers. The bid preparation requires no specialized training, although a knowledge of the construction field is advantageous, and bids can be produced at minimal cost. Many contractors routinely maintain a price index of necessary supplies and services, and can update this information readily via telephone calls to potential suppliers. Bidders generally consider the cost of copies of plans and specifications a part of general administrative overhead, and account for it accordingly.

The proposed amendments and new rules will impact on the contractors' ability to bid on Department construction projects. Statistical information developed by the Department has shown that 74 percent of currently classified contractors will have increased or equivalent bidding capacity using the proposed new rules. Contractors who receive a performance rating of 80 or above will be rewarded with the potential for increased bidding capacity. Conversely, contractors who receive a performance rating below the average of 79 eventually may have decreased bidding capacity. No additional administrative costs are anticipated. Monetary savings are anticipated, since the Department will not have to evaluate the bids of contractors who do not have sufficient capacity to support the bid. The dollar value in saving cannot be substantiated since there has been no data available and costs are variable depending upon the project. Prospective bidders will be able to evaluate their bidding capacity in advance and will not incur costs in developing bids where there is no chance of award.

Regulatory Flexibility Analysis

The rules proposed for readoption primarily affect contractors/corporations, some of which are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The bookkeeping, recordkeeping and compliance requirements of these rules are directed towards maintaining the accountability of contractors/corporations in contract with the Department. The promulgation of less demanding contract administration standards for small businesses would erode the level of accountability necessary for the Department to protect the public interest in the awarding of public contracts. For this reason, no differing compliance standards based upon business size are provided for in these rules.

The rules proposed for readoption use performance rather than design standards in the requisition of contractors/corporations. Professional services such as accounting, needed by any contractor/corporation are already a part of the regulated organization for other purposes, as indicated in the Economic Impact. There are no changes being implemented in this readoption which require any additional professional services.

Almost all of the 379 currently classified contractors 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 amendments and new rules provide a standardized means of evaluating contractors/prospective bidders. Current classification submittals from contractors/prospective bidders will not change. No change in contractors' recordkeeping or in initial or annual costs are anticipated. Costs, such as staff overhead and professional fees, should remain the same. A contractor's ability, through these standards, to perform a more accurate assessment of capacity, may decrease its costs.

Full text of the repropoed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:44.

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

SUBCHAPTER 1. CLASSIFICATION OF CONTRACTORS AND PROSPECTIVE BIDDERS**16:44-1.1 Definitions**

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

"Affiliates" means persons having a relationship such that any one of them directly or indirectly controls or has the power to control another.

...
"Bond value" means par value or market value of the bond, whichever is lower.

"Classification" means the rating given a contractor that denotes the type of contracts on which the [department] New Jersey Department of Transportation (NJDOT) will allow [him] the contractor to submit bids and the total amount of [additional] work which [he] the contractor may undertake.

...
"Corporate reorganization" means any change in the structure or organization of a corporation wherein one or more of the following events occur:

1. A change in ownership of more than 5 percent of the stock of the corporation;
2. A transfer of the assets, in whole or in part, from the existing corporation to another or new corporation;
3. Any modification of the corporate name;
4. Any other change, modification, dissolution, transfer of, deletion from or addition to the corporate entity which may affect the operation of the corporation as a contractor; or
5. Any change in operation or function of the corporation, such as a change in classification or industry.

...
"Debarment" means an exclusion from NJDOT contracting, on the basis of a lack of responsibility evidenced by an offense, failure,

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or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

"Disqualification" means a debarment or a suspension which denies or revokes a qualification to bid or otherwise engage in NJDOT contracting which has been granted or applied for pursuant to statute, or rules and regulations.

"Key sheet" means the first sheet of a set of plans containing a location map for the project, usually at a scale of 2000 feet to the inch, a brief description of the project and the necessary approvals.

"NJDOT contracting" means any arrangement giving rise to an obligation to supply anything to or perform any service for the NJDOT, other than by virtue of State employment, or to supply anything to or perform any service for private or public persons where the NJDOT provides substantial financial assistance or retains the right to approve or disapprove the nature or quality of the goods or service or the persons who may supply or perform the same.

"Person" means any natural person, company, firm, association, corporation, or an entity.

"Plans" means construction plans, supplementary specifications and proposal forms.

["Potential liquid assets" means the excess of current quick assets over current liabilities plus the available portion of lines of credit as shown on the Department of Transportation Contractor's Financial and Equipment Statement: Experience Questionnaire and Past Performance Record. Items which shall not be allowed as assets include:

1. Those which are not in the name of the applicant;
2. Past due accounts (located by comparison with previous statements);
3. Items which are not liquid, such as prepaid expenses and fixed assets;
4. Securities which are not listed in the Bank and Quotation Record;
5. Securities which have been pledged to secure loans or the release of retainage;
6. Cash surrender value of life insurance policies which are not verified by a letter from the insurance company;]

"Pre-qualification Committee" means a committee appointed by the Commissioner of Transportation to perform the duties indicated in this [subtitle] chapter. The Committee shall be [composed] comprised of five voting members, selected at the discretion of the Commissioner of Transportation. [A Deputy Attorney General shall serve as a non-voting member for the committee.] The Manager, Bureau of Construction Services, Procurement Division, shall serve as [staff] a non-voting member and Secretary to the committee. The committee consists of:

1. Assistant Commissioner for Finance and Administration, (Chair);
2. Assistant Commissioner for Construction and Maintenance (Deputy State Transportation Engineer);
3. Director, Division of Procurement;
4. Director, Office of Civil Rights/Contract Compliance;
5. Director, Division of Construction and Maintenance Engineering Support; and
6. Non-voting members as follows:
 - i. A Deputy Attorney General; and
 - ii. The Manager, Construction Services, Procurement Division, shall be a non-voting member of the Pre-qualification Committee, and serve as Secretary. The Pre-qualification Committee will delegate to the Manager, Construction Services, Procurement Division, the authority to sign renewal of pre-qualification applications for the Committee which will increase by three steps in dollar values without change in work scope and any decreases in dollar value without change in work scope., and may be granted authority by the Pre-qualification Committee to sign renewal of pre-qualification applications on behalf of the Committee in those circumstances deemed appropriate by the Committee.

"Project Rating" means the maximum dollar [limit] amount which a contractor shall be allowed to bid on an individual project.

"Standard Specifications" means the 1983 edition of the book entitled "New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction," as amended and supplemented.

"Supplementary specifications" means amendments or revisions updating the Standard Specifications.

"Suspension" means an exclusion from NJDOT contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

"Vendor" means any person, firm, corporation or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency.

16:44-1.2 Statements under oath

(a) All contractors proposing to bid on [Department of Transportation] NJDOT work [must] shall furnish, on forms provided by the Commissioner of Transportation, a Prequalification Questionnaire including, at a minimum, the following statements:

1. A statement as to financial ability, which statement shall show current assets and current liabilities and shall include verifications of unsecured lines of credit extended by banks. The Prequalification Questionnaire must be accompanied by certified audited financial statements or a CPA review of financial statements. The financial statements [must] shall be complete, with a balance sheet, related statements of income and retained earnings and cash flows. [They must] The financial statements shall be completed by a certified public accountant or public accountant, as established by N.J.S.A. 45:2B-29 et seq., who is independent of, and not an employee of, the contractor for which the financial statements are being provided;

i.-ii. (No change.)

iii. Submission of a consolidated financial statement is acceptable. It may be submitted with the Prequalification Questionnaire completed in the name of the parent corporation. A consolidated financial statement submitted with a Prequalification Questionnaire and completed in the name of the subsidiary corporation shall include a separate breakdown of the financial statements, that is, balance sheet, income statement, statement of changes in financial position and cash flows, in the name of the subsidiary corporation;

2.-4. (No change.)

5. A statement which shall give an accurate and complete record of work completed in the [three prior] previous four years and which shall identify the projects undertaken, type of work performed, location, contract price, name and telephone number of the owner's engineer in charge;

i. The work record statement shall list, in detail, any liens, stop notices, default notices or claims filed with regard to any project within the previous [three] four years. The work record statement shall also disclose labor troubles experienced, failures to complete contracts and all penalties imposed by reason of any contract undertaken within the previous [three] four years. The contractor shall explain all such items;

ii. Any contractor which has been continuously qualified with the Department of Transportation for a period of four years shall not be required to complete this statement, unless the statement contractor desires to be classified for a different type of work than that for which it has previously been classified;]

6. (No change.)

7. A statement disclosing any suspension, debarment, or disqualification of the contractor, its parent company or subsidiary and/or any owner, stockholder, officer, partner or employee of the contractor;

Recodify existing 7.-10. as 8.-11. (No change in text.)

16:44-1.3 Penalties for false statements

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

[(c) As used in this rule, "person" means and includes any individual copartnership association, corporation or joint stock com-

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pany their lessees, trustees, assignees or receivers appointed by any court whatsoever.]

16:44-1.4 Types of work

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

(c) Each contractor will be classified for one or more of the types of work requested by that contractor and will be rated in accordance with its financial ability, adequacy of plant and equipment, organization, record of construction and any other factors deemed pertinent by the [Department of Transportation] NJDOT. The contractor will be assigned a classification, designating the types and dollar values of work upon which it shall be eligible to bid.

(d) (No change.)

(e) The dollar rating ranges within which contractors may be entitled to bid are as set forth in Table I below.

TABLE 1
Dollar Rating Ranges

\$ 50,001 to 100,000	20,000,001 to 25,000,000
100,001 to 150,000	25,000,001 to 30,000,000
150,001 to 200,000	30,000,001 to 35,000,000
200,001 to 300,000	35,000,001 to 40,000,000
300,001 to 400,000	40,000,001 to 45,000,000
400,001 to 500,000	45,000,001 to 50,000,000
500,001 to 750,000	50,000,001 to 55,000,000
750,001 to 1,000,000	55,000,001 to 60,000,000
1,000,001 to 2,000,000	60,000,001 to 65,000,000
2,000,001 to 3,000,000	65,000,001 to 70,000,000
3,000,001 to 4,000,000	70,000,001 to 75,000,000
4,000,001 to 6,000,000	75,000,001 to 80,000,000
6,000,001 to 8,000,000	80,000,001 to 85,000,000
8,000,001 to 10,000,000	85,000,001 to 90,000,000
10,000,001 to 15,000,000	90,000,001 to 95,000,000
15,000,001 to 20,000,000	95,000,001 to 99,999,999 over 99,999,999

1.-2. (No change.)

16:44-1.5 Classification rating system

(a) (No change.)

(b) Aggregate Ratings will be established as follows:

1.-2. (No change.)

3. The [Department of Transportation] NJDOT will add dollar figures established by use of the multipliers indicated below. For contractors which have not had a [Department of Transportation] NJDOT performance rating within the prior four year period, the resulting figure shall be the contractor's aggregate rated capacity. For contractors which have had a [Department of Transportation] NJDOT performance rating within the prior four year period, the resulting figure will be multiplied by the contractor's average performance rating [percentage] to establish the contractor's aggregate rated capacity.

Contractors without NJDOT past performance

Aggregate rated capacity = (Net working capital × 9) + (net book value of equipment × 9) + (unsecured lines of credit × 4).

Contractors with NJDOT past performance

Aggregate rated capacity = ((net working capital × 15) + (net book value of equipment × 15) + (unsecured lines of credit × 7)) × the contractor's average past performance rating.

4.-6. (No change.)

(c) (No change.)

16:44-1.8 Renewal of classification ratings

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

(c) Upon renewal of classification, contractors with a NJDOT past performance rating within the previous four years will be evaluated on the basis of their average performance rating and a Project Rating will be established in the following manner:

1. If a contractor's average performance rating does not meet the criteria of (c)2, 3, or 4 below, the contractor's average past performance [percentage] rating will be multiplied by a dollar level equal to three times the largest successfully completed NJDOT or [equivalent] similar contract performed during the prior four years.

The contractor's Project Rating will be determined by applying the resulting dollar figure to Table I at N.J.A.C. 16:44-1.4(e).

2. (No change.)

3. If the two most recent performance ratings assigned a contractor during the prior four year period average five points or more above the average performance rating of all contractors that have received a NJDOT performance rating within the previous four years, or if the contractor's average rating is 80 or above, the contractor will be entitled to a Project Rating equal to its Aggregate Rating, up to a limit of OVER \$99,999,999.

4. If the four most recent performance ratings assigned a contractor during the prior four years are at least equal to the average performance rating of all contractors that have received NJDOT performance ratings within the previous four years, or if the contractor's average rating is 80 or above, the contractor will be entitled to a Project Rating equal to its Aggregate Rating up to a limit of OVER \$99,999,999.

16:44-1.9 Effective date of classification

The effective date of a classification shall be 15 days after the Prequalification Questionnaire is received in the Bureau of Construction Services or 15 days after receipt of any additional information requested by the Bureau of Construction Services. The expiration date shall be 18 months after the date of the financial statement accompanying the Prequalification Questionnaire.

Recodifying existing N.J.A.C. 16:44-1.9 through 1.16 as N.J.A.C. 16:44-1.10 through 1.17 (No change in text.)

16:44-[1.17]1.18 Requirements

(a) [Contractor's Financial and Equipment Statement and Experience] The Bureau of Construction Services will provide a Prequalification Questionnaire and Past Performance Record (Form DC 74A) [are to be furnished by the Bureau of Contract Administration] to any contractor [who] that desires to be classified to perform work for [the Department,] NJDOT under contract.

(b) Completed questionnaires shall be submitted to the Bureau of [Contract Administration] Construction Services. [shall be stamped with the date of receipt, entered chronologically in the Mail Log and also recorded on the Alphabetical Record, which is maintained for each applicant. The "Contractor's Financial and Equipment Statement," submitted by mail, shall be acknowledged on an "Acknowledgment of Prequalification Questionnaire" form.]

(c) A "Contractor's Classification and Rating Recommendation" form shall be typed, listing the name and address of the applicant, the date of the questionnaire, the date received, the last approved rating and the date of the approval, the rating requested and the net liquid assets claimed.

(d) If the first examination of the questionnaire, Form DC-47(A) shows incomplete information the page or pages involved are returned for completion.]

[16:44-1.18 Effective date of classification

The effective date of the classification shall be 15 days after it is received in the Bureau of Contract Administration or 15 days after receipt of any additional information requested. The expiration date is 18 months after the date of the financial information supplied.]

16:44-1.19 Notice of classification

[(a)] A "Notice of Classification" form shall be prepared in triplicate by the Bureau of [Contract Administration] Construction Services. The original shall be signed and mailed to the applicant by First Class mail [together with blank forms for his use in filing for renewal of his rating].

[(b)] A recommendation for the renewal of a contractor's classification which is not greater in either scope of work or dollar value may be approved by the Chief, Bureau of Contract Administration, without further approval by the Prequalification committee.]

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SUBCHAPTER 2. DISTRIBUTION OF STANDARD SPECIFICATIONS

[16:44-2.1 Definition

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

“Standard Specifications” refer to the book entitled “New Jersey State Highway Department Standard Specifications for Road and Bridge Construction.”]

16:44-[2.2]2.1 Requirements

(a) The Bureau of [Contract Administration] **Construction Services** shall:

1. (No change.)
2. Establish a reasonable selling price for the current “Standard Specifications.” [This price is subject to change.]

(b) Approval of the [chief engineer, design] **Assistant Commissioner of Design and Right-of-Way or designee** is required for nondepartmental distribution without charge.

16:44-[2.3]2.2 Distribution of free copies

(a) The Bureau of [Contract Administration] **Construction Services** is authorized to distribute “Standard Specifications” upon revision and reprinting, without charge, to the following:

1. New Jersey county engineer’s office (one copy each);
2. Chief engineer of other [State highway] **state transportation** departments (one copy);
3. American Association of State Highway and Transportation officials (three copies);
4. [The] **Each** successful bidder may receive one **free copy upon request**, [of “Standard Specifications”] upon award of the contract; provided that not more than one copy of the current “Standard Specifications” will be furnished to any contractor, regardless of [repeat contract awards to him] **its number of awarded contracts**, except upon payment of the established selling price per copy. [(S.S. 1.5.2).]

(b) [All requests for free copies to other than those specified in subsection (a) of this section shall be approved by the chief engineer, design.] **No other free copies shall be provided. The Assistant Commissioner of Design and Right-of-Way or designee may, however, make exceptions to this rule on a case-by-case basis.**

[16:44-2.4 Excerpts

The portion of the “Standard Specifications” entitled “New Jersey State Highway Department Standard Specification for Materials” shall be sold for the established selling price per copy. All other provisions of this subchapter shall apply to this volume.]

SUBCHAPTER 3. DISTRIBUTION AND SALE OF CONSTRUCTION PLANS AND SUPPLEMENTARY SPECIFICATIONS

[16:44-3.1 Definitions

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

“Key sheet” means to the first sheet of a set of plans containing a location map for the project, usually at a scale of 2000 feet to the inch, a brief description of the project and the necessary approvals.

“Plans” means construction plans, supplementary specifications and proposal forms.

“Supplementary specifications” means amendments or revisions updating the current New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction.]

16:44-[3.2]3.1 (No change in text.)

16:44-[3.3]3.2 Requisitioning of plans

Requests for plans should be sent to the Bureau of Construction Services, **Division of Procurement, New Jersey** Department of Transportation, **CN605**, 1035 Parkway Avenue, Trenton, New Jersey **08625-0605**.

16:44-[3.4]3.3 Nondepartmental distribution and sale

(a) The Bureau of Construction Services shall issue plans and supplementary specifications in the quantities indicated without cost to the following:

1. The successful low bidder will receive copies of plans specified below and five additional free copies of supplementary specifications without charge, upon award of the contract[,] if requested.

TABLE OF PLANS FURNISHED WITHOUT CHARGE

From more than	To and including	Set of plans furnished
0	500,000	1
500,000	1,000,000	2
1,000,000	5,000,000	3
5,000,000	10,000,000	4
10,000,000	—	5

Additional copies of plans and supplementary specifications will be furnished, upon request, at a charge [in accordance] **commensurate** with reasonable copying [expenses] costs.

2.-6. (No change.)

16:44-[3.5]3.4 Departmental distribution

(a) The division or bureau of origination shall provide construction plans and specifications on each advertised project to the [various] **Design Field Offices** in the State to enable the [contracting] **contractor organizations** to make a review of these plans and specifications. The four (4) Design Field Offices are located in:

1. Parsippany-Troy Hills;
2. Newark;
3. [Mt. Laurel] **Freehold**;
4. [Freehold] **Mt. Laurel**.

SUBCHAPTER 4. ADVERTISING FOR BIDS

[16:44-4.1 Requirements

Advertisements shall be placed for department work as required by the New Jersey Statutes Annotated, in accordance with this procedure; and policies and procedures of the Federal Highway Administration when applicable.

16:44-4.2 Processing

(a) N.J.S.A. 27:7-29 specifies, “The advertisement shall be by public notice published for at least three weeks before bids on the contract may be received, at least once a week in each of two newspapers printed in the county or counties where the roads are located, and in one other newspaper in Trenton, and may be inserted in one or more American engineering periodicals.”

(b) “The advertisement shall give a brief description of the work and materials required, specify where plans and specifications can be seen or purchased, the hours, date and place where the sealed proposals will be received and publicly opened and read, and such other pertinent information as the Commissioner may include.”]

16:44-4.1 Requirements

Projects shall be advertised as required by N.J.S.A. 27:7-29.

SUBCHAPTER 5. RECEIPT OF BIDS

[16:44-5.1 Requirements

(a) Bids shall be received at the hour, date and place specified in the advertisement.

(b) The following Department personnel, or their authorized representatives, shall participate:

1. State highway engineer, or his designee, as presiding officer;
2. Chief, Bureau of Contract Administration, as narrator;
3. His secretary, as recorder;
4. A member of his auditing staff, as bid opener; and
5. A microfilm machine operator, from the records office.

(c) Observers may include the following:

1. A representative of the Office of Information Services, a representative of the Bureau of Federal Aid Coordination, together

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with a representative of the Bureau of Public Roads, if the project is primary, urban or interstate;

2. A representative of the Division of Transportation Operations and Local Aid, together with representation of the county or municipality involved, if the project is Federal Aid Secondary or TOPICS.

(d) All bids shall be delivered to the Bureau of Contract Administration.

(e) The information concerning the bidder's current classification status, and the bidder's code number appearing on the proposal envelope shall be checked with the records of the Bureau of Contract Administration, as shown in the alphabetical record.

(f) The department's estimated cost of the project, prepared by the bureau of origin, will be opened by the presiding officer and made available to the narrator, the bid opener and the deputy attorney general.

(g) The presiding officer shall open the meeting, as near to the hour specified in the advertisement as is practical. He shall announce the projects on which bids are being received and request presentation of bids. He shall then declare the bidding closed. No bids shall be accepted after the bidding has been closed.

(h) The presiding officer or the narrator shall then make the following announcement: "All documents accompanying the bid proposals of all bidders shall be checked for completeness and the mathematical calculations of each proposal will be checked to determine the correct total price and necessary corrections made to determine the correct total amount. Proposal guarantees submitted with bid proposals will be returned to all except the two lowest responsible bidders within three working days after such bids are received. The Commissioner reserves the right to reject any or all bids in accordance with the provisions of N.J.S.A. 27:7-30."

(i) The bid opener shall compare the bidder's classification rating with the engineer's estimate of cost for the project. If the rating is below the estimate, he shall notify the deputy attorney general that the bid is being opened provisionally.

1. He shall open the proposal envelope and remove the contents.

2. He shall place the bidder's code number on the title page of the proposal if it does not appear there.

3. He shall check the total amount of the bid against the rating of the bidder. If the bid is actually higher than the classification rating, it shall be announced that the bid is rejected and the amount not read.

4. He shall also ascertain that the proposal bond required by 1.2.7 of the standard specifications is of adequate amount.

i. The furnishing of proposal bonds by surety companies on department projects must comply with the following requirements:

(1) United States Treasury Department circular 570, dated July 8, 1976, and as issued annually thereafter, shall be used as the list of companies acceptable as sureties on proposal bonds covering contracts for New Jersey Department of Transportation projects and the underwriting limitations for any one risk;

(2) The company must be authorized to transact surety business in the State of New Jersey;

(3) Two or more companies may be accepted as sureties on any contract, the penal sum of which does not exceed the limitation prescribed of their aggregate qualifying power. Each company shall limit its liability, upon the face of the bond or policy, to a definite specified amount within its underwriting limitations. Such obligation shall be executed by the principal and sureties jointly and severally;

(4) Reinsurance shall not be acceptable in furnishing proposal bonds on New Jersey Department of Transportation contracts.

5. He shall determine if the "Contractor's financial and equipment statement" meets the requirements of the advertisement as to date, and that the "Contractor's financial statements and plant and equipment questionnaire for engineering construction" is properly signed and notarized.

6. After examining these portions of the contents of the proposal envelope, he shall deliver the envelope and its contents to the deputy attorney general, informing him of any error or omission which would cause rejection of the proposal.

(j) The deputy attorney general within two working days shall determine that the proposal has been properly signed, that the non-collusion affidavit is in proper order; and that the proposal guarantees meet the Department's requirements.

(k) The narrator shall announce the bidder's name and the municipality in which his office is located, and read the total price bid for the project. He shall then hand the proposal to the microfilm machine operator for photographic recording. After each sheet has been photographed, the operator shall return the proposal to the narrator.

(l) If only one bid is received on a project, it shall be opened. If the contents are in proper order, it shall be read.

16:44-5.2 Multiple Bids

If a bidder submits bids on two or more projects at the same meeting, a single revised "Contractor's financial statement and plant and equipment questionnaire for engineering construction", submitted in a separate envelope marked to show that it is a financial statement to accompany the proposals on the projects being bid, shall be accepted in lieu of a separate "Financial statement and plant and equipment questionnaire" for each project.

16:44-5.3 Withdrawal

A bid, after having been submitted, may be withdrawn by a bidder prior to the opening of any bid on that project, upon request and the execution of Department of Transportation "Request for withdrawal of bid" form.

16:44-5.4 Actions prior to close of meeting

(a) After all acceptable bids on the project have been read, the narrator shall repeat the name and the total price bid by the apparent lowest and the apparent next lowest bidder.

(b) While the announcements are being made at the end of the final project for the meeting, the microfilm machine operator shall remove one of the photographic films, seal it in a container and deliver it to the department secretary for safekeeping. This copy is not processed and is retained for six months, or until notice by the head of the records office that the processed film has been received in acceptable condition. The other film is removed and processed.

(c) The presiding officer shall announce that all bids have been received and adjourn the meeting.

16:44-5.5 Verification

(a) The Office of Construction Services, Procurement Division shall separate all proposals from the other required documents and calculations verified.

(b) The extensions and additions are to be checked; errors, if any, corrected; and the actual total price certified as being correct. Copies of the certified printed calculations shall be distributed as follows:

1. One set to the Bureau of Contract Administration with the proposals;

2. Two sets to the Review and Specifications Section, Bureau of Special Engineering;

3. If the project is either interstate, primary or urban Federal aid, an additional distribution of four sets shall be made to the Bureau of Federal Aid Coordination. They shall retain one set for their file;

4. The other three sets shall be sent to the Federal Highway Administration with the following:

i. Original non-collusion affidavit;

ii. Three copies of the engineer's estimate;

iii. Three copies of the tabulation of bids form;

iv. Three copies of a letter from the division or bureau head at interest, with information as to the engineer-in-charge assigned to the project;

v. One copy of a worksheet of excerpts from the classification questionnaire; and

vi. A letter requesting concurrence in the award of the contract to the low bidder.

5. If the project is Federal Aid Secondary or TOPICS, an additional distribution of three sets shall be made to the Division of Transportation Operations and Local Aid, Bureau of Local Federal Aid Programs, who shall send one set to the Federal Highway Administration.

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i. The Division of Transportation Operations and Local Aid, Bureau of Local Federal Aid Programs, shall then prepare an invoice billing the county concerned for 50 percent of the price bid for participating items and 100 percent for the price bid for non-participating items, plus the amount of the contingencies, and shall deliver it to the Director of Fiscal Management, or his designee, for signature.

ii. Upon receipt of the invoice signed by the Director of Fiscal Management, or his designee, the Division of Transportation Operations and Local Aid, Bureau of Local Federal Aid Programs, shall send a letter to the clerk of the board of chosen freeholders concerned, enclosing the invoice and one set of the certified calculations and notifying the county that a resolution from the board of freeholders recommending the award to the low bidder must be received, together with a check for the amount of the invoice, before the award of the contract can be made.

(c) Tabulations of the correct total price of each bidder and the correct unit prices of the two lowest bidders shall be furnished by the bureau of Contract Administration to all bidders on the project and to addressograph list no. 3, which consists of those who request the Bureau of Contract Administration to furnish this information. Those on this list shall be queried once a year as to their desire to receive this information.

(d) The proposal bond and financial questionnaire of all but the lowest and next lowest bidders shall be returned by the Bureau of Contract Administration within three working days after the bids are received. (N.J.S.A. 27:7-33.)

1. All proposals shall be retained until the processed microfilm has been reviewed by and is acceptable to the head of the Records Office. He shall notify the department secretary that the unprocessed film is to be destroyed. He shall notify the Bureau of Contract Administration that the proposals may be destroyed. The processed microfilm shall be retained by the Records Office for a period of two years.

2. The "Contractor's financial and equipment statement and the plant and equipment questionnaire for engineering construction" of the second lowest bidder together with their proposal bond shall be retained until the contract has been properly signed.

(e) The financial information submitted by the low bidder shall be analyzed. The Bureau of Contract Administration shall report promptly to the Director of Fiscal Management, with copies to the commissioner, the State highway engineer and the division director or directors interested in the project, the details as to the names and the total prices bid by the lowest, next lowest, and the highest bidder, and the reasons for the rejection of any bid. A letter shall be used to relay the information as to type and amount of work on which the low bidder is classified to bid; and, to show that the bidder's capacity has not decreased dangerously, the date of the financial information supplied, the net liquid assets claimed and any deductions therefrom, with the allowable liquid assets and the revised capacity after allowing for the uncompleted work on hand. The "Contractor's financial and equipment questionnaire for engineering construction" submitted by the low bidder shall be attached to this report.]

16:44-5.1 Procedures

(a) Bid proposals will be received at the hour, date and place specified in the advertisement. Bids will only be accepted from contractors currently classified, in accordance with N.J.A.C. 16:44-1 for the project advertised.

(b) The presiding officer will open each bid session as near to the hour specified in the advertisement as is practical. The presiding officer will announce the projects on which bids are being received during that bid session and ask if there are any additional bid proposals to be submitted. The presiding officer will then declare the bidding closed. No bids will be accepted after the bidding has been closed.

(c) The bid proposals will be opened and reviewed for acceptability and total bid prices will be read.

(d) Each bid shall be accompanied by a proposal bond in an amount equal to or greater than 50 percent of the bid price. Each proposal bond shall reference the project to which it applies.

i. Proposal bonds shall comply with the requirements of this chapter and relevant State statutes. Proposal bonds covering NJDOT projects shall be issued only by companies listed in the current United States Treasury Department Circular 570, which Circular will establish the underwriting limitation for any one risk.

ii. Proposal bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

iii. Two or more companies may underwrite the proposal bond on a project if the aggregate of their underwriting limitations, as established by United States Treasury Department Circular 570, is not exceeded by the penal sum of the proposal bond. Each company may limit its liability, upon the face of the bond or power of attorney form, to a definite specified amount within its underwriting limitation. Such obligation shall be executed by the principal and sureties jointly and severally.

iv. Reinsurance shall be prohibited on NJDOT proposal bonds.

(e) The NJDOT shall examine all bid documents for completeness, conformity with requirements and mathematical accuracy. Adjustments will be made by the Bureau of Construction Services where necessary to establish the correct total bid amount.

(f) All proposals will be microfilmed at the bid session by NJDOT, or other State agency staff. The proposal bonds and the contractor's Updated Financial Statement (Form DC-74B) of all but the two lowest bidders will be returned after the processed microfilm has been deemed acceptable. The proposal bond and the contractor's Updated Financial Statement (Form DC-74B) of the second lowest bidder will be retained until a contract with the low bidder has been executed by the Commissioner of Transportation.

16:44-5.2 Multiple bids

If a bidder submits bids on two or more projects at the same bid session, that bidder must have a current bid capacity greater than or equal to the combined amount of its bids, unless a reservation has been placed in each bid limiting the maximum gross amount of awards acceptable to the bidder at that particular bid letting. If such reservations are placed in the bids, the Commissioner will select which contract or contracts are to be awarded to such bidder within the maximum gross amount reserved.

16:44-5.3 Withdrawal

A bidder may withdraw a bid proposal by executing an NJDOT "Request for Withdrawal of Bid" form prior to the opening of any bid on the project that is the subject of such proposal.

SUBCHAPTER 6. CONTRACTS

[16:44-6.1 Requirements

(a) Recommendation to the commissioner for the award of a contract shall be made on form AD-12 (Department action slip) accompanied by a signed copy of the "Certificate of award".

(b) The "Certificate of award" shall consist of the following:

1. Designation and description of the project;
2. Certification as to publication and notice;
3. Summary of bids received;
4. Recommendation concerning the contract by the division and/or bureau heads involved in the contract to the State highway engineer;
5. Certification of concurrence by the Federal Highway Administration (for interstate, primary and urban projects);
6. Certification of concurrence by county (for Federal Aid Secondary projects);
7. Status of funds;
8. Certification and recommendation of award;
9. Certification of award.

16:44-6.2 Preparation

(a) The Bureau of Contract Administration shall prepare and forward the contract and surety corporation bond forms to the contractor for signature with a letter of transmittal, calling the contractor's attention to the specified time in which the contract must be executed and returned.

(b) If the contractor returns the executed contract and bond within the specified time, the Bureau of Contract Administration

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shall return the proposal guarantees which were tendered by the low bidder. At this time the proposal guarantees of the second low bidder shall also be returned.

1. The furnishing of performance bonds by surety companies on department projects must comply with the following requirements:

i. United States Treasury Department circular 570, dated July 8, 1976, and as issued annually thereafter, shall be used as the list of companies acceptable as sureties on performance bonds covering contracts for construction and maintenance projects and the underwriting limitations for any one risk;

ii. The company must be authorized to transact business in the State of New Jersey;

iii. Two or more companies may be accepted as sureties on any contract, the penal sum of which does not exceed the limitation prescribed of their aggregate qualifying power. Each company may limit its liability, in terms upon the face of the bond, to a specified amount which shall be within the limitations prescribed. Such obligation shall be executed by the principal and sureties jointly and severally;

iv. Reinsurance shall not be acceptable on department contracts.

(c) If the contractor fails to return the executed contract and bond within the time specified, the Bureau of Contract Administration shall notify the State highway engineer by memorandum. The State highway engineer shall recommend to the commissioner the appropriate action to be taken consistent with the requirements of statute and specifications.

16:44-6.3 Execution

(a) The commissioner shall sign the contract and forward it to the department secretary for attestation.

(b) The department secretary shall send the signed and attested contract to the Bureau of Contract Administration.

(c) The Bureau of Contract Administration shall conform all other copies necessary.

16:44-6.4 Distribution

(a) The original and one conformed copy to the Director of Fiscal Management.

1. The original shall be retained by the Director of Fiscal Management in the permanent file of the project.

2. The Director of Fiscal Management shall transmit the conformed copy to the office of the State Treasurer, together with the contract order committing funds for the amount of the contract plus the amount estimated for contingencies.

(b) The duplicate signed copy to the contractor with the letter of transmittal.

(c) One conformed copy to each division of bureau head concerned, if the project is other than Federal Aid Secondary.

(d) Two conformed copies to the Division of Transportation Operations and Local Aid, for Federal Aid Secondary projects:

1. The Division of Transportation Operations and Local Aid shall transmit one conformed copy of the contract to the county concerned.

2. The other copy shall be retained by the Division of Transportation Operations and Local Aid for their file.

(e) The copies of the documents specified in subsection (c) of this section shall be forwarded to the Bureau of Federal Aid Coordination, which shall furnish these copies to the Federal Highway Administration so that they shall have in their file all of the material which makes up the contract.

NOTE: The forms referred to in this chapter may be obtained from the Division of Construction, New Jersey Department of Transportation, 1035 Parkway Avenue, Trenton, New Jersey 08625.]

16:44-6.1 Contracts

(a) **The NJDOT will forward the contract and surety corporation payment and performance bond forms to the contractor for signature and specify the time within which the executed contract and bond forms must be returned.**

(b) **Each payment and performance bond must be in an amount at least equal to the total contract price less the lump sum bid for the pay item "Performance Bond and Payment Bond."**

1. Payment and performance bonds must comply with the requirements of this chapter and relevant State statutes. Bonds covering NJDOT projects must be issued by companies listed in the current United States Treasury Department Circular 570, which Circular will establish the underwriting limitation for any one risk.

2. Bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

3. Two or more companies may underwrite the payment and performance bonds on a project if the aggregate of their underwriting limitations, as established by United States Treasury Department Circular 570, is not exceeded by the penal sum of the bonds. Each company may limit its liability, upon the face of the bond or power of attorney form, to a definite specified amount within its underwriting limitation. Such obligations must be executed by the principal and sureties jointly and severally.

4. Reinsurance shall be prohibited on NJDOT payment and performance bonds.

(c) If the contractor fails to return the executed contract and bond within the time specified by the NJDOT, the NJDOT will take whatever action is appropriate and authorized by law and specification.

(d) After execution by the Commissioner of Transportation, a copy of the signed contract will be sent to the contractor.

SUBCHAPTER 7. DEFERRED PAYMENTS TO CONTRACTORS FOR MATERIALS SUPPLIED AND WORK PERFORMED IN THE CONSTRUCTION OF STATE HIGHWAYS AND RELATED PROJECTS

[16:44-7.1 Definitions

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

"Bond value" means par value or market value of the bond, whichever is lower.

"Contract" means any contract or agreement, the terms of which require retainage to be withheld for payments due to the contractor.

"Contractor" shall be construed as singular or plural, depending on the circumstances.

NOTE: The Commissioner of Transportation may act hereunder by his designated representative.]

Recodify existing N.J.A.C. 16:44-7.2 through 7.10 as **N.J.A.C. 16:44-7.1 through 7.9** (No change in text.)

SUBCHAPTER 8. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF A PERSON(S)

[16:44-8.1 Definitions

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

"Affiliates" means persons having a relationship such that any one of them directly or indirectly controls or has the power to control another.

"Debarment" means an exclusion from New Jersey Department of Transportation (NJDOT) contracting, on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, of inadequacy of performance.

"Disqualification" means a debarment or a suspension which denies or revokes a qualification to bid or otherwise engage in NJDOT contracting which has been granted or applied for pursuant to statute, or rules and regulations.

"NJDOT contracting" means any arrangement giving rise to an obligation to supply anything to or perform any service for the NJDOT, other than by virtue of State employment, or to supply anything to or perform any service for private or public person where the NJDOT provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service or the persons who may supply or perform the same.

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"Person" means any natural person, company, firm, association, corporation, or an entity.

"Suspension" means an exclusion from NJDOT contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

"Vendor" means any person, firm, corporation or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency.]

Recodify existing N.J.A.C. 16:44-8.2 through 8.5 as N.J.A.C. **16:44-8.1 through 8.4** (No change in text.)

16:44-[8.6]**8.5** Conditions for suspension of a person(s)

(a) The following conditions concerning suspension are to be adhered to:

1. (No change.)

2. The existence of any cause for suspension shall not require that a suspension [by] **be** imposed, and a decision to suspend shall be made at the discretion of the Commissioner of Transportation and of the Attorney General, and shall be rendered in the best interest of the State.

3.-6. (No change.)

Recodify existing N.J.A.C. 16:44-8.7 and 8.8 as N.J.A.C. **16:44-8.6 and 8.7** (No change in text.)

16:44-[8.9]**8.8** Extent of debarment, suspension or disqualification

The exclusion from State contracting by virtue of debarment, suspension, or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of the NJDOT, including any contracts which utilize State funds. When it is determined by the Commissioner of Transportation to be essential to the public interest, and upon filing of a [funding] **finding** thereof with the Attorney General, an exception from total exclusion may be made with respect to a particular State contract.

Recodify existing N.J.A.C. 16:44-8.10 through 8.12 as N.J.A.C. **16:44-8.9 through 8.11** (No change in text.)

SUBCHAPTER 9. CORPORATE REORGANIZATION OF CONTRACTORS

[16:44-9.2 Definitions

"Corporate Reorganization" means any change in the structure of organization of a corporation wherein one or more of the following events occur:

1. A change in ownership of more than 10 percent of the stock of the corporation;

2. A transfer of the assets, in whole or in part, from the existing corporation to another or new corporation;

3. A reorganization of the corporate structure that substantially changes the operation or function of the corporation;

4. Any modification of the corporate name;

5. Any other change, modification, dissolution, transfer of, deletion from or addition to the corporate entity which may affect the operation of the corporation as a contractor.]

16:44-[9.3]**9.2** (No change in text.)

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Applications Identification

Proposed New Rule: N.J.A.C. 19:41-7.2A

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

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 94 and 107d.

Proposal Number: PRN 1993-568.

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Submit written comments by November 17, 1993 to:

Antonia Z. Cowan, Senior Counsel
Casino Control Commission
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Proposed new rule N.J.A.C. 19:41-7.2A addresses the issue of establishing identification for the purpose of applying for any license or registration pursuant to the Casino Control Act (Act) and for the purpose of changing the name on a previously issued license or registration. N.J.S.A. 5:12-80a establishes that it is the affirmative burden of each applicant to establish by clear and convincing evidence his or her qualifications under the Act. Sections 89, 90 and 91 require any applicant for a casino employee license (license) or casino hotel registration (registration) to provide sufficient information, documentation, and assurances to meet the qualification criteria. The threshold burden must be to establish identity. Previously, the Casino Control Commission (Commission) has required that application forms be accompanied by certain specified identifying documents. The proposed rule continues to require identifying documents and lists the documents which may be provided. The rule also provides that an applicant must establish identity to a reasonable certainty.

Identity may be established by the production of certain listed documents of such reliability that only one is required, or by the production of two or more documents with less reliable safeguards. In order to link documents and track the use of different names by an individual, legal documents establishing the basis for any change in a name are required. Further, to allow identification to be established when documents of sufficient reliability may not be available, a hearing may be requested to permit the introduction of other evidence.

Social Impact

The proposed rule impacts on all applicants for any license, or registration. The rule will allow the Commission and the Division of Gaming Enforcement to have greater confidence that the person requesting application is, in fact, that individual. It will provide to the applicant or individual who requests a name change on an existing credential, specific instructions as to the various documentation that could be used to establish identity.

Economic Impact

The proposed new rule can be expected to benefit both the regulatory agencies and applicants by providing more explicit requirements to establish identity. Such specific requirements are expected to avoid unnecessary expenditure of time and expense in establishing identity and to reduce the number of contested cases involving individuals who are alleged to have provided false information to gaming regulators.

Regulatory Flexibility Statement

The new rule affects applications by all natural persons, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:41-7.2A [(Reserved)] **Identification**

(a) **Each natural person who seeks to apply for a license or registration under the Act shall establish his or her identity to a reasonable certainty.**

(b) A natural person may establish his or her identity pursuant to (a) above by providing either:

1. One of the following authentic documents:

i. A current United States passport;

ii. A Certificate of United States Citizenship, or a Certificate of Naturalization, issued by the United States Department of Immigration and Naturalization (INS); or

iii. A current INS alien registration card which contains a photograph and fingerprints; or

2. Any two of the following authentic documents:

i. A certified copy of a birth certificate issued by a state, county or municipal authority in the United States bearing an official seal;

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ii. A current driver's license containing a photograph or identifying information such as name, date of birth, sex, height, color of eyes and address;

iii. A current identification card issued to persons who serve in the United States military or their dependents by the United States Department of Defense containing a photograph or identifying information such as name, date of birth, sex, height, color of eyes and address;

iv. A current student identification card with a photograph;

v. A current identification card issued by a federal, state or local government agency containing a photograph or identifying information such as name, date of birth, sex, height, color of eyes and address;

vi. A current identification card issued by INS containing a photograph or identifying information such as name, date of birth, sex, height, color of eyes and address; or

vii. An unexpired foreign passport with an authorization issued by the INS.

(c) Any natural person may request that the Commission change the name designated on his or her application, license or registration by establishing identity pursuant to (b) above or by providing a certificate of marriage, a divorce decree or court order from this or any other state, which evidences the requested name change.

(d) Any person whose application or name change is not accepted for failure to meet the requirements of (b) or (c) above may request a hearing in accordance with N.J.A.C. 19:42-2.1.

(a)

CASINO CONTROL COMMISSION

Casino Simulcasting

Proposed Amendments: N.J.A.C. 19:45-1.1, 1.14A; 19:46-1.20; 19:51-1.2, and 19:55-1.1, 2.9, 4.3, 4.10, 6.2, 7.1 and 8.1

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

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(g) and 99(a).

Proposal Number: PRN 1993-566.

Submit written comments by November 17, 1993 to:

E. Dennis Kell
Assistant General Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

This proposal is intended to make several technical and substantive changes to the Commission's rules concerning simulcasting.

The proposed amendment to N.J.A.C. 19:55-1.1 would add a definition of "credit voucher machine," and N.J.A.C. 19:46-1.20(a), 19:51-1.2 and 19:55-6.2 would be amended to specify that a credit voucher machine is simulcast wagering equipment which is subject to the same regulatory scrutiny as other gaming and simulcast wagering equipment. The proposal would also make technical changes to the definitions of "simulcast handle" in N.J.A.C. 19:45-1.1 and "casino pari-mutuel cashier" and "credit voucher" in N.J.A.C. 19:55-1.1 to make them more accurate and consistent with other defined terms.

N.J.A.C. 19:45-1.14A would be amended to permit a casino simulcasting facility to contain one or more ancillary simulcast counters. Depending upon, among other things, the proximity of an ancillary simulcast counter to the simulcast counter, the number of pari-mutuel windows it contains and the span of authority of the simulcast shift supervisor, the Commission could waive the requirement that the ancillary counter contain its own vault, remote management console and have its own simulcast shift supervisor.

The proposal would amend N.J.A.C. 19:55-2.9 to clarify that sound as well as pictures of simulcast horse races may, subject to Commission approval, be shown in portions of the establishment outside the casino

simulcasting facility, and also to clarify that, subject to Commission approval, they may be shown in non-public areas such as hotel rooms.

An amendment to N.J.A.C. 19:55-4.3 would eliminate the provision that the Commission and Racing Commission may waive the requirement that a transmission line be a dedicated line only in exceptional cases. It would also eliminate the requirement that any application for waiver document the security of the proposed alternative procedure, since a backup line and cellular phone are, in all cases, required.

N.J.A.C. 19:55-4.10(c) would be amended to provide that pari-mutuel tickets on a current race which are purchased at a self-service pari-mutuel machine may be cancelled if they could otherwise be cancelled pursuant to the provisions of N.J.A.C. 19:55-4.10(b).

An amendment to N.J.A.C. 19:55-4.11 would provide that a casino pari-mutuel cashier may cancel any tickets which a patron requests and does not pay for, provided the tickets are cancelled prior to the sale of any ticket to a subsequent patron.

The proposal would amend N.J.A.C. 19:55-7.1 to permit a casino licensee and a sending track to agree upon the terms on which they will reconcile simulcast wagers. The parties may not desire to send or receive payment until a certain agreed-upon monetary threshold has been reached, while the current regulation requires reconciliation within seven days in all cases.

Finally, N.J.A.C. 19:55-8.1 would be amended to provide that the information required to be made available to patrons in a casino simulcasting facility include the assigned weight, drivers and drivers' colors, but only the maternal grandsire of entered horses.

Social Impact

The proposed amendments are generally technical in nature or intended to clarify the existing rules and procedures and will therefore have little social impact. The public may benefit by the proposed amendments to N.J.A.C. 19:55-2.9, which would permit showing simulcast races in hotel rooms. Additionally, if casino licensees choose to install and operate ancillary simulcast counters, patrons should be able to place simulcast wagers more expeditiously.

Economic Impact

It would be speculative to predict whether the proposed amendments will have any economic impact upon casino licensees. It is possible that the installation and operation of ancillary simulcast counters will cause casino licensees to incur some cost and may increase simulcasting wagering. However, they may merely enable patrons to wager the same amounts with less waiting in line.

Regulatory Flexibility Statement

The proposed amendments will only affect the operation of New Jersey casino licensees and the hub facility, none of which is a "small business" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.1 Definitions

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

...
"Simulcast handle" means the amount of currency, coin, gaming chips, slot tokens and coupons wagered by patrons on a simulcast horse race, less the value of cancelled or refunded tickets.
...

19:45-1.14A Simulcast counter

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

(d) A casino simulcasting facility may contain one or more ancillary simulcast counters to house casino pari-mutuel cashiers. An ancillary simulcast counter shall comply with all of the provisions of (a) and (b) above; provided however, that the requirements of a separate RMC, simulcast vault and simulcast shift supervisor for the ancillary simulcast counter, or any of them, may be waived if, considering, among any other relevant factors, the number of pari-mutuel windows in the ancillary simulcast counter, the proximity of the ancillary simulcast counter to the simulcast counter, and the span of authority and responsibility of the supervisor, the Com-

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mission determines that any such requirement is not necessary to the maintenance of adequate supervision of the simulcast wagering operations.

19:46-1.20 Approval of gaming and simulcast wagering equipment; retention by Commission or Division; evidence of tampering

(a) The Commission shall have the discretion to review and approve all gaming and simulcast wagering equipment and other devices used in a casino, casino simulcasting facility or hub facility as to quality, design, integrity, fairness, honesty and suitability including without limitation gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, pai gow tiles, locking devices, card reader devices, data processing equipment, pari-mutuel machines, self-service pari-mutuel machines, **credit voucher machines** and totalisators.

(b) (No change.)

(c) Any evidence that gaming equipment or other devices used in a casino, casino simulcasting facility or hub facility including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, card reader devices, data processing equipment, tokens, slot machines, pari-mutuel machines, self-service pari-mutuel machines, **credit voucher machines** and totalisators have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other device for use in a casino, casino simulcasting facility or hub facility shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's casino security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice, cards and pai gow tiles may be found at N.J.A.C. 19:46-1.16, 19:46-1.18 and 19:46-1.19B, respectively.

19:51-1.2 License requirements

(a) (No change.)

(b) Enterprises required to be licensed in accordance with subsections 92a and b of the Act and (a) above shall include, without limitation, the following:

1. Manufacturers, suppliers, distributors, servicers and repairers of roulette wheels, roulette balls, big six wheels, gaming tables, slot machines, cards, dice, gaming chips, gaming plaques, slot tokens, dealing shoes, drop boxes, computerized gaming monitoring systems, totalisators, pari-mutuel machines [and], self-service pari-mutuel machines **and credit voucher machines**;

2.-3. (No change.)

(c)-(j) (No change.)

19:55-1.1 Definitions

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

...
 "Casino pari-mutuel cashier" means a casino employee who sells pari-mutuel tickets representing simulcast wagers, sells credit vouchers for simulcast wagers [in self-service pari-mutuel machines], pays cash for credit vouchers, and makes simulcast payouts [for winning or refundable pari-mutuel tickets] in a casino simulcasting facility.
 ...

"Credit voucher" means a ticket issued by [a]:

1. A casino pari-mutuel cashier in exchange for cash, gaming chips, slot tokens or coupons;
2. [a] A **credit voucher machine in exchange for cash**; or [by a]

3. A self-service pari-mutuel machine [for currency, as payment for a winning or refunded pari-mutuel ticket,] as a simulcast payout or as the balance returnable after a simulcast wager has been placed.

"**Credit voucher machine**" means a mechanical, electrical or other device connected to a totalisator which, upon the insertion of cash, automatically issues a credit voucher of an equal value.

19:55-2.9 Wagering limited to casino simulcasting facility

Wagering on simulcast horses within the premises of a casino licensee shall be conducted only in a casino simulcasting facility. However, pictures and sound of simulcast horse races may be shown in [non-casino public] **such other** areas of the establishment as approved by the Commission.

19:55-4.3 Transmission data line

A transmission data line shall be a dedicated line. There shall be a minimum of one back-up line, which may be a dial-up line. In addition, each out-of-State sending track shall maintain a cellular phone in its totalisator room. [These requirements] **The dedicated line requirement** may be waived [only in exceptional cases] for good cause shown with the prior written approval of the Commission and Racing Commission. [Any application for such waiver shall be supported by documentation of the precautions which will be taken to assure that the alternative method of transmitting data, which may include the use of cellular phones, will be secure.]

19:55-4.10 Cancellation of tickets

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

(c) [No] **Except for pari-mutuel tickets which may be cancelled pursuant to (b) above, no pari-mutuel ticket purchased at a self-service pari-mutuel machine on a current race shall be cancelled.**

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

(f) **A casino pari-mutuel cashier may cancel any pari-mutuel tickets which a patron requests, but does not pay for, provided the tickets are cancelled prior to sale of any ticket to a subsequent patron.**

19:55-6.2 Simulcast wagering equipment

All manufacturers, suppliers and repairers of simulcast wagering equipment, including totalisators, pari-mutuel machines [and], self-service pari-mutuel machines **and credit voucher machines**, to casino licensees or hub facilities shall be licensed in accordance with the provisions of N.J.S.A. 5:12-92a.

19:55-7.1 Reconciliation with sending tracks

Each casino licensee which conducts casino simulcasting shall, in conformance with information provided by the hub facility, reconcile all simulcast wagers with sending tracks on at least a weekly basis **unless the casino licensee and a sending track agree to a different term of payment, which shall be set forth in the agreement between the casino licensee and sending track.**

19:55-8.1 Race information availability

A casino licensee which conducts casino simulcasting shall make available to patrons of its casino simulcasting facility the following information for each simulcast race: the names of entrants, their sires, dames and **maternal** grandsires, their wagering numbers, post positions, jockeys or **drivers**, **assigned weight**, morning line odds, owners and owners' colors or **drivers' colors**, trainers, sex, color, year of birth; the distance and number of the race; amount of purse; and conditions and claiming price, if any. For harness races, the performance lines for at least the last six races of each entrant shall also be available. The availability of such information, and the procedures for obtaining same, shall prominently be displayed in the casino simulcasting facility. Nothing in this chapter shall preclude a casino licensee from charging patrons a fee for providing such information.

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Interested Persons see Inside Front Cover

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(a)

CASINO CONTROL COMMISSION

Exclusion of Persons

Proposed Amendments: N.J.A.C. 19:42-4.5 and 19:48-1.1, 1.3, 1.4, 1.7 and 1.8

Proposed Repeal and New Rule: N.J.A.C. 19:48-1.5

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

Authority: N.J.S.A. 5:12-63c, 69a, 70b, 70d and 71.

Proposal Number: PRN 1993-570.

Submit written comments by November 17, 1993 to:

Lon E. Mamolen, Counsel
Casino Control Commission
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Act ("Act") provides for the exclusion from casino premises of persons who satisfy enumerated criteria and who are placed on a list maintained by the Casino Control Commission ("Commission"). N.J.S.A. 5:12-71a. The Act also provides that the Commission's exclusion list shall not be deemed an all-inclusive list, and that a casino licensee is bound to exclude from casino premises persons, not on the Commission's list, known to the casino licensee who satisfy these criteria. N.J.S.A. 5:12-71d.

Commission rules implementing section 71, for the most part, parallel the statute, supplementing the statute with interpretive definitions for terms in the statute. Additionally, the rules amplify the exclusion criteria in two substantive respects. The rules supplement the statutory exclusion criteria in section 71a with an individual "who is an associate of a career or professional offender." N.J.A.C. 19:48-1.3(a)2. Further, the rules specifically add to each non-inimical statutory basis for placement on the exclusion list the requirement that such basis renders the individual's presence on casino establishment premises inimical to the interest of New Jersey or of licensed gaming in New Jersey. N.J.A.C. 19:48-1.3(a)1, 1.3(a)2 and 1.3(a)3.

Subsection 71a(3) of the Act requires exclusion for persons "whose presence in a licensed casino would, in the opinion of the commission, be inimical to the interest of the State of New Jersey or of licensed gaming therein, or both." Proposed amendment N.J.A.C. 19:48-1.3(b) defines in most expansive terms the concept of a person's "inimical presence," consistent with case law, and replaces the definition in N.J.A.C. 19:48-1.1.

Each regulatory exclusion criterion contains the phrase "in the opinion of the Commission." Once a person is placed on the exclusion list, it is a fact without saying that, according to the Commission, one or more exclusion criteria were established. For liability under section 71d, rather than impose a duty of clairvoyance on casino licensees, the efficacious construction of the statute requires knowledge by the licensee of the person's history, background, or habits which information renders presence on licensed premises "inimical . . .". Therefore, the proposed amendments eliminate "in the opinion of the Commission" for all regulatory exclusion criteria.

The Commission has generally found both a casino licensee and its employees or agents to have regulatory liability subject to sanction when acts or omissions constituting a violation are committed by the casino licensee's employees or agents who are typically individual licensees. Therefore, the proposal eliminates particular reference throughout N.J.A.C. 19:48-1.7 to a duty of individual licensees or of a casino licensee's agents and employees.

The present procedures for entry of names on the exclusion list are set forth at N.J.A.C. 19:48-1.5. They are, in some part, reiterative of the rules established in N.J.A.C. 19:42-4, governing hearings concerning the exclusion of persons. The proposed repeal and new rule at N.J.A.C. 19:48-1.5 eliminates those subsections which are duplicative or which are recodified at N.J.A.C. 19:42-4.5.

N.J.A.C. 19:48-1.7(a) through (e) set forth the duties of licensees with respect to persons on the exclusion list and to persons known to the licensee who otherwise satisfy exclusion criteria. The proposal clarifies and condenses these provisions eliminating much reiteration of the statute.

The independent duty on casino licensees to keep from their premises persons known to satisfy exclusion criteria is embodied in the rule at N.J.A.C. 19:48-1.7(c). The duty is a companion duty to that of gaming regulators to prohibit from licensed casino establishments patrons who satisfy exclusion criteria. The proposed amendments conform, to the extent practicable, due process procedures for individuals designated by casino licensees who satisfy exclusion criteria to those established for "excluded persons," as defined under N.J.A.C. 19:48-1.1, who by Commission order are required to be excluded from a casino hotel facility.

Proposed amendment N.J.A.C. 19:48-1.3(a)4 adds to the list of examples of persons whose presence is deemed inimical to the interests of New Jersey and casino gaming "persons who pose a threat to the safety of the patrons or employees of a casino licensee," "persons who have a history of conduct which unduly disrupts gaming operations," and "persons subject to an order of the Superior Court of New Jersey excluding such persons from all casino hotel facilities." Proposed amendments N.J.A.C. 19:48-1.3(a)4iii, 1.3(a)4iv, and 1.3(a)4v, respectively. Proposed amendment N.J.A.C. 19:48-1.3(a)4iii codifies the existing practice of many casino licensees. Proposed amendment N.J.A.C. 19:48-1.3(a)4iv includes persons who have exhibited a pattern of conduct on casino premises which, by itself, renders presence inimical. The addition of persons subject to court-ordered exclusion at proposed amendment N.J.A.C. 19:48-1.3(a)4v accommodates a superior court's determination that such person's presence is inimical to the interest of the State of New Jersey.

Proposed amendment N.J.A.C. 19:48-1.4(c) imposes upon the Division of Gaming Enforcement ("Division") the duty to file a petition to exclude simultaneously with a complaint alleging a violation of section 71d of the Act and the implementing rule, proposed amendment N.J.A.C. 19:48-1.7(b)2, against any licensee. The new rule averts the anomaly of necessarily determining a person's excludability without affording the person who allegedly satisfies exclusion criteria due process in the form of a hearing. Such has resulted where the Division filed only a complaint alleging a violation of section 71d of the Act against third-party licensees, and thereby caused the Commission to adjudicate the person's excludability in that proceeding.

Proposed amendment N.J.A.C. 19:48-1.7(c) affords casino licensees and persons designated by them to satisfy exclusion criteria a process through which to seek a determination of the designated person's rights to enter upon the premises of licensed casino hotel establishments. The proposed amendment provides a procedure in which either a casino licensee or such designated person may request the Commission to refer to the Division the investigation and determination of whether the person satisfies exclusion criteria. If such a referral is undertaken and if the Division ultimately determines that the person satisfies exclusion criteria, the Division shall proceed pursuant to N.J.A.C. 19:48-1.5 to petition for placement of the person on the exclusion list.

A petition for exclusion brought by the Division is the only procedure described in the present rules for the entry of names on the exclusion list pursuant to N.J.A.C. 19:48-1.5. The rules do not accommodate a court-ordered exclusion of a person, which not infrequently has arisen in the context of a criminal sentencing proceeding. As a matter of comity to the superior courts of New Jersey, a court-ordered exclusion is dispositive of the inimicality to the interest of the State of New Jersey of a person's presence, and should be given full and prompt effect by the Commission. The proposed amendment at N.J.A.C. 19:48-1.5(a)2 establishes a procedure for court-ordered exclusions upon the Commission's receipt of an order of the Superior Court of New Jersey requiring the exclusion of a person from casino hotel facilities. The new procedure provides that, upon receipt of the order, the Commission shall consider the placement of the person subject to court-ordered exclusion upon at least 15 days notice to the Division and to such person by certified mail at his or her last known address.

The proposal also amends the rules regarding petitions for early consideration of an excluded person's request for removal from the exclusion list. The amended rule would allow only one such petition to be filed during the five years from the date of the person's placement on list.

Social Impact

The proposed amendments to 19:48, to the extent they rekindle the pre-existing statutory duty of casino licensees, its employees and agents, impact on the rights of an individual who seeks entry into a licensed casino hotel facility. The amendments should benefit the regulatory agencies in prohibiting the participation of individuals identified to

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organized crime and other excludable persons from participating in licensed gaming or adjunct activity in casino hotels.

Proposed amendment N.J.A.C. 19:48-1.3 should assist all licensees in the industry and the regulatory agencies by clearly elaborating the standards and bases for determining the inimicality of a person's presence to licensed gaming in New Jersey.

Proposed amendment N.J.A.C. 19:48-1.7(b)2 affords a person alleged in a section 71d complaint to satisfy exclusion criteria, but who is not named as a party, the due process right to be heard before the person's excludability is adjudicated. The proposed amendment should provide fair and consistent agency determinations with respect to access rights of these persons and correlative exclusion obligations of licensees.

Proposed amendment N.J.A.C. 19:48-1.7(c) should benefit individuals who appear to satisfy exclusion criteria, who are designated as such by a casino licensee, but whose names are not sought to be placed on the exclusion list. The proposed amendment should benefit casino licensees and their employees and agents, who may avail themselves of a procedure which may insulate them from regulatory liability or mitigate any penalty therefrom.

Proposed amendment N.J.A.C. 19:48-1.5(a)2 should benefit the State's criminal justice system and the regulatory agencies by enabling the effective enforcement of court-ordered exclusions and by identifying, through non-regulatory means, individuals who satisfy exclusion criteria. Proposed amendments N.J.A.C. 19:48-1.5(a)2 and 1.8(d)2 should protect the due process rights of persons before the Commission who are subject to court-ordered exclusion.

Economic Impact

The proposed amendments can be expected to have negligible economic benefit or detriment on licensed hotel casino establishment, their employees and agents, or members of the general public.

Regulatory Flexibility Statement

The proposed amendments affect exclusion of natural persons and the concomitant obligation of licensed casino hotel establishments, and their employees and agents, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:42-4.5 Plenary hearing; nature of proceeding; burden of proof; **issuance and service of order**

(a) (No change.)

(b) The Division shall have the affirmative obligation to demonstrate by a fair preponderance of the evidence that the candidate for exclusion satisfies the criteria for exclusion established by section 71 of the Act and N.J.A.C. 19:48. **In a hearing pursuant to N.J.A.C. 19:48-1.8, the excluded person shall have the affirmative obligation to show cause why he or she should be removed from the list.**

[(c) The Commission shall render a decision and issue a final order as soon as is practicable after the completion of the plenary hearing. A final order directing that the candidate for exclusion shall be placed on the list or, if the candidate has been placed on the list by preliminary order of the Commission, shall either remain on the list or be removed from the list shall, within five days of its entry, be served upon the candidate, by regular mail at his or her last known address, and upon the Division and all casino licensees.]

(c) **If, upon completion of a plenary hearing, or in the absence of a plenary hearing, upon the expiration of the time for requesting such a hearing, the Commission determines that a candidate for exclusion satisfies the criteria for exclusion established by section 71 of the Act and this chapter, the Commission shall issue a final order directing that the candidate be placed on the exclusion list until further order of the Commission. A final order directing that the candidate for exclusion shall be placed on the list, or if the candidate has been placed on the list by preliminary order of the Commission, shall remain on the list shall, within five days of its entry, be served on the candidate, the Division and all casino licensees.**

(d) **If, upon completion of a plenary hearing, the Commission determines that a candidate for exclusion does not satisfy the criteria for exclusion established by section 71 of the Act and this chapter, the Commission shall issue a final order denying the**

petition for exclusion. A final order denying a petition for exclusion shall, within five days of its entry, be served on the candidate and the Division. If the candidate has been previously placed upon the list by preliminary order of the Commission in accordance with the provisions of N.J.A.C. 19:48-1.5A, the Commission shall issue a final order directing that the excluded person be removed from the list, which order shall, within five days of its entry, be served on the excluded person, the Division and all casino licensees.

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

19:48-1.1 Definitions

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

...

["Inimical to the interest of the State of New Jersey or of licensed gaming" means adverse to the public confidence and trust in the credibility, integrity and stability of casino gaming operations and in the strict regulatory process created by the Casino Control Act.]

...

19:48-1.3 Criteria for exclusion

(a) The exclusion list may include any person **who meets any of the following criteria:**

1. [Who is a] A career or professional offender [and] whose presence in a licensed casino establishment would[, in the opinion of the Commission,] be inimical to the interest of the State of New Jersey or of licensed gaming therein; [or]

2. [Who is an] **An** associate of a career or professional offender [and] whose association is such that his **or her** presence in a licensed casino establishment would[, in the opinion of the Commission,] be inimical to the interest of the State of New Jersey or of licensed gaming therein; [or]

3. [Who] **Any person who** has been convicted of a criminal offense under the laws of any State, or of the United States, which is punishable by more than six months in prison, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed casino establishment would[, in the opinion of the Commission,] be inimical to the interest of the State of New Jersey or of licensed gaming therein; or

4. [Whose] **Any person whose** presence in a licensed casino establishment would[, in the opinion of the Commission,] be inimical to the interest of the State of New Jersey or licensed gaming therein, including, but not limited to [,]

i. [cheats] **Cheats**; [and]

ii. [persons] **Persons** whose privileges for licensure have been revoked[.];

iii. **Persons who pose a threat to the safety of the patrons or employees of a casino licensee;**

iv. **Persons with a documented history of conduct involving the undue disruption of the gaming operations of casino licensees; and**

v. **Persons subject to an order of the Superior Court of New Jersey excluding such persons from all casino hotel facilities.**

(b) **For purposes of (a) above:**

1. A person's presence may be considered "inimical to the interest of the State of New Jersey or of licensed gaming therein" if known attributes of such person's character and background:

i. Are incompatible with the maintenance of public confidence and trust in the credibility, integrity and stability of licensed casino gaming;

ii. Could reasonably be expected to impair the public perception of, and confidence in, the strict regulatory process created by the Act; or

iii. Would create or enhance a risk of the fact or appearance of unsuitable, unfair or illegal practices, methods or activities in the conduct of gaming or in the business or financial arrangements incidental thereto.

2. A finding of inimicality may be based upon the following:

i. The nature and notoriety of the attributes of character or background of the person;

ii. The history and nature of the involvement of the person with licensed casino gaming in New Jersey or any other jurisdiction, or

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with any particular casino licensee or licensees or any related company thereof;

iii. The nature and frequency of any contacts or associations of the person with any casino licensee or licensees, or with any employees or agents thereof; or

iv. Any other factor reasonably related to the maintenance of public confidence in the efficacy of the regulatory process and the integrity of gaming operations, the casino industry and its employees.

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

19:48-1.4 Duties of the Division of Gaming Enforcement

(a) The Division shall, on its own initiative, or upon [the request of the Chairman] **referral by the Commission**, investigate any individual who would appear to be an appropriate candidate for placement on the exclusion list.

(b) (No change.)

(c) **If the Division files a complaint alleging a violation of section 71d of the Act and N.J.A.C. 19:48-1.7(b)2 against any licensee, the Division shall file simultaneously a petition to exclude the person alleged in the complaint to meet the criteria for exclusion in N.J.A.C. 19:48-1.3.**

[(c)](d) If, upon completion of an investigation undertaken [at the request of the Chairman] **upon referral by the Commission**, the Division determines that an individual should not be placed on the exclusion list, the Division shall so state in writing to the [Chairman] **Commission**.

19:48-1.5 Procedure for entry of names

[(a) Upon receipt of a Division petition naming a candidate for placement on the exclusion list, the Commission shall notify the candidate of his or her right to request a plenary hearing in accordance with the provisions of N.J.A.C. 19:42-4.4 and 4.5.

(b) If, upon completion of a plenary hearing, or in the absence of a plenary hearing, upon the expiration of the time for requesting such a hearing, the Commission determines that a candidate for exclusion satisfies the criteria for exclusion established by section 71 of the Act and this chapter, the Commission shall issue a final order directing that the candidate be placed on the exclusion list until further order of the Commission. A final order directing that a candidate be placed on the list shall be effective as to a particular casino licensee upon its service upon that casino licensee.

(c) The placement of a candidate on the exclusion list pursuant to section 71 of the Act, N.J.A.C. 19:42-4.5 and this chapter shall have the effect of requiring the exclusion or ejection of the excluded person from any casino hotel facility.

(d) If, upon completion of a plenary hearing, the Commission determines that a candidate for exclusion does not satisfy the criteria for exclusion established by section 71 of the Act and this chapter, the Commission shall issue a final order denying the petition for exclusion. A final order denying a petition for exclusion shall be served on the candidate and the Division. If the candidate had been previously placed upon the list by preliminary order of the Commission in accordance with the provisions of N.J.A.C. 19:48-1.5A, the Commission shall issue a final order directing that the excluded person be removed from the list, which order shall be served on the excluded person, the Division and all casino licensees. A final order directing the removal of an excluded person from the list shall be effective as to a particular casino licensee upon its service upon that casino licensee.]

(a) **The Commission may place a person on the exclusion list as follows:**

1. **Upon petition of the Division in accordance with the procedures set forth at N.J.A.C. 19:42-4; or**

2. **Upon receipt of an order of the Superior Court of New Jersey excluding such person from all casino hotel facilities. The Commission shall consider such action forthwith upon receipt of the court order, with at least 15 days notice to the Division and to such person by certified mail at his or her last known address.**

19:48-1.7 Duty of casino licensee[; duty of individual licensee]

[(a) No excluded person shall be permitted entry into any portion of a casino hotel facility.]

[(b)](a) [It shall be the duty of a] A casino licensee shall [and of individual licensees to] exclude or eject **the following persons** from its [a] casino hotel facility:

1. [any] **Any excluded person** [whose name has been placed by the Commission on the exclusion list]; or

2. **Any person known to the casino licensee to satisfy the criteria for exclusion set forth in section 71 of the Act and N.J.A.C. 19:48-1.3(a).**

[(c) Any list compiled by the Commission of persons to be excluded or ejected shall not be deemed to be an inclusive list, and a casino licensee shall have a duty to keep from its casino hotel facility persons known to them to be within the classifications declared in Section 71a of the Act and these regulations.]

[(d)](b) [Whenever] **If an excluded person enters, attempts to enter, or is in a casino hotel facility and [said excluded person] is recognized by the casino licensee, [its employees or agents, it shall be the duty and responsibility of] the casino licensee[, its agents and employees to] shall immediately notify [a] the Commission [inspector] and Division [representative] of such fact.**

(c) **The Commission may, upon request of any casino licensee or any person who has been excluded or ejected from a casino hotel pursuant to (a)2 above, refer a matter to the Division for investigation to determine whether such person meets the criteria for exclusion provided in N.J.A.C. 19:48-1.3.**

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

19:48-1.8 Petition to remove name from exclusion list

(a) [Except as otherwise provided by (e) below, any] **An excluded person** [placed on the list by final order of the Commission] may[, after five years have expired since his placement on the list,] petition the Commission to request a hearing concerning his **or her** removal from the list **at any time after five years from the placement by the Commission of such person on the list.**

(b) (No change.)

(c) The Commission may decide the petition on the basis of the documents submitted by the parties. The Commission [shall have the authority to either] **may** summarily deny the petition or **may** grant the petition and direct that a hearing be held in accordance with [the provisions of (d) below] **N.J.A.C. 19:42-4.5**. The Commission shall grant the petition only upon a finding that there is new evidence which is material and necessary, or that circumstances have changed since the placement of the excluded person on the list, and that there would be a reasonable likelihood that the Commission would alter its previous decision.

[(d) A hearing to determine if an excluded person placed on the list by final order of the Commission should be removed from the list shall be conducted as if it were a plenary hearing pursuant to the provisions of N.J.A.C. 19:48-1.5 and N.J.A.C. 19:42-4.5. Notwithstanding the foregoing, an excluded person shall have the affirmative obligation to show cause why he or she should be removed from the list.]

[(e)](d) Any excluded person who is barred from requesting a hearing concerning his **or her** removal from the list by (a) above may petition the Commission for early consideration [of his request] at any time; **provided, however, that no excluded person may, within the five-year period of exclusion, file more than one such petition.** Such petition shall be verified, with supporting affidavits, and shall state with particularity any grounds upon which exclusion was based, and the facts and circumstances which warrant the relief sought. Upon receipt of such petition, the Division shall be given an opportunity to state its position in writing. The Commission may decide the petition on the basis of the documents submitted by the parties. The Commission [shall have the authority to either] **may** summarily deny the petition or **may** grant the petition and direct that a hearing be held in accordance with [the provisions of (d) above] **N.J.A.C. 19:42-4.5**. The Commission shall grant the petition [only]:

1. [upon] **Upon a finding that there exist extraordinary facts and circumstances warranting early consideration of the excluded person's request for removal from the list; or**

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2. If exclusion was pursuant to N.J.A.C. 19:48-1.5(a)2, upon a finding that the excluded person has completed the period of probation or otherwise satisfied the terms of any court-ordered exclusion.

(a)

**CASINO CONTROL COMMISSION
Casino Hotel Alcoholic Beverage Control
Proposed Readoption: N.J.A.C. 19:50**

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

Authority: N.J.S.A. 5:12-70q and 103.

Proposal Number: PRN 1993-567.

Submit written comments by November 17, 1993 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 19:50 is scheduled to expire on December 15, 1993. Chapter 50 was initially promulgated in 1978 to regulate the distribution and consumption of alcoholic beverages on casino premises, as required by N.J.S.A. 5:12-70q. The rules were reorganized and updated upon readoption in 1983 (15 N.J.R. 539(b), 15 N.J.R. 932(b)), and again upon readoption in 1988. 20 N.J.R. 770(a), 20 N.J.R. 1210(a).

The chapter was substantially amended in 1992. 23 N.J.R. 3087(b), 24 N.J.R. 110(b). The rules were reorganized and streamlined, and revised so as to clarify the interrelationship between the casino hotel alcoholic beverage (CHAB) statutory scheme and the alcoholic beverage statutory controls in Title 33 of New Jersey Statutes. A number of unnecessary or obsolete provisions were eliminated. For example, Commission approval is no longer required for every alteration of the physical structure of a CHAB location, but only for major changes creating new CHAB locations, expanding or decreasing the size of existing CHAB locations, or changing the type of CHAB authorizations used therein. The Commission also eliminated a rule requiring the presence of an alcoholic beverage supervisor on the casino floor, as well as a provision which had prohibited licensees from including the cost of a drink in a showroom admission price. Other changes implemented legislative amendments to section 103 of the Casino Control Act, N.J.S.A. 5:12-1 et seq. For example, there are now six types of CHAB authorizations instead of seven, and the prohibition against offering food in the casino rooms was eliminated. The 1992 revisions also codified prior Commission rulings concerning the waiver of certain restrictions on New Year's Eve (for example, an open bar prohibition), eliminating the need for licensees to apply for individual waivers. Chapter 50 was recently readopted (see 25 N.J.R. 1999(e)) and given an early expiration date of December 15,

1993, in order to implement the revision of the readoption schedule for all chapters in Title 19.

The Commission has determined that the rules in N.J.A.C. 19:50 are reasonable and proper for the purposes for which they were originally promulgated. Since chapter 50 was recently subject to comprehensive review and revision, the rules are proposed for readoption at this time without amendment.

Social Impact

The readoption of N.J.A.C. 19:50 will enable the Commission to continue to fulfill its statutory mandate to regulate the distribution and consumption of alcoholic beverages on casino premises. N.J.S.A. 5:12-70q. Further, by controlling and monitoring the promotion and sale of alcoholic beverages within casino hotels, the rules enhance the public confidence in the integrity of the casino industry. Finally, the rules allow CHAB licensees promotional flexibility and marketing opportunities which will enhance the hospitality industry in New Jersey and Atlantic City in accordance with the goals of the Act. See N.J.S.A. 5:12-1b(5).

Economic Impact

Compliance with the rules in N.J.A.C. 19:50 involves time and expense for CHAB licensees. Each applicant for CHAB licensure or license renewal is assessed a fee as set forth in N.J.A.C. 19:41-9.7. Costs are also incurred in maintaining compliance with the various standards and procedures set forth in the rules. The Commission and Division also expend staff time in controlling and monitoring alcoholic beverage operations within the casino industry. Nevertheless, the costs associated with these rules are unavoidable if the Commission is to effectively regulate the distribution and consumption of alcoholic beverages on casino premises. However, as reflected in recent amendments, the Commission has streamlined and simplified the CHAB rules to the extent possible so as to maximize efficiency and reduce costs for both the licensees and the regulatory agencies.

Regulatory Flexibility Statement

The CHAB licensees regulated by chapter 50 are for the most part casino licensees, none of which qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, certain other CHAB licensees may qualify as small businesses. These may include businesses selling alcoholic beverages in a portion of the casino hotel occupied pursuant to a lease or license.

All CHAB licensees, including small businesses, are assessed a fee as set forth in N.J.A.C. 19:41-9.7. Costs are also necessarily incurred by any CHAB licensee in ensuring that its sale of alcoholic beverages in the casino hotel are fully in compliance with Commission standards and the standards of the Division of Alcoholic Beverage Control.

Although some small businesses are affected by these rules, the objective of regulating the sale, service and consumption of alcoholic beverages in casino hotels may be met only imposing uniform compliance upon all CHAB licensees. Thus no exemption is provided for small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:50.

RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF COMMUNITY RESOURCES

Intergovernmental Review of Federal Programs and Direct Development Activities

Readoption with Amendments: N.J.A.C. 5:50

Proposed: August 2, 1993 at 25 N.J.R. 3281(a).

Adopted: September 14, 1993 by Stephanie R. Bush, Commissioner, Department of Community Affairs.

Filed: September 17, 1993 as R.1993 d.505, **without change**.

Authority: N.J.S.A. 52:27D-3.

Effective Date: September 17, 1993, Readoption
October 18, 1993, Amendments

Expiration Date: September 17, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 5:50.

Full text of the adopted amendments follows:

5:50-1.1 Applicability

These rules provide the procedures to be followed by State agencies, local governments, nonprofit and for-profit organizations and areawide agencies when applying for Federal financial assistance in amounts over \$50,000 and for Federal direct development activities covered by Presidential Executive Order 12372 and implementing Federal rules.

5:50-1.4 Review process; applications for financial assistance

(a) Applicants for Federal financial assistance in an amount over \$50,000 under a qualifying program and reviewing agencies shall adhere to the following procedures:

1. Provide the Director and appropriate reviewing agency or agencies with an application review package, as prescribed in N.J.A.C. 5:50-1.12, at least 30 days for noncompeting continuation awards, and at least 60 days for financial assistance other than noncompeting awards, prior to the end of the review period established by the Secretary or Agency Administrator of the Federal funding agency.

2. Applicants for Federal financial assistance shall submit the application review package to the appropriate reviewing agencies, as identified by the Director:

i-vii. (No change.)

3.-6. (No change.)

5:50-1.5 Transmittal of review comments

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

(e) The Single Point of Contact shall prepare and revise, as necessary, instructions describing the procedures required to be followed in the preparation of a State Process Recommendation.

5:50-1.12 Application review package

(a) The application review package required to be submitted, pursuant to N.J.A.C. 5:50-1.4(a), to the Director and to the reviewing agencies identified by the Director, shall include the following documents:

1. An Application for Federal Assistance (Federal Form 424);
2. A one-page narrative description of the proposed activities, including a statement identifying the counties in New Jersey to be impacted or served by the project;
3. A Certification of Distribution of Application Review Package;
4. An 8½ inch × 11 inch site location map (for projects involving construction only); and

5. A completed Project Information Form (for projects involving construction only), incorporated herein by reference as Appendix A.

(b) The Certification of Distribution of Application Review Package and the Project Information Form shall be submitted on forms provided by the Director.

(c) Documents that do not contain all applicable required information, that do not indicate correct distribution of the application review package, or that are not signed and dated where required, shall not be accepted.

(d) Upon request by the applicant, the Director shall provide each applicant with a list of the names and addresses of the reviewing agencies to which the applicant must provide the application review package.

APPENDIX A PROJECT INFORMATION FORM

This form must be completed for all projects involving construction.

PLEASE ELABORATE ON ANY "YES" ANSWER.

USE ADDITIONAL PAGES AS NEEDED.

		YES	NO
1. Will the project encroach upon wetlands or a waterway?	1.	___	___
2. Will the project require potable water? If NO, go to 3.	2.	___	___
a. If YES, is municipal water available?	a.	___	___
b. If YES, will a well be drilled?	b.	___	___
3. Will the project require wastewater disposal? If NO, go to 4.	3.	___	___
a. If YES, is sewerage available?	a.	___	___
b. If YES, will a septic system(s) be included?	b.	___	___
4. Will the project involve demolition?	4.	___	___

EDUCATION

(b)

STATE BOARD OF EDUCATION

Notice of Administrative Correction

Special Education Programs; General Requirements

N.J.A.C. 6:28-4.1

Take notice that the Department of Education has discovered an error in the text of N.J.A.C. 6:28-4.1(e) as published in the notice of adoption in the August 2, 1993 New Jersey Register at 25 N.J.R. 3515(a), 3518. The text of paragraph (e) in the adoption did not correspond to that which appeared as the correct, current rule text in the notice of proposal (see 25 N.J.R. 1318(a)). Specifically, the term "pupils with educational disabilities" published as current rule text in the proposal appeared as "educationally handicapped pupils" in the adoption. The term "educationally handicapped pupils" was replaced in this rule with "pupils with educational disabilities" effective July 6, 1992 (see 24 N.J.R. 1150(a) and 2434(a)). By this notice, published in accordance with N.J.A.C. 1:30-2.7, the correct term is reinserted into the paragraph.

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

6:28-4.1 General requirements

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

(e) The length of the school day and the academic year of programs for [educationally handicapped pupils] **pupils with educational disabilities** shall be at least as long as that established for all pupils.

1.-3. (No change.)

(f)-(k) (No change.)

HEALTH

(a)

DIVISION OF EPIDEMIOLOGY AND COMMUNICABLE DISEASE CONTROL

Notice of Administrative Corrections Youth Camp Safety Act Standards Modification and Waiver of Standard; Staff N.J.A.C. 8:25-2.1 and 2.3

Take notice that the Department of Health has discovered an error in the current text of N.J.A.C. 8:25-2.1(b), in that the word "and" appears as a misprinting of the adopted word "any" (see 6 N.J.R. 180(a) and 264(b)).

Take further notice that the Department of Health has requested, and the Office of Administrative Law has agreed to permit, corrections to the punctuation in the first sentence of N.J.A.C. 8:25-2.3(c). A comma is added after "trips" to conclude the clause setting forth examples of hazardous camp activities, and the unnecessary comma after "specialist" is deleted.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

8:25-2.1 Modification and waiver of standard

(a) (No change.)

(b) The Department may waive temporarily [and] any standard to allow for experimentation and demonstration of new and innovative approaches to a camp program.

8:25-2.3 Staff

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

(c) Hazardous camp activities, such as, but not limited to, aquatics, archery, horseback riding, riflery, and out of camp trips, shall be conducted by a qualified adult activity specialist[,] in accordance with guidelines available from the Department or other recognized organization in the specialized field. The activity specialist shall also have training or experience in conducting the activity.

(d) (No change.)

INSURANCE

(b)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Insurance Producer Licensing Professional Qualifications

Adopted Amendments: N.J.A.C. 11:17-1.2 and 2.3 through 2.15

Adopted New Rule: N.J.A.C. 11:17-2.10

Proposed: September 21, 1992 at 24 N.J.R. 3216(a).

Adopted: September 17, 1993 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: September 21, 1993 as R.1993 d.507, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and with the proposed repeals of N.J.A.C. 11:17-5.1 through 5.6 not adopted.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1 and 17:22A-1 et seq.

Effective Date: October 18, 1993.

Expiration Date: April 15, 1998.

Summary of Public Comments and Agency Responses:

Comments were received from:

Alliance of American Insurers

American Council of Life Insurance

American Credit Indemnity
 American Insurance Association
 American Security Group
 Associates Corporation of North America
 Consumer Credit Insurance Association
 Independent Insurance Agents of New Jersey
 Lincoln National Life Insurance Company
 New Jersey Land Title Association
 Northwest Financial
 Professional Insurance Agency of New Jersey
 The Prudential

COMMENT: We favor the inclusion of "insurance against loss from bad debts" in the current definition of "credit property/casualty insurance." The proposed amendments clarify the relevant statutes and answer concerns regarding agent licensing.

RESPONSE: The Department agrees.

COMMENT: More clarification is needed with regard to the change of address language at N.J.A.C. 11:17-2.7(e)2 and (f) than is currently provided by the proposed change or the accompanying commentary. The commentary states that: "The rule is further amended to clarify that the address which appears on the license (not business mailing and location address) shall be used when notifying the Department of such change." We remain confused by this explanation. It seems at first glance that greater clarity is afforded by keeping the terminology parallel between these two paragraphs ("business mailing and/or location address"). Also, we believe that, where the change involved is one of business address, and requires the submission of the original license for reissuance, reissuance of the updated license should be sufficient proof of notification having been given, and that the five-year record retention requirement in (e)2 should be dispensed with.

RESPONSE: The Department currently requires the residence address of the licensee to appear on the license, not the business mailing or location address as in prior years. Upon adoption, the Department has revised the added language to read: "... and maintain a proof of notification for five years or until receipt of a new or renewed license or other documentation from the Department showing the new address."

COMMENT: Regarding new producers at N.J.A.C. 11:17-2.9(a)3, we request clarification of the proposed change as it relates to the provisions of N.J.A.C. 11:17-2.4(a) for the issuance of a temporary certificate evidencing that an applicant may begin work. Specifically, what may a producer do during the period of the temporary certificate? Does the temporary certificate authorize a person to "begin work" only for another producer?

RESPONSE: When an individual gets a temporary work authority, he or she can use it as if he or she was duly licensed as an insurance producer provided either an insurance company or another licensed producer and the new producer sign the statement verifying that the application and check have been forwarded to the Department for license processing. If a company or a currently licensed producer does not sign this verification with the new producer, then the new producer cannot start selling until he or she gets his or her permanent license. Failure by a sponsor to immediately forward the application and check to the Department may jeopardize the temporary authority of the applicant and expose the sponsor to penalties for falsely verifying that transmittal has been made.

COMMENT: The existing language at N.J.A.C. 11:17-2.9(a)2 fails to address the concerns of insurers by failing to provide for acknowledgement by the Department of receipt of notice. In the event of an administrative mix-up, both the insurance company and the agent should be protected where they have acted in good faith. Therefore, a "deemer" clause should be added as follows:

The Department shall acknowledge receipt of the form in writing to the insurance company within five (5) days of receipt thereof. In the absence of such acknowledgement, the provisions of this section shall be deemed to have been complied with by the insurance company, and the form shall be deemed to have been timely received by the Department of Insurance."

RESPONSE: The Department believes that the cancelled check for payment of fees required by N.J.A.C. 11:17-2.9 set forth in recodified N.J.A.C. 11:17-2.13 is sufficient proof of receipt and that addition of the commenter's proposed language is therefore unnecessary.

COMMENT: Many insurers and insurance trade associations expressed concern about the proposed amendment to N.J.A.C. 11:17-2.9(a)6. With regard to termination of agency contracts, the amendment would have extended the agency relationship if the insurer failed

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to collect all solicitation and related materials—even if the insurer attempted to do so. Commenters reacted to this amendment by stating, among other things, that it would remove agency termination from contract law; that it is impracticable and unnecessarily burdensome on insurers, unfair, unreasonable, unworkable, entirely unnecessary and completely unacceptable. It would promote litigation, confusion and undue hardship for all parties involved. This comment was typical:

“The proposal, as written, puts an extremely undue burden on insurers. There is currently no way, short of litigation, to force a producer to return all of the insurer’s materials upon termination. Oftentimes, the insurer is not even aware of all the materials a producer has collected; additionally, there is nothing to prevent a producer from returning “all” his materials, only to find out later that select materials were withheld by that producer. We do not believe that the insurer should continue to be held liable for the failure of a producer to act upon a request to return materials. We believe that the burden in this situation must be borne not only by the insurer, but also by the producer.”

Other commenters expressed concern over the need for terminated producers, pursuant to contract provisions or N.J.S.A. 17:22-6.14a1 relating to auto insurance policies, to have available materials to enable them to continue to service policies.

RESPONSE: The Department has agreed to eliminate that part of the proposed new language which would have deemed the agency relationship extended in the event the insurer failed to collect all company brochures, solicitation or other related materials from the producer upon termination. The Department agrees that for an insurer to collect all such materials in a given case may indeed be impossible and has added language which requires insurers to “make a good faith attempt” in this regard. The Department would, however, view a “good faith attempt” to be more than just a single telephone call or written request to the terminated producer for return of such materials. Furthermore, the Department would expect an insurer, in an appropriate case, to make a consumer whole where a previously appointed producer acting on apparent authority used the insurer’s materials to write new business after termination. The Department has added new language which recognizes that the terminated producer may have need of such materials in order to continue to service existing policies.

COMMENT: Several commenters strongly opposed the Department’s proposed change set forth at N.J.A.C. 11:17-2.9(b)1 which would require licensed producers to enter into employment contracts. According to one commenter, this amendment would require that wherever two licensed producers desire an employment relationship to exist, they must reduce the details of that relationship to a written employment contract. Doubt was expressed as to whether the Department has the authority to order insurance producers to enter into written employment contracts. By requiring a written contract in every instance where insurance producers desire an employment relationship, the proposed amendment would significantly impair the contractual flexibility and options of producers and force them to reach a written agreement regarding compensation, duties and other matters of employment. Such an imposing requirement could arguably be found to be of an unreasonable and arbitrary nature and a serious impairment to the contractual freedom of New Jersey producers. It was suggested that the Department’s interests could be just as well served by the signing of a single, prescribed form acknowledging that an employment relationship exists pursuant to contract or the provisions of N.J.S.A. 17:22-6.14a1.

Another commenter stated that if a producer employer does not wish to have a producer employee authorized to write all lines of business for which he is licensed, then that producer employer should consider having a contract to state that limitation of authority. However, it should not be a mandatory requirement by regulation. If a contract is not in existence limiting the authorities of the producer employee, it should be assumed that the producer employer has granted the producer employee authority to solicit all lines of insurance for which he or she is licensed. This requirement would be impossible to monitor and would involve thousands of variations in employment agreements for which the Department would not have the personnel necessary to evaluate each and every one. The existing language “. . . may enter into an employment contract . . . may specify that it does not include all license authorities . . .” should remain.

RESPONSE: The Department has reverted back to the existing language with one exception: that the employment contract shall (not may) specify that it does not include all license authorities if such is the case. The requirement that such contracts be in writing is **not new**. The Department agrees with the interpretation stated by one

commenter that, if an employment contract exists between two licensed producers, the contract shall be a written contract (as opposed to a verbal one).

The Department has restored existing language at N.J.A.C. 11:17-2.9(b)2 requiring an employer who has entered into such an employment contract, to notify the Department accordingly. The Department is concerned that many producers may not be adhering to this requirement and warns that penalties may result.

COMMENT: We concur with the proposition that employer producers are responsible for the insurance-related conduct of their employees. Therefore, we do not object to the insertion of the words “be responsible for” at N.J.A.C. 11:17-2.9(b)4. However, we do question the remainder of the proposed insertion. “Activities”, in its unmodified state, is a very broad term, which could be construed to apply to actions taken by employees outside their insurance-related conduct, and even to their actions outside of the employment context. While we do not believe that this was the Department’s intent, this is the literal construction of the proposed wording. Similarly, we just do not know what is intended by the term “oversight”. Therefore, we propose that the adoption read:

4. An employer shall [oversee] **be responsible** for the insurance-related conduct of an employee.

We believe that this, combined with the existing following sentences should be enough for the Department’s purposes.

RESPONSE: The Department agrees and the suggested changes have been made accordingly.

COMMENT: We favor the proposed amendment at recodified N.J.A.C. 11:17-2.11 that would make credit involuntary unemployment insurance marketable through limited insurance representatives. Due to the burdensome licensing requirements to obtain the appropriate insurance agent license to solicit involuntary unemployment insurance, that is, a 150-hour study course and examination, New Jersey lenders have, in effect, not been able to offer this coverage to their customers. Accordingly, we urge that this section be amended as proposed.

RESPONSE: The Department agrees.

COMMENT: The citizens of New Jersey will be better served by authorizing credit involuntary unemployment insurance to be marketed through limited insurance representatives who are trustworthy and of good character, rather than requiring fully licensed agents with extensive continuing education requirements. This product can be adequately handled by limited insurance representatives. When the insurance products are very narrow in scope and limited to only a few benefit plans, the imposition of extensive educational requirements tend to deny the consumer access to the product rather than to enhance the professionalism of the insurance agent.

RESPONSE: The Department agrees.

COMMENT: We object to making the fees set forth at recodified N.J.A.C. 11:17-2.13 non-refundable. We believe that a licensed producer, upon termination of the license through retirement, death, moving out of the state, etc., should be entitled to a pro-rata refund of the licensing fee. Such fees represent a considerable investment and should be refundable when the producer clearly will no longer be transacting an insurance business in New Jersey.

RESPONSE: N.J.S.A. 17:22A-21c provides that “(A)ll fees payable to the commissioner . . . are nonrefundable.” The proposed new language was added to the regulation so that producers would not have to refer back to the statute. The Department has always refunded license renewal fees to families of insurance producers who died or became severely disabled between the time they sent in their renewal fee and the effective date of their renewal license since, they would no longer be able to transact business. However, the Department does not prorate license fees for retirement, etc. License fees are an expense of doing business and producers who move to other states can exchange their New Jersey resident licenses for non-resident licensees if and when they become licensed in their new home state.

COMMENT: With regard to recodified N.J.A.C. 11:17-2.14, we object to the deletion of a specific time frame for the Department to review applicants’ records in cases of license denial. The commentary states that “The Department believes that this change is in the applicant’s interest and will allow a more comprehensive review of license denial appeal prior to the hearing requested.” However, we fear that the absence of any specific time frame would place the applicant into a kind of regulatory limbo with no means to bring about a speedy resolution of the denial. If the Department believes it needs more time in such cases, we propose the following adoption:

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(b) Within [30] 45 days from receipt of a request for hearing”, etc.
 RESPONSE: The time period of 30 days was eliminated since it is sometimes difficult to meet as a deadline. Requests for hearing often contain additional information which may change the complexion of the application and are reviewed carefully before referral to the Office of Administrative Law for hearing. Some requests indicate that additional material is to be sent later. The definite time period unduly limits the Department in such cases sometimes leaving insufficient time to review the material.

Summary of Agency-Initiated Change:

The Department has deleted language that had been proposed erroneously at N.J.A.C. 11:17-2.3(b) and has reinserted all but paragraph 3 of this language at N.J.A.C. 11:17-2.5 as new subsection (d). The first sentence of proposed subsection (d) has been recodified as subsection (e) and the second sentence thereof has been deleted.

The Department has omitted reference to “Subchapter 5. Transition Rules” from this Adoption Notice. Desired amendments to this subchapter will be repropsoed along with proposed changes to subchapter 3.

This section heading of proposed N.J.A.C. 11:17-2.10 has been revised for clarity.

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

11:17-1.2 Definitions

(a) (No change.)

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

...
 “Credit involuntary unemployment insurance” means casualty insurance on a debtor to provide indemnity for payments becoming due on a specific loan or credit transaction while the debtor is involuntarily unemployed.

“Credit life insurance” and “credit health insurance” mean the insurance coverages as defined in N.J.S.A. 17B:29-2.

“Credit property/casualty insurance” means insurance against loss from bad debts and includes property insurance coverage solely for the lender’s interest against loss of or damage to personal property serving as security on a specific loan or credit transaction.

“First-time applicant” means any person who was not actively licensed during the 12-month period prior to application.

...
 “Late renewal” means any renewal that is applied for subsequent to the expiration of a license and within 12 months after the expiration date.

11:17-2.3 Application filing requirements for initial licenses

(a) A first time applicant for an individual license shall submit the following:

1.-5. (No change.)

6. If the application requests surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-2.12; and

7. A valid check or money order for the fees required in accordance with N.J.A.C. 11:17-2.13.

***[(b) If an applicant’s license has lapsed for a period of one year or less the applicant may apply for late renewal of the license within one year of the date the license expired provided the following is attached to the application:**

1. Proof of completion of 48 continuing-education credits as required by N.J.A.C. 11:17-3.4;

2. An affidavit stating whether any business as an insurance producer was transacted by the applicant during the unlicensed period, and if so the number of policies written; and

3. All information required in (a) above, except the criminal history, school certificate and the passing notice.]*

***[(c)]*(b)* A first time applicant for an organization license shall submit the following:**

1.-5. (No change.)

6. If applying for surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-2.12*[(d)]*(c)*;

7. (No change.)

8. A valid check or money order for the fees required by N.J.A.C. 11:17-2.13.

***[(d)]*(c)* Failure to pay a license fee due to “not sufficient funds” or otherwise non-negotiable instrument shall void any license issued in good faith by the Commissioner. Any business written during the period prior to payment shall be deemed in violation of N.J.S.A. 17:22A-*[2]**3* and shall subject the licensee to penalties in addition to the penalties prescribed at N.J.A.C. 11:17D-2.4(a)3 for checks returned for insufficient funds, and a late renewal fee.**

11:17-2.4 Temporary certificate

(a) The Commissioner or his or her designee is authorized to issue a temporary certificate evidencing that an applicant may begin work when the applicant has submitted in proper form the items required by N.J.A.C. 11:17-2.3 if the submission does not disclose any matter that may disqualify the applicant from being licensed. Any certificate issued in accordance with this section shall contain an expiration date and shall expire no more than 60 days after issuance.

(b) A nonresident licensee, upon moving ***[their]* *his or her*** residence or business into the State of New Jersey, shall within 20 days notify the Department of his or her change of address and intent to qualify as a resident insurance producer. Upon such notification, the licensee may continue to act as an insurance producer for a period of 90 days from the date of such notification. The Commissioner or his or her designee may, for good cause shown, extend this time.

11:17-2.5 License renewal

(a) A current licensee shall renew a license in the following manner:

1. At least 10 days before the license expiration date, each licensee shall submit a properly completed renewal application together with a valid check or money order for fees in accordance with N.J.A.C. 11:17-2.13. The renewal application shall be signed, dated and certified to be correct by the licensee or a licensed officer or partner of a licensed organization. The licensee shall certify that he, she or it continues to be qualified in accordance with the insurance laws of New Jersey.

(b) (No change.)

(c) Any licensee who does not desire license renewal shall notify the Department by submitting the renewal application signed, dated and marked on the face, “Do Not Renew”.

***[(d) If an applicant’s license has lapsed for a period of less than one year, the applicant may apply for late renewal of the license within one year of the date the license expired provided the following is attached to the application:**

1. Proof of completion of 48 continuing education credits as required by N.J.A.C. 11:17-3.4; and

2. The applicant’s certification which shall state whether or not the applicant has transacted any business as an insurance producer during the unlicensed period and, if so, the number of policies written.*

[(d)]*(e)* An applicant who files a late renewal request within one year of the license expiration date shall be granted a waiver from the preclicensing education and examination requirement set forth in N.J.A.C. 11:17-3.2 and 3.3. *[The application for renewal shall include the applicant’s certification which shall state whether the applicant transacted any business as an insurance producer while unlicensed and, if so, the number of policies written.]

11:17-2.6 Additional authorities

(a) A currently licensed individual producer may obtain additional authorities as described in N.J.A.C. 11:17-2.2 by submitting the following:

1. His or her current original license, marked to request the additional authority or authorities, dated, signed and certified to be correct by the applicant;

2.-3. (No change.)

4. If applying for surplus lines authority, a bond conforming to the requirements of N.J.A.C. 11:17-2.12*[(d)]*(c)*; and

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5. A valid check or money order for the processing fee as required by N.J.A.C. 11:17-2.13.

(b) A currently licensed organizational producer may obtain additional authorities as described in N.J.A.C. 11:17-2.2 by submitting the following:

1. Its current original license, marked to request the additional authority or authorities, dated, signed and certified to be correct by a licensed officer or partner who holds or has applied for that authority;

2. (No change.)

3. If applying for surplus lines authority, a performance bond as required in accordance with N.J.A.C. 11:17-2.12*(d)**(c)*; and

4. A valid check or money order for the processing fee described in N.J.A.C. 11:17-2.13.

11:17-2.7 Legal and business names; addresses

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

(e) The requirements for business addresses and notification of change of business mailing or location address and residence address are as follows:

1. (No change.)

2. All licensees shall provide the Department with written notification of any change of business mailing or location address and residence address within 20 days of the change and maintain a copy of notification for five years ***or until receipt of a new or renewed license or other documentation from the Department showing the new address***.

3. (No change.)

(f) A licensee shall advise the Department of a change of any legal name, business name or a change of the address which appears on the license by noting the change on its current original license and returning it to the Department for cancellation and reissuance of a new license containing the updated information. No fee shall be required for such changes. If the notice is to change a legal or business name, the request shall be accompanied by a copy of the document filed in the office of the Secretary of State, County Clerk or other authority evidencing that the change has been properly recorded.

11:17-2.8 Branch offices

(a) Licensees shall file with the Department a branch office registration form within 30 days before business is first conducted there. A branch office registration form shall be accompanied by the processing fee specified in N.J.A.C. 11:17-2.13. The appropriate registration form will be prescribed by the Department.

(b)-(e) (No change.)

11:17-2.9 Business relationships

(a) The agency relationship between company and producer is subject to the following requirements:

1. (No change.)

2. An insurance company contracting with a licensed insurance producer shall be responsible to advise the Department of that relationship by filing a notice within 15 days after execution of the contract, on a form prescribed by the Department containing the company's name and reference number; the producer's name and reference number; and the effective date of the contract. The form shall contain the name and title of the company official who signed and certified the notice. The notice shall be submitted with the fee set forth in N.J.A.C. 11:17-2.13.

3. Prior to executing any agency contract, the insurance company shall determine that the producer is properly licensed with authority for the kinds of insurance described in the contract. The insurance company shall not accept any business produced prior to a person's licensure nor shall an insurance company pay commissions to any person for any business produced prior to licensure. The company officer executing the notice shall certify that he or she examined the credentials of the producer and is satisfied that the producer is currently licensed with the authorities for one or more of the kinds of insurance for which the company is authorized.

4-5. (No change.)

6. The notice of termination filed shall specify the true reason for termination. If the reason is conduct by the producer that may constitute cause for disciplinary action against the producer, an additional copy of the notice of cancellation shall be mailed by the insurance company to the Department's Enforcement Division together with an outline of available documentation.

*[i.]**7.* The insurer shall ***make a good faith attempt to*** collect from producers all company brochures, solicitation or other related materials subsequent to termination. ***[A failure to collect solicitation materials shall be deemed to extend the agency relationship.**

ii. In the case of title insurance, in addition to the items set forth in (a)6i above, the insurer shall collect all blank commitments, policy forms, endorsement forms and any other material bearing the insurer's name.]* ***This requirement shall not apply to underwriting guidelines and other materials required for use during the time the producer continues to service policies following termination, as provided by contract or pursuant to N.J.S.A. 17:22-6.14a1.***

*[7.]**8.* (No change in text.)

(b) The employment of another producer by a producer is subject to the following requirements:

1. Licensed producers ***[shall]* *may*** enter into employment contracts by which the employed producer (employee) conducts business under the supervision of and in the name of an employing producer (employer). The employment contract ***shall be in writing and*** shall specify that it does not include all license authorities of the parties, if such is the case. ***[The contract shall be in writing.]*** Both parties shall retain copies ***of the contract*** and shall make them available to the Department upon request.

2. ***An employer who has entered into such an employment contract shall notify the Department of the agreement by submitting a document signed by the employer, or licensed officer or partner if an organization, containing the employee's name, license reference number and the date of employment.*** The employer shall examine the credentials of the employee to determine that he or she is licensed to conduct the kinds of business described in the contract.

3. (No change.)

4. An employer shall be responsible for the ***[activities, oversight, and the]*** insurance-related conduct of an employee. In any disciplinary proceeding, the existence of the employment contract shall be prima facie evidence that the employer knew of the activities of the employee.

5. (No change in text.)

11:17-2.10 ***[Deceased and disabled producers]* *Continuation of business of a producer who becomes disabled or dies***

(a) A licensed producer continuing the business of a deceased or disabled producer is subject to the following requirements:

1.-6. (No change.)

11:17-2.11 Limited insurance representatives

(a) The following kinds of insurance may be marketed through limited insurance representatives.

1.-3. (No change.)

4. Credit involuntary unemployment;

Recodify existing 4.-10. as 5.-11. (No change in text.)

(b) An organization shall not be registered as ***a*** limited insurance representative ***[s]*** unless there is also an individual member of that organization licensed or registered as a limited insurance representative. Each individual acting as a limited insurance representative for an organization must be so licensed or so registered. An insurance company authorized to write the lines of insurance described in (a) above shall register its limited insurance representatives with the Department in accordance with this section.

(c) (No change.)

(d) The insurance company shall satisfy itself that the proposed limited insurance representative is trustworthy, competent, of good character, honest, financially responsible and capable of acting as its representative.

(e) The insurance company shall register its limited insurance representatives on a form prescribed by the Commissioner containing its company name and reference number; the representative's name, and date of birth if an individual; business mailing and

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location address; kind of insurance business to be conducted; and the effective date of the contract. The fee described in N.J.A.C. 11:17-2.13 shall be paid at the time of initial registration.

(f)-(h) (No change.)

11:17-2.12 Licensing information requirements

(a) The following requirements relate to the provision of criminal history information by licensed producers and license applicants.

1.-5. (No change.)

6. Failure to indicate a criminal conviction on the application for an insurance producers license shall constitute a material misrepresentation and subject a licensee to the penalties provided at N.J.S.A. 17:22A-17a and b.

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

(d) Licensed organizations shall notify the Department within 30 days of the addition or deletion of any licensed or unlicensed officer, director, partner or owner of five percent or more of the licensed organization. Notification of the addition of any unlicensed officer, director, partner or owner of five percent or more of the licensed organization shall be accompanied by a properly completed criminal history verification form and required fee.

(e) Departure, termination or deletion of licensee officers, directors or partners, which leaves an organization insurance producer with no licensed officers, directors or partners or with officers, directors or partners who do not have like authorities as the organization producer, shall make the organization producer license inactive. Under these circumstances, the organization license shall be returned immediately to the Commissioner.

11:17-2.13 Fees

(a) The following fees shall be payable as set forth in this chapter: 1.-5. (No change.)

6. Filing or processing any Notice of Agency Contract: \$20.00;

7. Any limited insurance representative registration: \$20.00; and

8. Late renewal fee: \$50.00.

(b) All fees shall be paid by check or money order made payable to: State of New Jersey—General Treasury. All Department fees are non-refundable after the license effective date.

(c) Disabled veterans may be exempted from payment of the fees described in (a) above upon submission to the Department of a recent certificate of the United States Veterans Administration confirming a current service connected disability.

11:17-2.14 Denial of license

(a) (No change.)

(b) Upon receipt of a request for a hearing on a license denial, the Department shall review the application and attachments, its records and any additional information submitted and determine whether the license may be issued. If after this review the Department determines that the applicant is not qualified, the Department shall find that the matter is a contested case and transmit it to the Office of Administrative Law for hearing.

(c) (No change.)

11:17-2.15 Termination and cancellation of license; reinstatement after termination

(a) (No change.)

(b) A producer license may be reinstated after termination during the same license period by completing an application in accordance with the provisions of N.J.A.C. 11:17-2.3. No additional license fee for that period shall be required but the processing fee provided in N.J.A.C. 11:17-2.13 shall be paid.

(c) Submitting a license for cancellation or allowing a license to expire shall not void or terminate any disciplinary proceedings against the licensee, nor prevent imposition of any penalty, ordered restitution or costs.

(d) (No change.)

(e) Nothing in these rules shall authorize any person whose license has been revoked or suspended to continue to transact insurance business after the date of revocation or suspension.

11:17-2.16 (No change in text.)

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(a)

DIVISION OF ADMINISTRATION

Audit Resolution Procedures

Adopted New Rules: N.J.A.C. 12:5

Proposed: August 2, 1993 at 25 N.J.R. 3417(a).

Adopted: September 24, 1993 by Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: September 24, 1993 as R.1993 d.511, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 31 USC Sec. 7500 et seq. and 29 CFR 96.501 et seq.

Effective Date: October 18, 1993.

Expiration Date: October 18, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

N.J.A.C. 12:5 expired on September 19, 1993, in accordance with Executive Order No. 66(1978). Pursuant to N.J.A.C. 1:30-4.4(f), the expired rules proposed for readoption are adopted herein as new rules.

Full text of the adopted new rules proposed for readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:5.

(b)

DIVISION OF ADMINISTRATION

Rulemaking

Petitions for Rules

Readoption: N.J.A.C. 12:6

Proposed: August 16, 1993 at 25 N.J.R. 3682(a).

Adopted: September 24, 1993 by Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: September 24, 1993 as R.1993 d.512, **without change**.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Effective Date: September 24, 1993.

Expiration Date: September 24, 1998.

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. 12:6.

LAW AND PUBLIC SAFETY

(c)

DIVISION OF CONSUMER AFFAIRS

BOARD OF PROFESSIONAL PLANNERS

Professional Misconduct

Adopted New Rule: N.J.A.C. 13:41-2.1

Proposed: September 21, 1992 at 24 N.J.R. 3221(a).

Adopted: April 15, 1993 by the Board of Professional Planners, Shirley Bishop, President.

Filed: September 21, 1993 as R.1993 d.506, **with substantive changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:14A-4.

Effective Date: October 18, 1993.

Expiration Date: July 17, 1995.

ADOPTIONS

The Board of Professional Planners afforded all interested parties an opportunity to comment on proposed new rule N.J.A.C. 13:41-2.1. The rule defines acts which the Board will deem to be professional misconduct in the practice of professional planning. The official comment period ended on October 21, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on September 21, 1992, at 24 N.J.R. 3221(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the New Jersey Society of Planning Consultants, the New Jersey Chapter of the American Planners Association, and the New Jersey County Planners Association.

A full record of this opportunity to be heard can be inspected by contacting the Board of Professional Planners, Post Office Box 45016, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

Fourteen letters (including seven form letters) commenting upon the proposal were received during the 30-day comment period. The commenters are:

New Jersey Society of Professional Planners
 New Jersey Association of Consulting Planners (on behalf of 35 licensed planners and planning firms)
 Louis A. Raimondi, Raimondi Associates
 Brian M. Slauch, PP, The Waetzman Planning Group
 Gerald C. Lenaz, Lenaz, Mueller & Associates
 Peter G. Steck, PP
 Stephen T. Boswell, PP, Boswell Engineering
 Harry N. Tuvel, PE
 Patrick J. Carberry, PP
 John P. Foster, PP
 John G. Yakimik, PP
 James D. Kelly, PP
 Thomas G. Fox, PP
 Kevin J. Boswell, PP

The majority of the commenters generally supported the proposal while raising some questions and requesting modifications or clarifications. Adam W. Samiec, president of the New Jersey Society of Professional Planners, objected to the misconduct rules as unnecessary. A summary of the issues raised by the commenters and the Board's responses follows.

General Comments

COMMENT: Were all New Jersey licensed planners notified of the proposal and asked to respond within the 30-day comment period?

RESPONSE: Pursuant to N.J.A.C. 1:30-3.1(h)4ii and iii, the Board provided additional methods of publicity other than publication in the New Jersey Register by sending the notice of proposal—which included information on the time, place and manner in which interested persons were to respond—to its distribution list, which included the New Jersey Society of Planning Consultants, the New Jersey Chapter of American Planners and the New Jersey County Planners Association.

COMMENT: These rules are unnecessary because laws already adopted, including N.J.S.A. 45:1-21 and N.J.S.A. 40A:9-22.1 et seq. (the Local Government Ethics Law), have established rules of conduct and rules for planners employed by State, county or local governments or serving on boards and agencies.

RESPONSE: N.J.S.A. 45:1-21 does not establish rules of conduct; rather, it lists grounds upon which a board may deny, suspend or revoke a license which include, under subsection (e), professional or occupational misconduct “as may be determined by the board.” It is that determination which the Board is making by this proposal. Furthermore, since not all planners work for governmental entities, rules which pertain to professional practice for all licensees, rather than conduct in office, are necessary.

COMMENT: One commenter stated that the rules do not allow for free enterprise for individuals who belong to professional organizations, stating that “under this rule if you have a relationship through a professional organization you then must stop practicing your profession.”

RESPONSE: The Board does not understand this comment. However, on the assumption that the commenter is referring to a prohibition on membership in a professional organization, the Board points out that that is not the intent of the rules.

COMMENT: Certain sections of the regulation (N.J.A.C. 13:41-2.1(a)4ii, iii and iv) should be reviewed “with the professionals” prior to adoption.

RESPONSE: Without more specific information from this commenter relating to his concerns with these sections, the Board is unable to

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respond. However, professional planners sit on the Board, which thoroughly considered the rule content during open public meeting sessions. In addition, planners were provided with an opportunity to respond through the proposal process, and all comments received during the official 30-day comment period are addressed herein.

N.J.A.C. 13:41-2.1(a)1

COMMENT: The term “faithful agent or trustee” is vague and needs to be defined.

RESPONSE: The Board disagrees that a definition is necessary at this time, as this is a term of art which is understood in legal usage. However, if it subsequently appears that the term is generally being misunderstood, the Board will provide a definition.

N.J.A.C. 13:41-2.1(a)2

COMMENT: This paragraph requires the licensee to notify the proper authorities if a client or employer requests the licensee to sign and seal documents not in conformity with accepted standards. The terms “accepted standards” and “proper authorities” are vague and should be defined. Can the Board take action against a non-licensee (that is, the client or employer)?

RESPONSE: For clarification, the Board is amending this paragraph to replace the phrase “proper authorities” with the phrase “the Board of Professional Planners or other appropriate governmental authority.” The Board disagrees that the term “accepted standards” is vague and is confident that planners are well aware of existing professional practice standards. Much of the basic curriculum which prepares individuals for entry into the profession focuses on ethics. Furthermore, standards for planners who engage in site plan work are set forth at N.J.A.C. 13:41-4; general standards of professional conduct have also been issued by the American Institute of Certified Planners and the American Planning Association. The Board believes that these sources provide sufficient guidance to licensees concerning accepted professional standards. The Board is authorized to take legal action in Superior Court against a non-licensee who engages in conduct prohibited by this paragraph, pursuant to N.J.S.A. 45:1-23.

N.J.A.C. 13:41-2.1(a)4

COMMENT: This paragraph identifies activities which the Board will deem to be misconduct. A new subparagraph should be added precluding licensees in governmental positions from soliciting contracts from other governmental or private entities unless such professional services are limited to pro bono, lectures, educational or similar activities. The commenter believes this would avoid the conflict of a governmental employee using cross-agency influence to secure a professional contract.

RESPONSE: The Board did not intend to preclude licensees from obtaining work as long as they are guided by these rules. Since the proposed rules will govern the conduct of a governmental employee in the situation described above, a new rule is not necessary.

COMMENT: This provision almost mandates a professional representing a municipality to do solely public work or solely private work.

RESPONSE: The Board disagrees. A professional representing a municipality may do both public work and private work provided he or she is guided by these rules.

COMMENT: This paragraph should state specifically that licensees can work simultaneously for private clients and public agencies, although in a way that avoids any conflict.

RESPONSE: While this statement is true, the Board believes a more explicit statement regarding activities the Board will deem to be misconduct is necessary to guide licensees. Although all potential conflict of interest situations cannot be identified in rule form, the proposed rule provides examples of such activities.

N.J.A.C. 13:41-2.1(a)4iii

COMMENT: This provision prohibits a licensee who is in a special relationship of trust with a governmental body from participating in the review or approval of professional work submitted on behalf of any individual with whom the licensee or his or her firm possesses a continuing or anticipated professional or financial relationship. A commenter pointed out that other licensed professionals, that is, engineers, attorneys, doctors, are permitted to render opinions provided they advise the boards and agencies before which they appear of any relationship which may seem improper. The commenter argues, therefore, that the rule discriminates against planners unless it is adopted for other licensed professionals.

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RESPONSE: The Board of Professional Planners does not have jurisdiction to regulate other professionals, all of whom have rules of conduct specific to their own professions. This provision is consistent with the Local Government Ethics Law, N.J.S.A. 40A:9-22.1, which was enacted to apprise government officers and employees of the behavior which is expected of them while conducting their public duties. The provisions of the statutory code of ethics clearly provide that local government officers and employees must avoid actual, possible, and perceived conflicts of interest between their public duties and private interests. These standards provide a "floor" which the Board may exceed, but may not go below, regarding its licensees who are local government officers or employers. See, Attorney General opinion No. 92-0131 (October 14, 1992), p. 6. Prohibiting professional planners from engaging in conflicts of interest and in situations fraught with the appearance of impropriety not only is consistent with the statute but will assume the profession's integrity and preserve the public's confidence in dealing with professional planners.

COMMENT: Seven commenters submitting form letters stated that this provision will result in a significant economic impact upon governmental bodies, since licensees will be required to withdraw from the review process, thus diminishing the availability of services. The commenters suggested that this provision be replaced with a requirement of full disclosure.

RESPONSE: The Board has found that mere disclosure of a conflict is insufficient to remedy the conflict or to protect the public interest. As noted above, the Attorney General has found this provision to be mandated by the recently enacted Local Government Ethics Law.

COMMENT: Several commenters stated that the term "anticipated" is too broad in that many consultants can anticipate eventually being contacted by attorneys or developers at some time in their professional career. Stating that the term "continuing" is too broad, a commenter asked whether a continuing relationship would be deemed to exist if a planner provides services to a client approximately once every two years.

RESPONSE: The basic intent of this rule is to prohibit a licensee who has a review relationship with a governmental body from reviewing work submitted on behalf of an individual or entity with whom the licensee has a definable current or anticipated professional relationship. The term "continuing" establishes a standard which contemplates a fixed and current professional relationship with a client to provide services. If past services have been completed and discharged, there can be no continuing relationship within the meaning of the rule. The Board is amending the rule upon adoption to add a clarifying statement that an anticipated relationship is one which the licensee may reasonably expect to form in the future and which will result in future financial gain. The Board will determine on a case-by-case basis whether a relationship could reasonably have been anticipated or could reasonably be viewed as a continuing relationship pursuant to the standards outlined above. This rule has also been clarified to provide guidance to licensees as to how to avoid a conflict as described in this subparagraph.

COMMENT: When a conflict exists between an appointed municipal engineer who is also a planner and the individual whose plans are being reviewed, will the engineer/planner be prohibited from performing an engineering review of plans and specifications as part of the technical review by a governmental body? The commenter suggested that this provision should be clarified to pertain only to individuals providing planning services.

RESPONSE: An individual who is both an engineer and a planner is subject to the rules of conduct of both boards as well as to the Local Governmental Ethics Law. In determining whether a conflict exists when providing engineering services, this individual would be guided by the rules of conduct of the Board of Professional Engineers and Land Surveyors. The Board does not believe the amendment suggested by the commenter is necessary as this Board's statutory authority clearly extends only to professional planners.

N.J.A.C. 13:41-2.1(a)4iv

COMMENT: This provision should be clarified to state whether the ban on an employee soliciting a professional contract from a governmental body is forever or only while an employee is employed by the agency.

RESPONSE: The Board does not believe clarification is necessary. As indicated by the prefatory phrase "While acting as a member or employee of a governmental body or agency . . .," the prohibition extends only during the term of employment.

COMMENT: The second sentence of this subparagraph states that an advisor or consultant to an agency may accept a professional contract from the agency. A commenter asked what is meant by this sentence, as most consultants usually have such contracts.

RESPONSE: The reference here is to contracts other than the employment contract between the agency and the consultant. For example, a planning consultant under an employment contract with an agency may enter into another contract with the agency to provide different services; that is, master plan, special studies, transportation.

COMMENT: The term "professional contract" should be clarified so as to distinguish between a professional contract and an employment contract. The commenter's concern appears to be that a person already under employment with a municipality by contract could not enter into a second employment contract with the governmental body upon being promoted to another level.

RESPONSE: The Board does not believe this distinction needs to be made. N.J.A.C. 13:41-2.1(a)4 provides examples of activities which the Board will deem to involve the licensee in a conflict of interest. Subparagraph (a)4iv specifically prohibits a full-time employee from accepting a contract from the employing agency for work in addition to and/or unrelated to the full-time employment. As the scenario outlined above is clearly distinguishable from this interpretation (that is, it appears to involve only the licensee's full-time employment and not a contract for additional services), no conflict would appear to be involved. However, if the Board finds this provision is generally misunderstood, clarifying amendments will be proposed at a later date.

N.J.A.C. 13:41-2.1(a)6

COMMENT: Under this paragraph, a licensee may not allow an unlicensed person to appear on the licensee's behalf before any public or private body for the purpose of rendering professional planning services. Two commenters pointed out that an unlicensed employee may conduct existing land use surveys and present the findings to a planning board without rendering a professional planning opinion. It was suggested that the term "services" is too broad and should be replaced with the phrase "professional planning opinion" so as not to restrict the activities of planners in training.

RESPONSE: Professional planning services are defined in N.J.S.A. 45:14A-2. These activities are within the scope of practice of a licensed planner and therefore may not be provided by an unlicensed individual. However, this provision does not restrict the permissible activities of planners in training as long as the activities do not include those within the licensee's scope of practice.

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 2. MISCONDUCT**13:41-2.1 Enumeration of prohibited acts**

(a) Misconduct in the practice of professional planning shall include, but not be limited to, the following:

1. Acting for a licensee's client or employer in professional matters otherwise than as a faithful agent or trustee;
2. Disregarding the safety, health and welfare of the public in the performance of the licensee's professional duties, such as preparing or signing and sealing documents which are not in conformity with accepted standards. If the client or employer insists on such conduct, the licensee shall notify the *[proper authorities]* ***Board of Professional Planners or other appropriate governmental authority*** and withdraw from further service on the project;
3. Using or approving the use of false, fraudulent, or deceptive advertising;
4. Engaging in any activity which involves the licensee in a conflict of interest, including, but not limited to:
 - i. Rendering professional services, or contracting to render such services, where the licensee's ability to faithfully and objectively serve the client is materially compromised by other personal, professional or financial interests or responsibilities;
 - ii. While a licensee, or any firm with which the licensee is associated, is acting as a member, advisor, employee or consultant to a governmental body or agency, undertaking work for private clients where such work will be submitted to the governmental body or agency for review and approval;

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iii. While acting as a member, advisor, employee or consultant to a governmental body or agency, participating in the review, approval or recommendation for approval of plans, specifications, reports or other professional work submitted on behalf of any individual or entity with whom the licensee or any firm with which the licensee is associated possesses any continuing or anticipated professional or financial relationship*. For the purposes of this subparagraph, an anticipated professional or financial relationship shall be one which may reasonably be expected to be formed in the future and which will result in future financial gain. A licensee shall avoid the conflict set forth in this subparagraph by:

(1) Submitting to the governmental body or agency a written notice of the licensee's recusal from any participation in the matter before the governmental body or agency; or

(2) Permanently terminating, or declining to enter into, the professional or financial relationship and providing the governmental body or agency with written notice thereof*;

iv. While acting as a member or employee of a governmental body or agency, soliciting or accepting a professional contract from the governmental body or agency. However, a licensee who is acting merely as an advisor or consultant to a governmental body or agency, or a firm with which the licensee is associated, shall not be precluded by this subsection from accepting a professional contract from the governmental body or agency and providing advice, recommendations and counsel with regard to such work;

v. Accepting compensation or remuneration, financial or otherwise, from more than one interested party for the same service or for services pertaining to the same work unless there has been full written disclosure and written consent obtained from all interested parties;

vi. Accepting compensation or remuneration, financial or otherwise, from material or equipment suppliers for specifying their product or for recommending their employment by any party; or

vii. Accepting commissions or allowances, directly or indirectly, from contractors or other persons dealing with the licensee's client or employer in connection with work for which the licensee is responsible to a client or employer;

5. Affixing the licensee's seal to any documents which were not prepared by the licensee or by employees or subordinates under the licensee's supervision; or

6. Permitting any person not appropriately licensed pursuant to N.J.S.A. 45:14A-1 to act for or on behalf of the licensee as a representative, surrogate or agent in appearance before any public or private body for the purpose of rendering professional planning services.

(a)

NEW JERSEY RACING COMMISSION

**Thoroughbred Rules
Trifecta**

Adopted Amendment: N.J.A.C. 13:70-29.53

Proposed: July 19, 1993 at 25 N.J.R. 3103(a).
Adopted: September 23, 1993 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: September 24, 1993 as R.1993 d.516, **without change**.
Authority: N.J.S.A. 5:5-30.

Effective Date: October 18, 1993.
Expiration Date: January 25, 1995.

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

Full text of the adoption follows:

13:70-29.53 Trifecta

(a) (No change.)

(b) Trifecta tickets shall be sold in not less than \$1.00 denominations and only from machines capable of issuing three numbers.

(c)-(f) (No change.)

(g) Coupled entries and fields are prohibited in trifecta races without the prior approval of the Racing Commission. The Commission in considering whether to grant such approval, shall consider the number of wagering interests in the race and whether its approval would be consistent with the best interests of the sport and wagering public.

(h) (No change.)

(i) In the trifecta races with a coupled entry or mutuel field, the numbers of the first three horses in order of finish as made official shall constitute the winning combination except that, where two or more of such horses are part of the same coupled entry or mutuel field, only the best finishing position attained by the coupled entry or mutuel field shall be considered for payoff purposes and the next best finishing horse or horses, not part of the coupled entry or mutuel field, shall be selected to determine the winning trifecta combination.

(j) (No change in text.)

(b)

NEW JERSEY RACING COMMISSION

Harness Rules

Pre-Race Blood Gas Analyzing Machine Testing Program

Pre-Race Guarded Quarantine; Punishment for Failure to Cooperate

Adopted New Rules: N.J.A.C. 13:71-23.3B and 23.3C

Proposed: August 2, 1993 at 25 N.J.R. 3427(a).
Adopted: September 23, 1993 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.
Filed: September 24, 1993 as R.1993 d.513, **without change**.

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

Effective Date: October 18, 1993.

Expiration Date: January 25, 1995.

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

Full text of the adoption follows:

13:71-23.3B Pre-race blood gas analyzing machine testing program: pre-race guarded quarantine

(a) Where a trainer, during any 12 month period, has had any single horse under his custody, care and control scratched from racing in accord with the procedures set forth in N.J.A.C. 13:71-23.3A, and where the levels of bicarbonate, sodium and pH have not been determined as physiologically normal for the horse in such instance, that horse subsequently scheduled to participate in a race under the custody, care and control of said trainer shall be placed under pre-race guarded quarantine. The track association sponsoring the race shall make such pre-race guarded quarantine available, at the sole expense of the trainer, for a length of time to be determined by the judges but in no event less than six hours prior to the start of the first race of the program.

1. Any pre-race guarded quarantine required by this subsection shall continue as to the affected horse for six months following the date of the scratch of the horse.

(b) Where a trainer, during any 12 month period, has had any horse or horses under his custody, care and control scratched from racing on two occasions in accord with the procedures set forth in N.J.A.C. 13:71-23.3A, and where the levels of bicarbonate, sodium and pH have not been determined as physiologically normal for the horse in either of such instance, all horses subsequently scheduled to participate in a race under the custody, care and control of that trainer shall be placed under pre-race guarded quarantine. The track association sponsoring the race shall make such pre-race guarded quarantine available, at the sole expense of the trainer, for a length

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of time to be determined by the judges but in no event less than six hours prior to the start of the first race of the program.

1. Any pre-race guarded quarantine required by this subsection shall continue as to the affected trainer for six months following the date of the second scratch of a horse or horses under his custody, care and control, and without regard to whether those scratched horses have been transferred to a new trainer. However, if during the six-month period any additional horse under the custody, care and control of the trainer is scratched in accord with the procedures set forth in N.J.A.C. 13:71-23.3A, and where the levels of bicarbonate, sodium and pH have not been determined as physiologically normal for the horse, the judges shall order that the six-month pre-race guarded quarantine period as to all of the trainer's horses be extended for a length of time which they deem appropriate.

(c) Where a single horse, during any 12 month period, has been scratched from racing in accord with the procedures set forth in N.J.A.C. 13:71-23.3A, and where the levels of bicarbonate, sodium and pH have not been determined as physiologically normal for the horse, the horse shall be placed under pre-race guarded quarantine even where the horse has been transferred to a new trainer. The track association sponsoring the race shall make such pre-race guarded quarantine available, at the sole expense of the current trainer, for a length of time to be determined by the judges but in no event less than six hours prior to the start of the first race of the program.

1. Any pre-race guarded quarantine required by this subsection shall continue as to the affected horse for six months following the date of the scratch of the horse. However, where during the pendency of such six-month period the horse is under the custody, care and control of the new trainer and the horse is again scratched in accord with the procedures set forth in N.J.A.C. 13:71-23.3A, and where the levels of bicarbonate, sodium and pH have not been determined as physiologically normal for said horse, the judges shall order that the six-month pre-race guarded quarantine period for the horse be extended for a length of time which they deem appropriate. Where such an event, during any 12 month period, constitutes the second incident of any horse or horses under the custody, care and control of the present trainer of said horse being scratched in accord with the procedures set forth in N.J.A.C. 13:71-23.3A, the provisions of (b) above shall apply as to that current trainer.

13:71-23.3C Pre-race blood gas analyzing machine testing program: punishment for failure to cooperate

In the event any owner, trainer, licensed representative of same, or any person subject to the jurisdiction of the Racing Commission, fails to cooperate in connection with a blood gas analyzing machine testing program authorized pursuant to N.J.A.C. 13:71-23.3A, or with regard to any procedures set forth in or implemented pursuant to N.J.A.C. 13:71-23.3A or 23.3B, in addition to ordering the horse scratched from competition, the judges may, consistent with this chapter, impose fines or suspensions, or both, on the non-cooperating person. In determining the length of suspension or amount of the fine, the judges may consider prior violations of N.J.A.C. 13:71-23.3A or 23.3B.

(a)**NEW JERSEY RACING COMMISSION****Harness Rules****Trifecta****Adopted Amendment: N.J.A.C. 13:71-27.50**

Proposed: July 19, 1993 at 25 N.J.R. 3106(a).

Adopted: September 23, 1993 by the New Jersey Racing

Commission, Frank Zanzuccki, Executive Director.

Filed: September 24, 1993 as R.1993 d.515, **without change**.

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

Effective Date: October 18, 1993.

Expiration Date: January 25, 1995.

(CITE 25 N.J.R. 4752)

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

13:71-27.50 Trifecta

(a) (No change.)

(b) Trifecta tickets shall be sold in not less than \$1.00 denominations and only from machines capable of issuing three numbers.

(c)-(f) (No change.)

(g) Coupled entries and fields are prohibited in trifecta races without the prior approval of the Racing Commission. The Commission, in considering whether to grant such approval, shall consider the number of wagering interests in the race and whether its approval would be consistent with the best interests of the sport and the wagering public.

(h) (No change.)

(i) In trifecta races with a coupled entry or mutuel field, the numbers of the first three horses in order of finish as made official shall constitute the winning combination except that, where two or more of such horses are part of the same coupled entry or mutuel field, only the best finishing position attained by the coupled entry or mutuel field shall be considered for payoff purposes and the next best finishing horse or horses, not part of the coupled entry or mutuel field, shall be selected to determine the winning trifecta combination.

(j) (No change in text.)

(b)**NEW JERSEY RACING COMMISSION****Harness Rules****The Pick(N)****Adopted Rule: N.J.A.C. 13:71-27.56**

Proposed: August 16, 1993 at 25 N.J.R. 3705(a).

Adopted: September 23, 1993 by the New Jersey Racing

Commission, Frank Zanzuccki, Executive Director.

Filed: September 24, 1993 as R.1993 d.514, **without change**.

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

Effective Date: October 18, 1993.

Expiration Date: January 25, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

13:71-27.56 The Pick(N)

(a) The Pick(N) requires selection of the first place finishers in each of four or more consecutive races, with the letter (N) representing the number of such races. The association must obtain written approval from the Commission concerning the scheduling of Pick(N) events. Any changes to the approved Pick(N) format requires prior approval from the Commission.

(b) A carry-over, as is relevant to this section, is that percentage of the pool not paid out when no one successfully selects all winning horses in the Pick(N). The carry-over amount shall be added to the subsequent Pick(N) pool until distributed as a result of the successful selection of all winning horses.

(c) The Pick(N) pool shall be distributed under one of the following methods:

1. Method 1. Pick(N) with carry-over: The net Pick(N) pool and carry-over, if any, shall be distributed as a single price pool to those who selected the first place finisher in each of the Pick(N) contests, based on the official order of finish. If there are no such wagers, then 25 percent of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick(N) races; and the remaining 75 percent of the net pool shall be added to the carry-over.

2. Method 2. Pick(N) with minor pool and carry over: The major share of the net Pick(N) pool (75 percent) and the carry-over, if

any, shall be distributed to those who selected the first-place finisher in each of the Pick(N) contests, based on the official order of finish. The minor share of the net Pick(N) pool (25 percent) shall be distributed to those who selected the first-place finisher in the second greatest number of Pick(N) contests based on the official order of finish. If there are no such wagers selecting the first-place finisher of all Pick(N) contests, the minor share of the net Pick(N) pool (25 percent) shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick(N) contests based on the official order of finish and the major share (75 percent) shall be added to the carry-over.

(d) If there is a dead heat for first in any of the Pick(N) contests involving contestants representing the same betting interest, the Pick(N) pool shall be distributed as if no dead heat occurred. If there is a dead heat for first in any of the Pick(N) contests involving contestants representing two or more betting interests, the Pick(N) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the net Pick(N) pool.

(e) The Pick(N) pool shall be held entirely separate from all other pools and is not a parlay and is not part of a daily double, exacta, trifecta or other wagering pool.

(f) Pick(N) tickets shall be sold in not less than \$1.00 denominations and only from machines capable of issuing four or more numbers.

(g) Those horses constituting an entry or a field as defined within the rules of the Commission shall race in any Pick(N) race as a single wagering interest for the purpose of Pick(N) pari-mutuel pool calculations and payments to the public. A scratch after wagering has begun on any part of an entry or mutuel field in such a race shall be of no effect with respect to the status of such entry or field as a viable wagering interest.

(h) At any time after wagering begins on a Pick(N) pool should a horse, entire betting entry or mutuel field be scratched or declared a non-starter in any Pick(N) race, no further tickets selecting such horse betting entry or mutuel field shall be issued, and wagers upon such horse betting entry or mutuel field, for purposes of the Pick(N) pool, shall be deemed wagers upon the horse, betting entry or mutuel field upon which the most money has been wagered in the win pool at the close of win pool betting for such race. In the event of a money tie, the tied horse, betting entry or mutuel field with the most inside post position shall be designated.

(i) The Pick(N) pool shall not be cancelled based upon the number of race cancellations or races being declared no contest, unless the following is true, in which case all Pick(N) wagers for the individual performance shall be refunded:

1. Three or more races of a Pick 4 or Pick 5 are cancelled or declared no contest;
2. Four or more races of a Pick 6 or Pick 7 are cancelled or declared no contest;
3. Five or more races of a Pick 8 or Pick 9 are cancelled or declared no contest;
4. Six or more races of a Pick 10 or Pick 11 or more races are cancelled or declared no contest.

(j) If, on the last day on which the system of wagering is conducted at a race meeting, no bettor selects the winning horse in those designated races, the total amount of the pool which exists on that day in connection with those races shall be paid to the bettor or bettors who selected the largest number of winning horses in those races.

(k) If, for any reason, the Pick(N) carry-over cannot be paid out on the last scheduled day of a race meeting, the carry-over shall be deposited in an interest bearing account approved by the Commission. The Pick(N) carry-over plus accrued interest shall then be added to the net Pick(N) pool on a race date determined by the Commission.

(l) An association, with the written approval of the Commission, may contribute funds to the net Pick(N) pool or the carry-over pool.

(m) Should circumstances occur which are not foreseen in this section, questions arising thereby shall be resolved with general pari-mutuel practice. Decisions regarding distribution of Pick(N) pools will be final.

OTHER AGENCIES

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Candidate Committee, Joint Candidates Committee and Political Committee Establishment and Reporting

Adopted Amendments: N.J.A.C. 19:25

Adopted Repeals and New Rules: N.J.A.C. 19:25-4 and 6

Adopted New Rules: N.J.A.C. 19:25-8

Adopted Repeal: N.J.A.C. 19:25-9

Proposed: August 2, 1993 at 25 N.J.R. 3429(b).

Adopted: September 14, 1993 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: September 22, 1993 as R.1993 d.509, with **substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 19:44A-6.

Effective Date: October 18, 1993.

Expiration Date: October 1, 1995.

Summary of Public Comments and Agency Responses:

Written comments were received from Richard E. Pryor, II, Vice President and Assistant Counsel, UJB Financial Corp. State Senator William E. Schluter made comments in a telephone conversation. No other comments were received.

Although the Commission conducted a public hearing on these proposed amendments, repeals and new rules at its August 17, 1993 public meeting, no persons appeared to testify. Advance written notice of the hearing was circulated on July 26, 1993 to all State and county political party committees, the State House press, and other interested persons. The hearing record may be received at the offices of the Commission at 28 West State Street, Trenton, New Jersey.

COMMENT: UJB Financial Corp. suggested that the definition of the term "contribution" at N.J.A.C. 19:25-1.7, Definitions, should be amended to exclude from its scope a loan made to a candidate in the ordinary course of business of a lending institution. Such a loan would not be a "contribution" if made on a basis that assures repayment, is evidenced by a written instrument, is subject to a due date or amortization schedule, and bears the usual and customary interest rate of the lending institution. The commenter notes that the Federal Election Campaign Act excludes such a loan from its definition of "contribution"; see 2 U.S.C.A. §431(8)(B).

RESPONSE: The New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq., (hereafter, the act) does not contain any provision parallel to the Federal law cited by the commenter, and the proposed regulatory text of the definition of "contribution" at N.J.A.C. 19:25-1.7 is paraphrased from the statutory definition at N.J.S.A. 19:44A-3d. Further, the act explicitly requires a candidate to report "any loan" without creating any exclusion as suggested by the commenter; see N.J.S.A. 19:44A-16a. However, the Commission finds some indication of a possible legislative intent to exclude certain loans by lending institutions from the application of contribution limits. N.J.S.A. 19:44A-44 permits a gubernatorial candidate to borrow up to \$50,000 from a national or State bank, notwithstanding the existence of the \$1,800 gubernatorial candidate contribution limit. The Commission believes that regardless of the merits of the proposed change, it would constitute a substantial departure from the substance of the regulatory proposal, and therefore the suggested change would require re-proposal pursuant to N.J.A.C. 1:30-4.3. Although the Commission is not adopting this comment, it will consider the suggestion for possible future proposal.

COMMENT: UJB Financial Corp. also observed that the term "depository" as used in N.J.A.C. 19:25-5.2, Qualifications of depositories, refers to banks or other financial institutions, but in the context of N.J.A.C. 19:25-5.3, Names of depositories, the term is used to refer to the account opened by a candidate or committee at a designated financial institution. The term "depository" should be used to refer to a financial

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institution, and the term "depository account" should be used to refer to the account opened by a candidate or committee at such an institution.

RESPONSE: The Commission agrees that the term "depository" should be understood to refer to a financial institution in which a candidate or committee establishes a campaign or organizational account, and therefore as a clarification has amended the text of N.J.A.C. 19:25-5.3 by substituting the words "depository account" for the term "depository," as suggested by the commenter.

COMMENT: N.J.A.C. 19:25-6.5(a)5 provides that a candidate committee may use its funds for the purpose of making a pro-rata repayment to contributors. Under the text as proposed, contributions of less than \$200.00 need not be included in the pro-rata repayment formula. State Senator William E. Schluter, in remarks made in a telephone conversation, suggested that the threshold should be adjusted so that a contribution of "\$200.00 or less" need not be included in the pro-rata repayment formula.

RESPONSE: The Commission agrees that this threshold should be established at "\$200.00 or less," and therefore has amended the proposed text. The threshold of "\$200.00 or less" conforms to the threshold established by the statute for requiring identification of contributors; see P.L.1993, c.65, subsections 9d through 9g. The Commission believes that the thresholds pertinent to contributor identification and to contributor repayment should be as uniform as possible, and therefore has amended the proposed text as suggested by the commenter.

Summary of Agency-Initiated Changes:

1. N.J.A.C. 19:25-8.4(c) sets forth what information must be filed by a candidate committee that has made an affidavit report but received a contribution in excess of \$200.00. The Commission has amended the subsection to clarify that the date of receipt (or dates of receipt in the case of the contributor making more than one contribution totaling over \$200.00) must be among the information to be reported.

2. N.J.A.C. 19:25-8.6(a) and 8.9(a) set forth the 48-hour reporting requirements for "any contribution in excess of \$500.00." These subsections have been amended to clarify that they apply also to a contributor who makes more than a single contribution in the "48-hour" notice timeframe which in the aggregate collectively exceed \$500.00. The phrase "or any aggregate contributions from a contributor which total in excess of \$500.00" has therefore been added to both the subsections.

In the opinion of the Commission, these changes do not require additional public notice and comment because they constitute clarification of statutory or regulatory text, and do not impose any new obligations.

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

19:25-1.7 Definitions

The following words and terms, when used in this chapter and in the interpretation of the act, shall have the following meanings unless a different meaning clearly appears from the context.

...
 "Candidate" means:

1. An individual seeking election to a public office of this State or of a county, municipality or school district to any election; and
2. An individual who shall have been elected or failed of election to an office, other than a party office, for which he sought election and who receives contributions and makes expenditures for any of the purposes authorized by N.J.S.A. 19:44A-11.2.

This definition does not include an individual seeking Federal elective office, or State, county or municipal political party office.

"Candidate committee" means a committee established by a candidate pursuant to N.J.S.A. 19:44A-9(a) for the purpose of receiving contributions and making expenditures.

"Commission" means the New Jersey Election Law Enforcement Commission.

"Continuing political committee" includes any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization, which in any calendar year contributes or expects to contribute at least \$2,500 to aid or promote the candidacy of an individual, or the candidacies of individuals, for elective public office, or the passage or defeat of a public question or public questions,

and which may be expected to make contributions toward such aid or promotion or passage or defeat during a subsequent election, provided that the group, corporation, partnership, association or other organization has been determined by the commission to be a continuing political committee in accordance with N.J.S.A. 19:44A-8(b).

"Contribution" includes every loan, gift, subscription, advance or transfer of money or other thing of value, including any item of real property or personal property, tangible or intangible (but not including services provided without compensation by individuals volunteering a part or all of their time on behalf of a candidate, committee or organization), made to or on behalf of any candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee and any pledge or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of the act, any such commitment or assumption shall be deemed to have been a contribution upon the date when such commitment is made or liability assumed. As set forth in N.J.A.C. 19:25-3.1, funds or other benefits received solely for the purpose of determining whether an individual should become a candidate are not contributions.

...
 "Expenditure" includes every transfer of money or other thing of value, including any item of real or personal property, tangible or intangible, made by any candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee and any pledge or other commitment or assumption of liability to make such transfer. For purposes of reports required under the provisions of the act, any such commitment or assumption shall be deemed to have been an expenditure upon the date when such commitment is made or liability assumed. As set forth in N.J.A.C. 19:25-3.1, payments or commitments made solely for the purpose of determining whether an individual should become a candidate are not expenditures.

1. Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodical publication is not an expenditure, unless the facility is owned or controlled by a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee in which case the cost for a news story which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility, and which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening areas, is not an expenditure.

"File" or "filed" means deposited in the office of the Commission designated in N.J.A.C. 19:25-2.1.

"Joint candidates committee" means a committee established pursuant to N.J.S.A. 19:44A-9(a) by at least two candidates for the same elective public offices in the same election in a legislative district, county, municipality or school district, but not more candidates than the total number of the same elective public offices to be filled in that election, for the purpose of receiving contributions and making expenditures. For the purposes of this definition, the offices of member of the Senate and members of the General Assembly shall be deemed to be the same elective public offices in a legislative district.

"Legislative leadership committee" means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly, or the Minority Leader of the General Assembly pursuant to N.J.S.A. 19:44A-10.1 for the purpose of receiving contributions and making expenditures.

...
 "Political committee" means any group of two or more persons acting jointly, or any corporation, partnership or any other incorporated or unincorporated association which is organized to or does aid or promote the nomination, election or defeat of any

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candidate or candidates for public office, or which is organized to, or does aid or promote the passage or defeat of a public question in any election. A club organized to promote the candidacy of one or more candidates or aid or defeat the passage of a public question, without a term of existence substantially longer than the campaign, is a political committee. Political committee does not include:

1. A candidate committee, joint candidates committee, continuing political committee, a political party committee, or a legislative leadership committee.

2. A contributor not involved in fund raising or other election-related activity does not become a political committee solely by virtue of having made a contribution to a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee.

3.-5. (No change.)

"Political party committee" means the State committee of a political party, as organized pursuant to N.J.S.A. 19:5-4; any county committee of a political party, as organized pursuant to N.J.S.A. 19:5-3; or any municipal committee of a political party, as organized pursuant to N.J.S.A. 19:5-2.

"Testimonial affair" means an affair of any kind or nature including, without limitation, cocktail parties, breakfasts, luncheons, dinners, dances, picnics or similar affairs directly or indirectly intended to raise campaign funds on behalf of a person who holds, or who is or was a candidate for nomination or election to public office in this State, or is directly or indirectly intended to raise funds on behalf of any candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, and legislative leadership committee.

Recodify existing 19:25-2.3 through 2.6 as 2.2 through 2.5 (No change in text.)

19:25-3.1 Exemption for activities conducted solely for the purpose of determining whether an individual will become a candidate; "Testing the Waters"

(a) Funds or other benefits received and payments made solely for the purpose of determining whether an individual should become a candidate are not contributions or expenditures. Activities contemplated under this exemption include, but are not limited to, expenses incurred for: conducting a poll, telephone calls and travel, or similar activity undertaken to determine whether an individual who has not established and is not maintaining a candidate committee or joint candidates committee should become a candidate.

(b) If the individual subsequently becomes a candidate, the funds received and payments made are contributions and expenditures subject to the limitations, prohibitions and requirements of the act. Such contributions and expenditures must be reported with the first report filed by the candidate committee or joint candidates committee, regardless of the date the funds were received or the payments made.

(c) This section is not applicable to:

1. A candidate who has established and is maintaining a candidate committee or joint candidates committee;

2. Funds received or payments made for general public political advertising; and

3. Funds received or payments made for activities designed to amass campaign funds that would be spent after the individual becomes a candidate.

(d) In no instance shall permissible activities conducted solely for the purpose of determining whether an individual will become a candidate be confined or limited on the basis of the total funds received or payments made for such purpose.

19:25-3.2 Recordkeeping for a prospective candidacy

(a) Any prospective candidate, or any person or group acting on behalf of the possible candidacy of a prospective candidate, receiving funds or other benefits and making payments for the purpose of determining whether that prospective candidate should become a candidate shall make and maintain written records of all such funds or other benefits received and of all payments made for that purpose.

(b) The records required by (a) above shall be maintained for a period of not less than four years after the transaction to which they relate occurred, or four years after the date of the election to which they relate, whichever is longer.

SUBCHAPTER 4. ESTABLISHMENT OF REPORTING COMMITTEES

19:25-4.1 Establishment of a candidate committee

(a) A candidate or elected officeholder shall establish a candidate committee by appointing a treasurer and opening a depository for the purpose of receiving contributions and making expenditures no later than the date on which that candidate first receives any contribution or makes or incurs any expenditure in connection with an election, unless the candidate has already established a candidate committee which continues under an obligation to file reports. In the event a prior candidate committee exists, no additional candidate committee may be established.

(b) No later than 10 days after establishing a candidate committee, or no later than 29 days before the election, whichever occurs first, a candidate shall file a certificate of organization and designation of campaign depository containing the following information:

1. The full name of the candidate committee, which name must contain the name of the candidate and the office sought;

2. The name, mailing address and telephone number of the person appointed as chairperson;

3. The name, mailing and resident address and telephone number of the person appointed as treasurer; and

4. The name, mailing address and telephone number of the bank at which the campaign depository has been established, the account name and number, and the names, mailing addresses and telephone numbers of all persons authorized to sign checks or otherwise make transactions.

(c) The certificate of organization and designation of campaign depository shall be certified as true and correct by the candidate, chairperson, and treasurer. The candidate shall further certify that the candidate has not, and will not during the existence of the candidate committee, establish, authorize the establishment of, maintain, or participate directly or indirectly in the management or control of any political committee or continuing political committee.

(d) The candidate shall file an amendment to the certificate of organization and designation of campaign depository no later than three days after any of the information required in (b) above changes.

19:25-4.2 Establishment of a joint candidates committee

(a) Two or more candidates seeking the same elective public offices in the same election shall establish a joint candidates committee for the purpose of receiving joint contributions and making joint expenditures no later than the date on which any of those candidates receives any joint contribution or makes or incurs any joint expenditure in connection with an election, unless the candidates have already established a joint candidates committee which continues under an obligation to file reports. In the event a prior joint candidates committee exists, no additional joint candidates committee may be established.

(b) No later than 10 days after establishing a joint candidates committee, or no later than 29 days before the election, whichever occurs first, the joint candidates committee shall file a certificate of organization and designation of campaign depository containing the following information:

1. The full name of the joint candidates committee, which name must contain the surname of each of the joint candidates and the office sought or, in the case of a joint committee including candidates for State Senate and State Assembly, the offices sought;

2. The name, mailing address and telephone number of the person appointed as chairperson;

3. The name, mailing and resident address and telephone number of the person appointed as treasurer; and

4. The name, mailing address and telephone number of the bank at which the campaign depository has been established, the account

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name and number, and the names, mailing addresses and telephone numbers of all persons authorized to sign checks or otherwise make transactions.

(c) The certificate of organization and designation of campaign depository shall be certified as true and correct by each of the joint candidates, by the chairperson, and by the treasurer. Each joint candidate shall further certify that the joint candidate has not and will not during the existence of the joint candidates committee establish, authorize the establishment of, maintain, or participate directly or indirectly in the management or control of any political committee or continuing political committee.

(d) The joint candidates committee shall file an amendment to the certificate of organization and designation of campaign depository no later than three days after any of the information required in (b) above changes.

19:25-4.3 Individual seeking multiple offices

An individual who is a candidate for two or more offices in an election shall establish separate candidate committees, or separate joint candidates committees, or both, for each office sought.

19:25-4.4 Establishment of a political committee

(a) Any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, which is organized to, or does, aid or promote the nomination, election or defeat of any candidate or candidates in an election, or which is organized to, or does, aid or promote the passage or defeat of a public question or questions in an election, and which raises or expends \$1,000 or more for those purposes, shall establish a political committee by appointing a treasurer and establishing a depository no later than the date on which the political committee first receives any contribution or makes or incurs any expenditure that when combined with other contributions received in an election, or expenditures made or incurred in an election, totals \$1,000 or more.

(b) No later than 10 days after a political committee is established, the political committee shall file a registration statement and designation of campaign depository containing the following information:

1. The full name of the political committee and identifying title, if different;

2. The mailing address of the political committee, and the name and resident address of a resident of New Jersey who is designated by the committee as the agent of the political committee to receive service of legal process;

3. The name, mailing address and telephone number of the person appointed as chairperson;

4. The name, mailing and resident address and telephone number of the person appointed as treasurer;

5. The name, mailing address and telephone number of the bank at which the campaign depository has been established, the account name and number, and the names, mailing addresses and telephone numbers of all persons authorized to sign checks or otherwise make transactions;

6. The general organizational category or affiliation of the political committee, including but not limited to: supporting or opposing a candidate or public officeholder, or support of or affiliation with a business, union, professional or trade association, ideological group, civic association, or other entity; and

7. A descriptive statement prepared by the organizers or officers that identifies:

i. The names and mailing address of the persons having control over the affairs of the political committee, including, but not limited to, persons in whose name or at whose direction or suggestion the committee solicits funds or makes contributions;

ii. The names and mailing addresses of persons not previously identified under (b)7i above who, directly or through an agent, participated in the initial organization of the committee;

iii. In the case of any identified person who is an individual, the occupation of that individual, home address, and name and mailing address of the individual's employer;

iv. In the case of any identified person that is a corporation, partnership, unincorporated association, or other organization, the name and mailing address of the organization; and

v. The economic, political or other particular interests and objectives which the political committee has been organized to or does advance.

(c) The registration statement and designation of campaign depository shall be certified as true and correct by the chairperson and treasurer, and they shall further certify that no candidate has established, authorized the establishment of, maintained or participated directly or indirectly in the management or control of the political committee, and no candidate shall be permitted to do so during the existence of the political committee.

(d) The political committee shall file an amendment to the registration statement and designation of campaign depository no later than three days after any of the information required in (b) above changes.

(e) A political committee shall file a registration statement and designation of campaign depository for each election in which it raises or expends \$1,000 or more to aid or promote the nomination, election or defeat of a candidate or candidates, or the passage or defeat of a public question.

(f) A political committee which expects to raise or expend funds in each of two or more successive elections may apply to the Commission to be certified as a continuing political committee.

19:25-4.5 Establishment of a continuing political committee

(a) Any group of two or more persons acting jointly, or any corporation, partnership, or any other incorporated or unincorporated association, including a political club, political action committee, civic association or other organization, which in any calendar year contributes or expects to contribute at least \$2,500 to aid or promote a candidate or candidates, or to aid or promote the passage or defeat of a public question or questions, and which may be expected to make contributions or expenditures in subsequent calendar years, shall become eligible to be certified by the Commission as a continuing political committee by appointing an organizational treasurer and organizational depository no later than the date on which the prospective continuing political committee first receives any contribution or makes or incurs any expenditure that when combined with other contributions received or expenditures made in a calendar year totals \$2,500 or more.

(b) No later than 10 days after a prospective continuing political committee becomes eligible to be certified, the prospective continuing political committee shall file a registration statement and designation of organizational depository containing the following information:

1. The full name of the prospective continuing political committee, and identifying title, if different;

2. The mailing address of the continuing political committee, and the name and resident address of a resident of New Jersey who is designated by the committee as the agent of the prospective continuing political committee to receive service of process;

3. The name, mailing address and telephone number of the person appointed as chairperson;

4. The name, mailing and resident address and telephone number of the person appointed as organizational treasurer;

5. The name, mailing address and telephone number of the bank at which the organizational depository has been established, the account name and number, and the names, mailing addresses and phone numbers of all persons authorized to sign checks or otherwise make transactions;

6. The general organizational category or affiliation of the prospective continuing political committee, including, but not limited to: supporting or opposing a candidate or public officeholder, or support of or affiliation with a business, union, professional or trade association, ideological group, civic association, or other entity; and

7. A descriptive statement prepared by the organizers or officers that identifies:

i. The names and mailing address of all the persons having control over the affairs of the prospective continuing political committee,

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including but not limited to persons in whose name or at whose direction or suggestion the committee solicits funds or makes contributions;

ii. The names and mailing addresses of persons not previously identified under (b)7i above who, directly or through an agent, participated in the initial organization of the committee;

iii. In the case of any identified person who is an individual, the occupation of that individual, home address, and name and mailing address of the individual's employer;

iv. In the case of any identified person that is a corporation, partnership, unincorporated association, or other organization, the name and mailing address of the organization; and

v. The economic, political or other particular interests and objectives which the prospective continuing political committee has been organized to or does advance.

(c) The registration statement and designation of organizational depository shall be certified as true and correct by the chairperson and organizational treasurer, and they shall further certify that no candidate has established, authorized the establishment of, maintained or participated directly or indirectly in the management or control of the continuing political committee, and no candidate shall be permitted to do so during the existence of the continuing political committee.

(d) The Commission shall certify a continuing political committee upon the satisfactory completion and filing of the registration statement and designation of organizational depository.

(e) The political committee shall file an amendment to the registration statement and designation of organizational depository no later than three days after any of the information required in (b) above changes.

19:25-4.6 Designation by a political party committee

(a) A political party committee shall designate on or before July 1 in each year an organizational treasurer and an organizational depository.

(b) No later than 10 days after designating an organizational treasurer and organizational depository, a political party committee shall file a designation of organizational depository containing the following information:

1. The full name of the political party committee, which shall include the name of the political party to which the committee is affiliated;

2. The name, mailing address and telephone number of the person appointed as chairperson;

3. The name, mailing and resident address and telephone number of the person appointed as organizational treasurer; and

4. The name, mailing address and telephone number of the bank at which the organizational depository has been established, the account name and number, and the names, mailing addresses and telephone numbers of all persons authorized to sign checks or otherwise make transactions.

(c) The designation of organizational depository shall be certified as true and correct by the chairperson and treasurer.

(d) The political party committee shall file an amendment to the certificate of organization and designation of organizational depository no later than three days after any of the information required in (b) above changes.

19:25-4.7 Establishment of a legislative leadership committee

(a) The President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly, and the Minority Leader of the General Assembly may each establish, authorize the establishment of, or designate a State political party committee as a legislative leadership committee for the purpose of receiving contributions and making expenditures to aid or promote candidates, or to aid or promote the passage or defeat of public questions.

(b) The President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly, and the Minority Leader of the General Assembly, or the person authorized by any of them to establish a legislative leadership committee, shall appoint such members and adopt such bylaws for the maintenance of the committee as is deemed appropriate.

(c) Each legislative leadership committee shall appoint an organizational treasurer and designate an organizational depository no later than the date on which it first receives any contribution, or makes or incurs any expenditure. If a State political party committee is designated to serve as a legislative leadership committee, an organizational depository separate from the organizational depository of the State political party committee shall be established and be designated as a depository solely for receiving funds and making expenditures of the legislative leadership committee.

(d) No later than 10 days after a legislative leadership committee is established, the legislative leadership committee shall file a registration statement and designation of organizational depository containing the following information:

1. The full name of the legislative leadership committee, which name must contain the name of the legislative leader who established it or authorized establishment of it;

2. The mailing address of the legislative leadership committee and the name and resident address of a resident of New Jersey who shall have been designated by the committee as its agent to accept service of legal process;

3. The name, mailing and resident address and telephone number of the person appointed as organizational treasurer;

4. The name, mailing address and telephone number of the bank at which the organizational depository has been established, the account name and number, and the names, mailing addresses and telephone numbers of all persons authorized to sign checks or otherwise make transactions;

5. The political party affiliation of the legislative leadership committee, and a statement of the interests which are shared by leadership, members, or financial supporters; and

6. A copy of the bylaws adopted by the legislative leadership committee or, if none have been adopted, a statement to that effect.

(e) The registration statement and designation of organizational depository shall be certified as true and correct by the legislative leader who established, or authorized establishment of, the legislative leadership committee, and by the organizational treasurer.

(f) Within 30 days after a legislative leadership committee is established, the organizational treasurer shall file and certify as true and correct a written notice of the membership containing the names, mailing addresses and telephone numbers of the chairperson, the vice-chairperson, and all other members of the committee.

(g) The legislative leadership committee or its organizational treasurer shall file an amendment to the registration statement and designation of organizational depository, or to the written notice of membership, within three days of the occurrence of any change in any of the information required by (d) or (f) above.

SUBCHAPTER 5. APPOINTMENT OF CAMPAIGN OFFICERS AND DEPOSITORIES

19:25-5.1 Qualifications of campaign or committee officers

(a) Any competent person 18 years of age or older may serve as a campaign treasurer, deputy campaign treasurer, organizational treasurer, deputy organizational treasurer, committee chairperson, committee vice-chairperson, or committee member provided that person maintains a resident address within the State of New Jersey, or alternatively files a consent to service of legal process within the State of New Jersey as set forth in (c) below.

(b) A candidate may serve as his or her own campaign or deputy campaign treasurer, or as committee chairperson, vice-chairperson or member.

(c) Notwithstanding (a) above, no person serving as the chairperson of a political party committee or a legislative leadership committee shall be eligible to be appointed to or serve as:

1. Chairperson, treasurer, or deputy treasurer of a candidate committee or joint candidates committee, other than a candidate committee or joint candidates committee established to further the election of that person as a candidate;

2. Chairperson, treasurer, or deputy treasurer of a political committee; or

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3. Chairperson, organizational treasurer, or deputy organizational treasurer of a continuing political committee.

(d) Any person appointed to serve, or serving, in any capacity specified in (a) above and not maintaining a resident address within the State of New Jersey shall file a consent to service of legal process at an address within this State within three days of appointment, or within three days of abandoning a resident address within this State.

19:25-5.2 Qualifications of depositories

(a) Any bank authorized by law to transact business in the State of New Jersey may be designated as a campaign or organizational depository, and may serve as campaign or organizational depository for any number of candidates or committees, except that any bank designated as a campaign depository by a candidate committee, or joint candidates committee, shall be located within the boundaries of any county in which the campaign is conducted.

(b) For the limited purpose of establishing a depository for investing campaign or organizational funds, a recognized investment institution authorized by law to transact business in the State of New Jersey may be designated as a depository, provided that the invested funds are not used for the benefit of any person or enterprise in which the candidate, or a campaign or committee official, has an economic interest.

(c) Notwithstanding (a) above, a bank or investment institution located outside the State of New Jersey may be designated as an organizational depository provided that the bank or investment institution files a consent to service of legal process at an address within this State prior to accepting or receiving any organizational funds.

19:25-5.3 Names of depositories

(a) A campaign or organizational depository ***account*** shall bear a name that conforms to the following requirements:

1. A campaign depository ***account*** designated by a candidate committee shall be named "Election Fund of (name of candidate)";
2. A campaign depository ***account*** designated by a joint candidates committee shall be named "Election Fund of (surnames of each of the joint candidates)";
3. A campaign depository ***account*** designated by a political committee shall be named "Election Fund of (name of political committee)";
4. An organizational depository ***account*** designated by a continuing political committee shall be named "Election Fund of (name of continuing political committee)";
5. An organizational depository ***account*** designated by a political party committee shall be named "Election Fund of (name of political party committee)"; and
6. An organizational depository ***account*** designated by a legislative leadership committee shall be named "Election Fund of (name of legislative leadership committee)".

19:25-5.4 Deputy treasurers and additional depositories

(a) A campaign treasurer of a candidate committee or joint candidates committee may appoint deputy campaign treasurers, and may designate additional campaign depositories, which depositories shall be located within the boundaries of any county in which the campaign is conducted.

(b) A campaign treasurer of a political committee, or an organizational treasurer of a political party committee, a continuing political committee, or a legislative leadership committee, may appoint deputy campaign or organizational treasurers, and may designate additional campaign organizational depositories.

(c) A campaign or organizational treasurer appointing deputy treasurers or additional depositories shall no later than five days after such appointment or designation file a notice, certified as true and correct by such campaign or organizational treasurer, containing the following information:

1. The name of the committee;
2. The name of the campaign or organizational treasurer;
3. The name, mailing and resident address and phone number of each person appointed deputy campaign or deputy organizational treasurer; and

4. The name, mailing address and phone number of the bank at which each additional campaign or organizational depository has been established, the account number of each additional depository, and the names, mailing addresses and phone numbers of all persons authorized to sign checks or otherwise made transactions for each depository.

19:25-5.5 Removal or resignation of treasurers

In the case of the death, resignation or removal of a campaign treasurer or organizational treasurer, the candidate or committee shall notify the commission of such event within 10 days of its occurrence. The candidate or committee shall appoint a successor as soon as practicable but in no case more than 20 days after such death, resignation or removal and shall notify the commission of the appointment of the successor and file his or her name and address with the commission within three days of such appointment.

SUBCHAPTER 6. RECEIPT AND USE OF FUNDS

19:25-6.1 Receipt and deposit of funds

(a) Funds received by a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee or legislative leadership committee shall be delivered to the campaign or organizational treasurer and deposited by that treasurer in the campaign or organizational depository within 10 days of receipt by the committee, unless transferred prior to deposit pursuant to N.J.A.C. 19:25-6.2.

(b) The date of receipt by a committee of any funds is the date on which a campaign or organizational treasurer, or any other person so authorized, receives funds on behalf of the candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee.

19:25-6.2 Transfer of funds without deposit

(a) A campaign or organizational treasurer may transfer funds (without depositing them) to a duly designated campaign or organizational treasurer of another candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee. Such a transfer of funds without deposit must be made within 10 days of receipt of the funds being transferred, and must be authorized by the candidate, candidates or committee which designated the treasurer.

(b) Any amount transferred pursuant to (a) above shall not be in excess of the amount that a candidate may contribute to another candidate in any election pursuant to N.J.S.A. 19:44A-11.3, except that this subsection shall not be construed to prohibit a county or municipal political party committee from transferring funds as authorized in (a) above.

(c) A campaign or organizational treasurer making any transfer pursuant to this section shall make a written record of all non-deposited funds so transferred, identifying those funds as to source and amount in the same manner as deposited funds, and a copy of that written record shall be included in the next campaign or quarterly report filed by the entity that made the transfer.

19:25-6.3 Receipt of transferred funds

A candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee receiving any transfer of undeposited funds shall deliver those funds to its organizational or campaign treasurer for deposit in its campaign or organizational depository within 10 days of receipt.

19:25-6.4 Expenditures through treasurer

(a) No expenditure of money or other thing of value, nor obligation therefor, including, but not limited to, expenditures, loans or obligations of a candidate or of the candidate's family, shall be made or incurred, directly or indirectly, by a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee except through:

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1. The duly appointed campaign treasurer or deputy campaign treasurers of the candidate committee, joint candidates committee, or political committee;

2. The duly appointed organizational treasurer or deputy organizational treasurers of a political party committee, continuing political committee, or legislative leadership committee.

(b) Any expenditure by a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee shall be made from the organizational or campaign depository established by the committee, except that nothing in this section shall be construed to prohibit an expenditure to establish a petty cash fund not to exceed \$100.00 to be used for occasional and incidental expenses, or an expenditure not to exceed \$100.00 to reimburse a candidate or campaign or organizational officer who has personally incurred an occasional and incidental expense on behalf of the committee.

19:25-6.5 Use or disposition of campaign funds

(a) All contributions received by a candidate, candidate committee, joint candidates committee or legislative leadership committee shall be used only for the following purposes:

1. The payment of campaign expenses, which may be any expense incurred or expenditure made by a candidate, candidate committee, joint candidates committee or legislative leadership committee for the purpose of paying for or leasing items or services used in connection with an election campaign, other than those items or services which may reasonably be considered to be for the personal use of the candidate, any person associated with the candidate, or any of the members of a legislative leadership committee;

2. The making of donations to any charitable organization described in section 170(c) of the Internal Revenue Code of 1954, as amended or modified, or non-profit organization which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954;

3. Transmittal to another candidate, candidate committee, joint candidates committee, political committee, continuing political committee, legislative leadership committee, or political party committee for the lawful use of such other candidate or committee;

4. The payment of the candidate committee's, joint candidates committee's or legislative leadership committee's overhead and administrative expenses related to its operation;

5. The pro-rata repayment of contributors, except that contributors of *[less than]* \$200.00 *or less* may be excluded from repayment; or

6. The payment of ordinary and necessary expenses of holding public office, provided that no funds received by a candidate, candidate committee, or joint candidates committee be used by any candidate or committee for the payment of the expenses arising from the furnishing, staffing or operation of an office used in connection with the candidate's or former candidate's official duties as an elected public official.

(b) Any funds remaining upon the death of a candidate in the campaign depository of the deceased candidate's candidate committee, or joint candidates committee, shall be used for one or more of the purposes set forth in (a) above by the committee's treasurer, or by whomever has control of the depository upon the death of the candidate.

SUBCHAPTER 7. RECORDKEEPING

19:25-7.1 Recordkeeping requirements

(a) An organizational or campaign treasurer, or deputy organizational or campaign treasurer of a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee, shall make and maintain a written record of all funds and contributions, including non-monetary contributions, and shall record the name and address of the contributor, the amount and date the contribution was received, and if the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer.

(b) An organizational or campaign treasurer, or deputy organizational or campaign treasurer, of a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee, shall make and maintain a written record of all funds expended by the committee, including the name and address of the recipient, the amount and date of the expenditure, and the purpose of the expenditure.

(c) The campaign or organizational treasurer of a candidate committee, joint candidates committee, or legislative leadership committee shall include as part of the record of any expenditure of such a committee, a notation or other reference disclosing which of the six enumerated permissible uses of funds set forth in N.J.A.C. 19:25-6.5(a) is applicable to the expenditure.

(d) A candidate, the candidates of a joint candidates committee, or the chairman of a political committee, continuing political committee, political party committee, or legislative leadership committee, shall take such steps as are necessary and appropriate to insure that a campaign treasurer, or organizational treasurer, appointed by the candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee, complies with the recordkeeping requirements of this section and this chapter.

19:25-7.2 Recordkeeping for credit card transactions

(a) Whenever a candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, or legislative leadership committee purchases, or authorizes purchase of, goods or services by use of a credit card, the campaign or organizational treasurer shall make and maintain a record of the following information:

1. The exact name or title of the owner of the card, and the name of the lending institution that issued the card;
2. The date of the purchase;
3. The name and address of the vendor from whom the purchase was made;
4. The purpose of the purchase; and
5. The cost and description of the goods or services purchased.

19:25-7.3 Period of retention

All records required to be made by N.J.A.C. 19:25-7.1 shall be maintained for a period of not less than four years after the date of the election to which they are relevant, or a period of not less than four years after the transaction to which they relate occurred, whichever is longer.

19:25-7.4 Affidavit for missing records

(a) An organizational or campaign treasurer unable to produce any record required to be made pursuant to N.J.A.C. 19:25-7.1, Recordkeeping requirements, shall submit to the Commission within 10 days after the Commission so requests an affidavit specifying which record cannot be produced and the reasons the record is unavailable. The affidavit shall specify:

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

SUBCHAPTER 8. CANDIDATE, JOINT CANDIDATES, AND POLITICAL COMMITTEE REPORTING

19:25-8.1 Candidate or joint candidates committee election fund reports

(a) A candidate committee, or a joint candidates committee, shall file election fund reports of all contributions received, all expenditures made, and all other transactions of the election fund subject to reporting under the act and these regulations.

(b) The term "election fund reports" shall mean election-cycle reports as defined in N.J.A.C. 19:25-8.2(b), or quarterly reports as defined in N.J.A.C. 19:25-8.3(b), which reports shall be filed in accordance with N.J.A.C. 19:25-8.12, Time and place of filing reports.

(c) The initial election fund report of a candidate committee, or joint candidates committee, shall be either a 29-day preelection report or a quarterly report. In the event the committee is

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established within five months or less of the due date of the 29-day preelection report for the election in which the candidate or joint candidates is or are seeking office, the committee shall file the 29-day preelection report described in N.J.A.C. 19:25-8.2 report as its initial election fund report. However, if the committee is established more than five months prior to the due date of the 29-day preelection report for the election in which the candidate or joint candidates is or are seeking office, the committee shall file as its initial election fund report any quarterly report described in N.J.A.C. 19:25-8.3 that is due for filing within five months of the date the committee is established.

(d) The initial election fund report shall begin with the reporting of the first contribution received or expenditure made in the election (including any transaction that initially may have been pre-candidacy activity pursuant to N.J.A.C. 19:25-3.1), and shall report all subsequent contributions, expenditures, or other reportable transactions of the election fund occurring before the closing date applicable to the report.

(e) A candidate committee, or joint candidates committee, shall continue to file election fund reports until such time as it terminates its reporting requirements and files a final election fund report pursuant to N.J.A.C. 19:25-8.11.

19:25-8.2 Election-cycle reports

(a) A candidate committee, or joint candidates committee, shall file election-cycle reports during any election in which the candidate, or joint candidates, is or are seeking election, or nomination for election.

(b) The term "election-cycle reports" shall mean the reports described below, which reports shall be due for filing on the following dates and shall report all contributions, expenditures, or other transactions of the election fund occurring within the following periods of time:

1. The 29-day preelection report shall be due for filing on the 29th day before the election and shall begin with the reporting of the first contribution received or expenditure made in an election (including any transaction that initially may have been pre-candidacy activity pursuant to N.J.A.C. 19:25-3.1); except that if the candidate committee, or joint candidates committee, filed, or was required to file, a prior quarterly report pursuant to N.J.A.C. 19:25-8.3, its 29-day preelection report shall begin with the first contribution received or expenditure made on or after 12:00 A.M. of the date on which the reporting period of the prior quarterly report ended. The 29-day preelection report shall end with the reporting of the last transaction occurring before 12:00 A.M. on the 31st day preceding the date of the election.

2. The 11-day preelection report shall be due for filing on the 11th day before the election and shall begin with the reporting of the first transaction occurring on or after 12:00 A.M. on the 31st day preceding the date of the election and end with the reporting of the last transaction occurring before 12:00 A.M. on the 13th day preceding the date of the election; and

3. The 20-day postelection report shall be due for filing on the 20th day following the election and shall begin with the reporting of the first transaction occurring on or after 12:00 A.M. on the 13th day preceding the date of the election and end with the reporting of the last transaction occurring before 12:00 A.M. on the 18th day following the date of the election.

(c) Notwithstanding (b) above, a candidate committee or joint candidates committee that is filing election fund reports in a municipal run-off election shall not be required to file the 20-day postelection report following the municipal election or the 29-day preelection report for the municipal run-off election. The 11-day preelection municipal run-off election report shall begin with the reporting of the first transaction occurring after 12:00 A.M. on the 13th day preceding the municipal election, and shall end with the reporting of the last transaction occurring before 12:00 A.M. on the 13th day preceding the municipal run-off election.

(d) The campaign treasurer and the candidate shall file and certify the correctness of a candidate committee election-cycle report, and shall certify that no contributions have been received in violation of the contribution limits prescribed by the act.

(e) The campaign treasurer and the joint candidates shall file and each certify the correctness of a joint candidates committee election-cycle report, and certify that no contributions have been received in violation of the contribution limits prescribed by the act.

19:25-8.3 Quarterly reports

(a) A candidate committee, or joint candidates committee, shall file quarterly reports for any period of time it is not required to file election-cycle reports pursuant to N.J.A.C. 19:25-8.2.

(b) The term "quarterly reports" shall mean the reports described below, which reports shall be due for filing and shall cover the following periods of time:

1. The first quarterly report shall be due for filing on April 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:00 A.M. of January 1 of the calendar year of the filing date and end with the reporting of transactions occurring before 12:00 A.M. of April 1 of that calendar year;

2. The second quarterly report shall be due for filing on July 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:00 A.M. on April 1 of the calendar year of the filing date and end with the reporting of transactions occurring before 12:00 A.M. of July 1 of that calendar year;

3. The third quarterly report shall be due for filing on October 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:00 A.M. on July 1 of the calendar year of the filing date and end with the reporting of transactions occurring before 12:00 A.M. of October 1 of that calendar year; and,

4. The fourth quarterly report shall be due for filing on January 15 of a calendar year and shall begin with the reporting of transactions occurring on or after 12:00 A.M. on October 1 of the calendar year preceding the calendar year of the filing date and end with the reporting of transactions occurring before 12:00 A.M. of January 1 of the calendar year of the filing date.

(c) A candidate committee, or joint candidates committee, that does not terminate its election-cycle filing requirements with its 20-day postelection report and is therefore required to file quarterly reports, shall start filing quarterly reports on the following dates:

1. For a school board candidate, or joint candidates, the committee shall file a third quarter report on October 15 of the calendar year of the school board election;

2. For a municipal or municipal run-off election candidate, or joint candidates, the committee shall file a third quarter report on October 15 of the calendar year of the municipal or municipal run-off election;

3. For a primary election candidate, or joint candidates, who is or are defeated in a primary election or otherwise is or are not running in the following general election, the committee shall file a third quarter report on October 15 of the calendar year of the primary election;

4. For a general election candidate, or joint candidates, the committee shall file a first quarter report on April 15 of the calendar year following the general election; or

5. For a special election candidate, or joint candidates, the committee shall file a quarterly report on a quarterly report filing date set forth in (b) above that falls within five months of the date on which the 20-day postelection report closed, that is 12:00 A.M. of the 18th day after the date of the special election.

(d) The initial quarterly report filed by a candidate committee, or joint candidates committee, after the filing of a 20-day postelection report, shall begin with the reporting of the first contribution received, expenditure made, or other reportable transaction occurring after 12:00 A.M. on the 18th day following the date of election. Subsequent quarterly reports shall cover the time periods set forth in (b) above.

(e) The campaign treasurer and the candidate, or joint candidates, shall file and each certify the correctness of each quarterly report, and shall certify that no contributions have been received in violation of the contribution limits prescribed by the act.

19:25-8.4 Candidate certified statements (Form A-1 or A-2)

(a) There shall be no obligation to file the election fund reports referred to in N.J.A.C. 19:25-8.1 on behalf of any candidate commit-

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tee of a candidate who files no later than five months after the date on which the committee is established, or no later than the 29th day before the election in which the candidate is seeking office, whichever is earlier, a certified statement (Form A-1) to the effect that the total amount expended or to be expended on behalf of his or her candidacy by the candidate committee, or by any candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, legislative leadership committee or person shall not in the aggregate exceed \$2,000 in that election.

(b) There shall be no obligation to file the election fund reports referred to in N.J.A.C. 19:25-8.1 on behalf of a joint candidates committee if the joint committee files no later than five months after the date on which the committee is established, or no later than the 29th day before the election in which the joint candidates are seeking office, whichever is earlier, a certified statement (Form A-2) to the effect that the total amount to be expended on behalf of the joint candidacies by the joint candidates committee or by any candidate committee, joint candidates committee, political committee, continuing political committee, political party committee, legislative leadership committee or person shall not in the aggregate exceed the following amounts:

1. In the case of a joint candidates committee consisting of two candidates, \$4,000 in the election; or

2. In the case of a joint candidates committee consisting of three or more candidates, \$6,000 in the election.

(c) If a candidate committee or joint candidates committee which has filed a certified statement receives any contribution from any one source aggregating more than \$200.00 it shall file a report which shall provide the name and mailing address of the source*, **the date or dates received***, and the aggregate total amount of contributions therefrom, and where the source is an individual, the occupation of the individual and the name and mailing address of the individual's employer. The report shall be signed by the campaign treasurer and filed no later than:

1. On the filing date for a quarterly report if the contribution is received within any quarterly report period prescribed by N.J.A.C. 19:25-8.3(b);

2. On the 29th day preceding the date of the election if the contribution was not required to be reported in a prior quarterly report period and is received prior to 12:00 A.M. on the 31st day preceding the date of the election;

3. On the 11th day preceding the date of the election if the contribution is received on or after 12:00 A.M. on the 31st day preceding the election but before 12:00 A.M. on the 13th day preceding the election; or

4. On the 20th day following the date of the election if the contribution is received on or after 12:00 A.M. on the 13th day preceding the election but before 12:00 A.M. on the 18th day following the election.

(d) A candidate, or joint candidates, for election to an office or offices of a school board, or a write-in candidate for any office, making expenditures within the limits provided in (a) or (b) above, shall not be required to file certified statements pursuant to (a) and (b) above, and any candidate committee, or joint candidates committee, established by such a candidate, or joint candidates, shall not be required to file election fund reports pursuant to N.J.A.C. 19:25-8.1. However, any candidate committee, or joint candidates committee, established by such a candidate or joint candidates, must file the reports required by (c) above. For the purposes of this section, the term "write-in candidate" shall mean an individual seeking or having sought election to a public office who has not filed an effective nominating petition for that office and whose name does not appear as a candidate for that office on the ballot used for that election.

19:25-8.5 Candidate not receiving contributions or making expenditures

A candidate who has not established a candidate committee or appointed a treasurer and opened a campaign depository because no contributions have been received and no expenditures have been

made, and who reasonably expects not to receive any contributions or make any expenditures in the election in which the candidate is seeking office, shall file a certified statement (Form A-1) so indicating no later than the 29th day preceding the date of the election in which the candidate is seeking office. In the event the candidate subsequently receives a contribution in the election, the candidate must establish a candidate committee as provided by N.J.A.C. 19:25-4.1 and file reports pursuant to N.J.A.C. 19:25-8.

19:25-8.6 Contributions received immediately before an election

(a) A campaign treasurer of a candidate committee, or joint candidates committee, shall file a report or other written notice of any contribution in excess of \$500.00*, **or any aggregate contributions from a contributor which total in excess of \$500.00,*** received on or after 12:00 A.M. on the 13th day preceding the date of an election in which the candidate, or joint candidates, is or are seeking election, but before 12:00 A.M. on the date of the election, which report shall contain:

1. The name of the recipient candidate committee, or joint candidates committee;

2. The date the contribution was received;

3. The amount of the contribution;

4. The name and mailing address of the contributor; and

5. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer.

(b) The report or written notice described in (a) above shall be filed with the Commission within 48 hours of receipt of the contribution, and shall be signed by the campaign treasurer or a candidate, except that a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, FAX) shall not be permitted.

19:25-8.7 Termination of election fund reporting

(a) A candidate committee, or a joint candidates committee, may certify a 20-day postelection report or a quarterly report as its final election fund report and thereby terminate further quarterly reporting provided:

1. There is no remaining balance in any depository opened or maintained by the candidate committee, or joint candidates committee;

2. There are no outstanding obligations of the candidate committee, or joint candidates committee; or, if outstanding obligations exist, the total amount does not exceed \$1,000, or does not exceed 10 percent of the expenditures of the election fund with respect to the election, whichever amount is less; or written evidence is provided that any existing outstanding obligations are likely to be discharged or forgiven; and

3. The candidate committee, or joint candidates committee has been dissolved and wound up its business for the past election, or elections.

(b) The campaign treasurer, and the candidate, or each joint candidate, shall file and each certify the final election fund report.

(c) Notwithstanding (a) above, if after filing a final election fund report, a candidate, or joint candidates, receives or receive any subsequent contributions, makes or make any expenditures, or assumes or assume any obligation in connection with the election for which the candidate or joint candidates was or were seeking office, the candidate, or joint candidates, shall establish a candidate committee, or joint candidates committee, and that committee shall resume filing election fund reports pursuant to N.J.A.C. 19:25-8.1.

19:25-8.8 Political committee election fund reports

(a) A political committee receiving or expending more than \$1,000 in an election shall file election fund reports of all contributions received, all expenditures made, and all other financial transactions of its election fund subject to reporting, and such reports shall be filed on the same dates and be pertinent to the same periods of time as set forth in N.J.A.C. 19:25-8.1 for candidate committee reports.

(b) The campaign treasurer of the political committee shall file and certify the correctness of the reports described in (a) above,

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and shall certify that no contributions have been received in violation of the contribution limits prescribed by the act.

19:25-8.9 Political committee contributions received immediately before an election

(a) A campaign treasurer of a political committee shall file a report or other written notice of any contribution in excess of \$500.00 *, or any aggregate contributions from a contributor which total in excess of \$500.00,* received on or after 12:00 A.M. on the 13th day preceding the date of the election but before 12:00 A.M. on the date of the election, which report shall contain:

1. The name of the recipient political committee;
2. The date the contribution was received;
3. The amount of the contribution;
4. The name and mailing address of the contributor; and
5. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer.

(b) The report or written notice described in (a) above shall be filed with the Commission within 48 hours of receipt of the contribution, and shall be signed by the campaign treasurer, except that a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, FAX) shall not be permitted.

19:25-8.10 Political committee expenditures made immediately before an election

(a) A campaign treasurer of a political committee shall file a report (Form E-1) of any expenditure of money or other thing of value in excess of \$500.00 made, incurred or authorized by the political committee to support or defeat a candidate in an election, or to aid the passage or defeat of a public question, which expenditure is made, incurred or authorized on or after 12:00 A.M. on the 13th day preceding the date of the election but before 12:00 A.M. on the date of the election. The report shall contain:

1. The name of the political committee;
2. The name and mailing address of the person, firm or recipient; or organization to whom or which the expenditure was paid or given; and
3. The amount and purpose of the expenditure.

(b) The report or written notice described in (a) above shall be filed with the Commission within 48 hours of the making of the expenditure, and shall be signed by the campaign treasurer, except that a report made by telegram need not be signed. Use of electronic facsimile transmission (that is, FAX) shall not be permitted.

19:25-8.11 Termination of political committee quarterly reporting

(a) A political committee may certify a 20-day postelection report or a quarterly report as its final election fund report and thereby terminate further reporting provided:

1. There is no remaining balance in any depository opened or maintained by the political committee;
2. There are no outstanding obligations of the political committee; or, if outstanding obligations exist, the total amount does not exceed \$1,000, or does not exceed 10 percent of the expenditures of the election fund with respect to the election, whichever amount is less; or written evidence is provided that any existing outstanding obligations are likely to be discharged or forgiven; and
3. The political committee has been dissolved and wound up its business for the past election, or elections.

(b) The campaign treasurer of the political committee shall certify and file the final election fund report.

19:25-8.12 Time and place of filing reports

(a) An original and two copies of all reports required to be filed must be received at the Commission offices no later than 5:00 P.M. on the date the report is due for filing in order to be deemed timely filed. A report submitted by United States mail postmarked on or before a filing date but not received until after 5:00 P.M. of the date the report is due for filing will not be deemed timely filed.

(b) For election-cycle reports filed pursuant to N.J.A.C. 19:25-8.2 for primary and general elections only, filing may be accomplished by filing an original and three copies with the appropriate county clerk for transmittal to the Commission, provided that the reports

are filed with the county clerk no later than 12:00 noon on the date due for filing. Any reports filed after 12:00 noon on the date due for filing will not be deemed timely filed until received by the Commission. The county clerk shall retain one of the copies of the report, and transmit the original and two copies to the Commission. The copy retained by the county clerk shall be duly certified by the campaign treasurer as a duplicate copy. This subsection is not applicable to election-cycle reports other than primary or general elections, and is not applicable to quarterly reports.

(c) With the exception of reports filed with a county clerk pursuant to (b) above, an additional copy of a candidate committee, or joint candidates committee, report filed pursuant to N.J.A.C. 19:25-8.1 shall be filed with the county clerk of the county in which the candidate, or joint candidates, seek office. A candidate, or joint candidates, for State legislative office shall file a copy with the county clerk of the county, or county clerks of the counties, in which the candidate, or joint candidates, resides or reside, if the legislative district includes more than one county. Such a report shall be duly certified as a duplicate copy by the campaign treasurer.

(a)

**CASINO CONTROL COMMISSION
Notice of Administrative Correction
Gaming Equipment
Approval of Gaming and Simulcast Wagering
Equipment; Retention by Commission or Division;
Evidence of Tampering
N.J.A.C. 19:46-1.20**

Take notice that the Office of Administrative Law has discovered an error in the current text of N.J.A.C. 19:46-1.20(c). The references to "N.J.A.C. 19:46-1.16(g) and 19:46-1.18(n), respectively" concluding that subsection were revised effective October 19, 1992 as references to "N.J.A.C. 19:46-1.16, 19:46-1.18 and 19:46-1.19B, respectively" (see 24 N.J.R. 558(a) and 3753(a)). While the amended references appeared in the October 19, 1993 update to the Administrative Code, subsequent adoptions of proposals amending this subsection, which did not include the revised references as they were not yet adopted, inadvertently did not include the revised references in their published adoptions and incorporation into the Code. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

19:46-1.20 Approval of gaming and simulcast wagering equipment; retention by Commission or Division; evidence of tampering

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

(c) Any evidence that gaming equipment or other devices used in a casino, casino simulcasting facility or hub facility including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, card reader devices, data processing equipment, tokens, slot machines, pari-mutuel machines, self-service pari-mutuel machines and totalisators have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other devices for use in a casino, casino simulcasting facility or hub facility shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's casino security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice, cards and pai gow tiles may be found at N.J.A.C. 19:46-1.16[(g) and], 19:46-1.18[(n)] and 19:46-1.19B, respectively.

ADOPTIONS

ENVIRONMENTAL PROTECTION

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF SOLID WASTE MANAGEMENT

Transportation

Adopted Amendments: N.J.A.C. 7:26-2.11, 2.13, 6.2, and 14:3-10.15

Adopted New Rules: N.J.A.C. 7:26-2B.9, 2B.10, 6.9 and 14:11-7.10

Proposed: September 21, 1992 at 24 N.J.R. 3286(c).

Adopted: September 19, 1993 by Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.

Filed: September 21, 1993 as R.1993 d.508, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-6, 13:1E-23 and 48:13A-1 et seq.

DEPE Docket Number: 37-92-08.

Effective Date: October 18, 1993.

Expiration Date: October 25, 1995, N.J.A.C. 7:26; May 6, 1996, N.J.A.C. 14:3; March 1, 1998, N.J.A.C. 14:11.

Summary of Public Comments and Agency Responses:

On September 21, 1992, the Department of Environmental Protection and Energy (Department) proposed a "mixed loads" rule which clarified its long-standing policy concerning waste flows into and out of both transfer stations and materials recovery facilities which are not specifically provided with waste flow pursuant to the Department's Interdistrict and Intradistrict Solid Waste Flow Rules (N.J.A.C. 7:26-6) and which also expanded the recordkeeping associated with that policy. See 24 N.J.R. 3286(c).

A public hearing was held Tuesday, October 20, 1992, at 1:00 P.M. at the Department's Public Hearing Room, 401 East State Street, Trenton, New Jersey. In addition, a notice of the public hearing was published on September 21, 1992 in the following newspapers: the Star Ledger for Essex, Hudson, Hunterdon, Morris, Somerset, Union, and Warren Counties; The Press for Atlantic, Cape May, and Cumberland Counties; the Home News for Middlesex County; the Trenton Times for Mercer County; the Asbury Park Press for Monmouth and Ocean Counties; the Record for Bergen and Passaic Counties; the New Jersey Herald for Sussex County; the Courier Post for Burlington, Camden, and Gloucester Counties; and Today's Sunbeam for Salem County. The Department also transmitted a copy of the proposal to each of the 22 solid waste coordinators within the State. The comment period closed October 21, 1992.

Thirteen persons presented written and/or oral comments at the public hearing, as follows:

- (A) Leslie London—Mercer County Improvement Authority
- (B) Larry Zaayenga—Monmouth County Department of Planning
- (C) Diane M. Leonik—Cape May County Municipal Utilities Authority
- (D) Wayne D. DeFeo—Browning-Ferris Industries
- (E) Erwin G. Goovaerts—Sussex County Municipal Utilities Authority
- (F) Louis Joyce—Gloucester County Improvement Authority
- (G) David M. Beavens—Wheelabrator Company
- (H) Sheldon Cohen—Essex County Utilities Authority, Hudson County Improvement Authority, Passaic County Utilities Authority, Union County Utilities Authority
- (I) Steve Changaris—NSWMA Mid Atlantic Region
- (J) Jeffrey S. Callahan—Union County Utilities Authority
- (K) Scott Singer—Union County Utilities Authority
- (L) Theodore J. Romankow—Union County Utilities Authority
- (M) Richard L. Fitamant—Middlesex County Utilities Authority

Twenty-three additional persons submitted written comments during the comment period, as follows:

- (1) Sandra T. Ayres—United Carting Company, Inc.
- (2) Daniel Caramagno—Schering Laboratories

- (3) Christopher L. Daul—Alman Management Group, Inc.
- (4) Samuel DeFrank—Salem County Utilities Authority
- (5) Richard Dovey—Atlantic County Utilities Authority
- (6) Jerry Fiabane—Mercer County Improvement Authority
- (7) Frank Giordano—Pollution Control Financing Authority of Camden County
- (8) William Godfrey—Salem County Utilities Authority
- (9) Erma Gormley—Sussex County Board of Chosen Freeholders
- (10) Ellen Gulbinsky—Association of Environmental Authorities
- (11) John A. Horensky—The Solid Waste Association of North America, New Jersey Chapter
- (12) John B. Livelli—Robinson, St. John & Wayne
- (13) Florence J. Lotrowski—Middlesex County Department of Environmental Health
- (14) Teresa H. Martin—Hunterdon County Solid Waste/Recycling Department
- (15) Thomas C. Miller—Somerset County Board of Chosen Freeholders
- (16) Elaine A. Morgan—Sussex County Board of Chosen Freeholders
- (17) John Purves—Pollution Control Financing Authority of Camden County
- (18) Michael F. Riccardelli—Riccardelli & Rosa
- (19) Michael Rodburg—New Jersey Auto and Metal Recycling Association
- (20) Joseph Rosa—Riccardelli & Rosa
- (21) Glenn Schweizer—Morris County Municipal Utilities Authority
- (22) Joseph A. Tato—Union County Utilities Authority
- (23) William M. Vukoder—The Solid Waste Association of North America, New Jersey Chapter

The Department reviewed the audiotape and transcript of the public hearing and the written comments submitted during the comment period. All comments raised relevant to the proposed amendments and new rules and the Department's responses are summarized below. The letters and/or numbers in parentheses after each comment identify the respective commenter(s) listed above.

Public Hearing

1. COMMENT: A hearing should have been held in each of the counties affected by the proposed amendment.

RESPONSE: Since this rule affects all of the State's counties, the Department chose Trenton as the site for the public hearing because of its central location. This is consistent with standard Department practice, and meets the requirements of the Administrative Procedure Act and its implementing rules. (14)

Franchise Agreements

2. COMMENT: The Board of Public Utilities (BPU) granted certain districts (14 of 22) exclusive franchise areas when the districts were planning the construction and operation of capital projects, including transfer stations and resource recovery facilities. The adoption of the mixed loads rule will infringe on these franchise agreements, affecting the various districts' exclusive right to control and dispose of solid waste directed to their facilities, and the ability of a district's designated solid waste implementing agency to obtain financing or service existing debt at the lowest possible cost to the users of the district system. To ensure the economic and technical viability of the district system, the implementing agency must have sufficient revenue to provide for the timely payment of the principal, redemption premium, if any, and interest due on debt obligations. The proposed new rules and amendments greatly weaken the agencies' ability to control waste flow by allowing the diversion of waste to out-of-district facilities. The lack of such control compromises the district's ability to develop recycling facilities and to achieve the State's goal of 60 percent recycling. In addition, weakened flow control power will adversely affect the districts' ability to comply with the terms of franchise holders' bond obligations. The proposed amendments should require inclusion in the county solid waste management plan of the out-of-district solid waste facility for the franchise district affected by the diversion of waste to out-of-district facilities. Alternatively, those districts possessing franchises could grant licenses to transporters and facilities, subject to Department approval, to accomplish the same objective. Such inclusion would subject the transporters and facilities so authorized to the verification and enforcement powers of the district or the franchise holder. The rule should not require facilities designated within a solid waste district for the ultimate in-State disposal of solid waste to accept out-of-district waste from transfer stations or materials recovery facilities

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unless the district which will be the point of ultimate disposal agrees to accept this responsibility as the result of negotiations with the transporter or facility. (A) (B) (C) (E) (F) (G) (H) (J) (K) (L) (M) (5) (10) (11) (13) (16) (22)

RESPONSE: The comment addresses three distinct concerns of the counties having franchises: financial planning, recycling goals, and compliance control. The compliance issues will be addressed below in the responses to Comments 3 and 4. With respect to financial planning and recycling, the Department, through this rule, does not impinge upon the rights granted to the franchises under the Solid Waste Utility Control Act. The counties' or the county utility authorities' franchises give them the exclusive right to control and provide for the disposal of solid waste, except for recyclable materials whenever markets for those materials are available. It has been the intended effect of long-standing policy of the Department, the Legislature and the Governor of New Jersey (see Statement of Governor Florio set out under N.J.A.C. 13:1E-128.1) that the waste streams directed to designated disposal facilities would not be constant in quantity but would be subject to intensive source separation and recycling in order to achieve the goal of 60 percent recycling. While the planning for the county facilities used then-current waste flows as a starting point, the size and financing of the facilities were not approved contingent on stable waste flows. In view of aggressive recycling and reduced waste flows, the Department has encouraged regional uses of capitalized facilities. In addition, granting the counties the exclusive right to receive and control both solid waste and recyclables would weaken the significant contributions to the recycling goals made by privately owned and operated facilities and would be contrary to the legislative intent of the solid waste and recycling laws. Similarly, allowing one county to effectively have planning authority over the facilities located in another county would contravene the Solid Waste Management Act.

Enforcement

3. **COMMENT:** In order to ensure the return of waste to the county of origin as required under the proposed rules, the county would have to literally follow every load of solid waste from the generator, track the transport of the waste, record the information at the transfer station for every load at every transfer station, and follow the recyclables to the end markets. Under the proposed rules, the end markets need not be identified, making enforcement impossible. Abuse in the auditing process will also occur as the loads delivered to the transfer stations and materials recovery facilities cannot be traced to their end markets. (A) (C) (D) (E) (F) (J) (L) (5) (11) (14) (15) (21)

RESPONSE: The Department is amending the rules on adoption to specify the location and name of each end market. The Department shares the commenters' concern that solid waste not be "laundered" through private transfer stations or materials recovery facilities and be disposed of in violation of the waste flow rules. With the end market and the generators identified (the latter subject to the confidentiality provisions at N.J.A.C. 14:3-10.15), the audit process is just as secure as direct disposal of solid waste. With the requirements already in place of daily logs, vehicle decals, container decals, scales and monthly facility reports, the risk of abuse is minimized. As an added protection, the rule makes a reporting discrepancy presumed evidence that a waste flow violation has occurred.

4. **COMMENT:** The Summary to the proposed rule states that the Department's "enforcement authority will be used to ensure compliance with permit conditions thereby ensuring that the environmental impact will remain at a minimum." As there exists a backlog in the Department of violations awaiting enforcement action and it is unclear whether the Department will ever impose penalties, what new and/or improved methods of enforcement does the Department plan to undertake to ensure "compliance with permit conditions"? The prosecution of these matters has been largely dependent upon investigation of the type of waste collected by haulers, where the waste is transported, and where the waste is disposed of. The proposed rules will have a debilitating impact on the enforcement of waste flow control and oversight. This crucial concern needs attention because the rules will be effective only when those in the waste industry not only know of their responsibility, but act accordingly.

How many people does the Department plan to employ to oversee compliance with permit conditions? Where does the Department plan to get the funding for this enforcement? Have these plans been worked out yet or is this "enforcement compliance" issue still in the planning stages? How long until this "enforcement compliance" becomes a reality? (A) (C) (E) (F) (I) (J) (L) (5) (16) (18)

RESPONSE: The Department acknowledges the fact that enforcement of the waste flow rules with the addition of the mixed loads rule will be more difficult than for direct haul situations. The comment regarding backlogged violations is unclear but it implies that there is some delay by the Department in taking formal administrative enforcement actions. This may be so in some particular instances but the Department has the resources to focus on a specific case or issue in order to take decisive, timely enforcement action. During fiscal year 1993, for example, the Division of Solid Waste Management's Enforcement Group collected over 2.5 million dollars in penalties, penalties large enough to serve as effective deterrents to potential violators. The Division of Enforcement employs 12 field inspectors dedicated to routine compliance inspections of facilities, and additional staff dedicated to waste flow enforcement. Since the merger of the former Board of Public Utilities and the Department in 1991, and as a result of regulatory changes under which fees assessed to the regulated community fund the Department's solid waste enforcement activities, the frequency and thoroughness of routine compliance facility inspections by the Division of Enforcement solid waste inspectors have increased. Upon implementation of a rule with implications as important as this one, the Department would naturally focus existing resources on monitoring strict compliance with the requirements contained in the mixed loads rule. However, since no fee increases are anticipated with this rule adoption, no additional Department staff will be hired to implement or enforce it.

Department inspections and investigations are supplemented with and in some cases exceeded in scope by aggressive county enforcement agencies whose primary responsibility is to enforce waste flow rules. The Department will rely on these agencies to assist in enforcing the provisions of the mixed loads rule. The rule will be superior to the present mixed loads policy because it contains enhanced recordkeeping requirements to more effectively track amounts of waste and residue. Also, the rule imposes a 30-day period for reciproaction, that is, the balancing of residue back to the county of origin, whereas the present policy presumed an unstated reasonable period of time for reciproaction; thus, the new rule will enable better enforcement of the mixed loads policy.

Disclosure of Customer Lists

5. **COMMENT:** In opposition to the disclosure provisions, some commenters stated that customer lists are considered confidential and proprietary in a very competitive market and should not be disclosed.

In support of the disclosure provisions, other commenters stated that operators of transfer stations and materials recovery facilities will not voluntarily provide the names and addresses of waste generators. The provisions of the current rule are such that the bases upon which an agency may obtain access to customer lists are limited. It is absolutely necessary to have a provision for both periodic and random audits of transporters and facilities in addition to the good cause showing for access to customer lists set forth in the proposed amendment in order to maintain comprehensive and cohesive enforcement of the solid waste disposal rules in New Jersey. The proposed rule should also include a caveat that nothing contained therein should be construed to limit the right of discovery in an action in law or equity. (A) (D) (F) (G) (H) (I) (J) (1) (8) (14) (18) (20)

RESPONSE: The Department has made a minor amendment to the proposed rule to make more flexible the basis upon which a designated agency may request access to customer list information. Specifically, a written request must now be submitted to the Department setting forth the information requested and the reasons for the request. This stipulation provides the requester greater latitude in providing reasons for the request. The proposed rule had provided that an agency could submit a request for access to customer lists only for the purpose of performing a periodic or random audit upon a good faith showing that a transfer station or materials recovery facility was receiving solid waste from collection operations in that county in violation of the rule and that review of public state and county records was not sufficient to verify compliance. The Department maintains that questions of the rule's interactions with the rights of discovery in litigation are best left to the determination of the courts and that access to this confidential information should be restricted to only those agencies which have been designated pursuant to the County Environmental Health Act as having solid waste enforcement authority.

In-Lieu Payment Rates for Solid Waste

6. **COMMENT:** Numerous comments were received regarding the implementation of the in-lieu payment rates for solid waste, specifically,

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that the concept is too vague, would be too difficult to implement, would subject private facilities to unnecessary county regulatory control, and add unnecessarily to solid waste disposal costs. (B) (D) (H) (I) (J) (1) (8) (10) (12) (20)

RESPONSE: The Department recognizes the opposition to the in-lieu payment provision. As discussed in more detail below, the Department has revised the rule upon adoption to make it clear that the use of in-lieu payments is an optional alternative means of compliance, and is not mandatory.

Under the in-lieu payment provision, an out-of-district transfer station or materials recovery facility can comply with the rule without physically returning solid waste to the facility designated to receive waste flows within the district. The transfer station or materials recovery facility can instead make monetary payments to the receiving facility in an amount proportional to the waste collected from the area serviced by the receiving facility. This alternative was intended to make compliance with the rule more economical and more practicable for the transfer stations and materials recovery facilities, without jeopardizing the fiscal integrity of the facility designated to receive waste under the waste flow rules.

Nearly all of the commenters who testified at the public hearing or submitted written comments opposed the in-lieu payment provision, and recommended that it be modified or deleted. Representatives of county governments and representatives of the private sector in the solid waste industry agreed that this alternative would further confuse an already complex solid waste regulatory structure. The representatives of the county governments were especially concerned about difficulties in monitoring and enforcement of waste flows if in-lieu payments were used. Representatives of the private sector raised concerns over tariff issues and predicted that an increase in ratepayer costs would result.

In response to these concerns, the Department has revised the rule upon adoption to make it clear that the use of the in-lieu payment alternative is optional for both the facility designated to receive waste under the waste flow rules, and for the out-of-district transfer station or materials recovery facility. The designated receiving facility can opt out of the alternative by refraining from filing a tariff for the in-lieu payment. The out-of-district transfer station or materials recovery facility can opt out by returning solid waste rather than money to the designated receiving facility.

Under the rule as proposed, the designated receiving facility could opt out of the in-lieu payment system by obtaining a waiver from the Department. In light of the problems cited by the commenters, the Department believes that any such facility seeking a waiver would have been eligible to obtain it. Accordingly, based on legal advice from the Division of Law in the Department of Law and Public Safety, the Department believes that the mandatory rule with waiver provision as proposed and the optional rule as adopted are in material respects equivalent and the change is not substantial enough to require reproposal.

The Department recognizes that additional regulations in this area may be necessary, and intends to circulate draft regulatory provisions for informal public review after publication of this rule adoption. Those additions would propose to establish a procedure for a private utility to request that the designated district from which it collects waste for processing file an in-lieu tariff. They may also provide for concurrence by the agency implementing the district solid waste plan for the district in which the processing facility is located. The Department is also considering establishing appeal procedures to provide for dispute resolution when the implementing agencies and the private utilities cannot reach an agreement.

With regard to increased costs, utilization of the provision should not result in an increase or escalation of ratepayer costs because the utilization of the in-lieu payment will be a market-based decision on the part of the operator of the transfer station or materials recovery facility. If the operator were to experience a net increase to expenses, a decreased rate of return and/or possibly a decreased customer base due to its choice to avail itself of the in-lieu payment option in a circumstance where it is not cost effective, then the prudent operator would determine to return the residue physically to the generating county. The safeguard is the economic threat of a net escalation in costs. Finally, with respect to enforcement concerns of the counties, the safeguard is the same reporting obligations imposed by the rule for disposal of mixed residual solid waste in proportional amounts to the generating districts.

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7. COMMENT: All solid waste disposal facilities should be required to have weigh scales. The failure to require all transfer stations and/or materials recovery facilities to install a scale and keep identical records unduly complicates the already imperfect audit trail that the proposed rule creates. The alternative use of volume-to-weight conversions ignores the complexities of estimating conversion factors for wet, dry, compacted, heavy and/or light types of solid waste. The conversion factor may also be skewed by facility estimates based on roll-off or compacted container trucks that are not filled to capacity. (C) (F) (4) (8)

RESPONSE: Pursuant to the Solid Waste Management Act, specifically N.J.S.A. 13:1E-117, all existing solid waste facilities that are identified in an approved district solid waste management plan for operation after January 1, 1985, and that accept in excess of 31,200 tons of non-liquid solid waste annually, must install scales. Any existing solid waste transfer station, or any solid waste transfer station for which a registration statement and engineering design are filed after the effective date of this statute and which accepts less than 31,200 tons of non-liquid solid waste annually is exempt from the scales requirement. The Department cannot require transfer stations and materials recovery facilities to install scales if they process less than 31,200 tons of non-liquid solid waste annually because the exemption is statutory. Regarding the conversion factor of 3.33 cubic yards equalling one ton, the Department has determined that this factor adequately represents an average of all waste types. Although the standard conversion factor cannot be adjusted on the basis of variable conditions, that is also its advantage: because the factor is based on averages, the variables are balanced and neutralized with consistent application over time. The standard factor does not rely upon or allow for variance for facility subjective estimates. Roll-off containers are presumed to be filled to capacity. The factor thus not only averages underfilled instances with overfilled, but encourages both generators and facility operators to maximize use of their containers.

Involuntary Regionalization Mandate

8. COMMENT: Facilities designated by solid waste districts for the ultimate disposal of solid waste generated within the district would be required, under the proposed rules providing for residual reciprocity, to accept out-of-district waste from transfer stations and materials recovery facilities that collect and process multi-district waste streams. This amounts to involuntary regionalization since such action would not be sanctioned by interdistrict agreements between the affected districts. (5) (10)

RESPONSE: The policy underlying the mixed loads rule is premised on the New Jersey Statewide Mandatory Source Separation and Recycling Act. The primary function of a materials recovery facility, and to a lesser extent, a transfer station, is to recover recyclables. The continued operation of these facilities is necessary to ensure compliance with the goal of maximizing recycling activity beyond source separation and drop-off center programs. The requirement that these facilities accept out-of-district waste as the reciprocal residue from the collecting and processing of multi-district waste streams is a fair and reasonable means to meet the statutory mandate and may be implemented outside the interdistrict and intradistrict waste flow rules and any required interdistrict agreements. The rule clarifies the Department's mixed loads policy that has been in effect since 1983; it does not authorize or implement new interdistrict agreements. Nor does the rule impose an obligation on one county to plan for the disposal of another county's solid waste in addition to its own. Each county remains the planning agency for only the amount of solid waste generated within its district. However, the actual solid waste disposed of, being of a fungible character, may be commingled or interchanged with the solid waste from another district. Under the rule, no district will receive and be responsible for disposing of more than its fair share of solid waste based upon the amounts generated intradistrict.

Economic Issues

9. COMMENT: The proposed amendment represents a departure from the Department's goal of ensuring that all solid waste collection and disposal facilities render cost-efficient services to the residents of the State. Allowing a transfer station or a materials recovery facility to deliver its nonprocessable residue and bypass waste to its host district's facility and to send in-lieu compensation to the generating district facility will result in prohibitive tipping fees as well as the transfer of residue station to station prior to possible out-of-State disposal. This could result in the double handling of these waste materials and residue, which not

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only is uneconomical but clearly violates the legislative mandate of the Solid Waste Utility Control Act. The act charged the Board of Public Utilities with the duty of setting and enforcing standards and rates in order to ensure that New Jersey citizens receive "safe, adequate and proper solid waste disposal service." N.J.S.A. 48:13A-2. (E) (G) (J) (4) (7) (11) (14) (15) (18) (20) (21)

RESPONSE: The proposed in-lieu tariff provision would not result in a system of double handling; rather, it allowed for efficient local disposal of the solid waste residue while making whole both the generating and host counties with respect to their designated disposal facilities' fixed costs. However, in view of the concerns expressed by commenters that the proposed in-lieu payments would have an indeterminate impact on the amount of solid waste each district must dispose of, the Department has in the adoption made this provision permissive and not mandatory.

10. COMMENT: The Economic Impact statement in the summary of the proposed rule is confusing. It states that marginal increases in disposal costs may result from the reporting and recordkeeping provisions. Regarding in-lieu payments, the Economic Impact statement does not predict that tipping fees will decrease over time, but simply states that transportation costs through in-lieu payments will reduce costs to transfer stations and materials recovery facilities. Also, if the proportional method of tonnage allocation of mixed loads is allowed to prevail, there can be a negative revenue effect on county facilities receiving reciprocal waste amounts or in-lieu payments. Finally, costs are increased unnecessarily by requiring transfer stations and materials recovery facilities to install scales and keep daily records of the origin of waste, amount, and type of waste from each point of origin when the facilities accept greater than 31,200 tons of solid waste annually. (G) (J) (4) (8) (10)

RESPONSE: The in-lieu payment is designed to be a means of increasing the flexibility of private enterprise economic decisionmaking in the solid waste industry if it is utilized under the permissive, not mandatory, adoption of this rule. While it is not anticipated to have any effect on the tipping rates at district facilities, it could lead to decreased expenses of processing and transporting solid waste by intermediate transfer stations or materials recovery facilities. It is expected to encourage the processing and reduction of waste at private facilities that would otherwise have been too far away from the generator to make processing and disposal of the residual solid waste cost effective.

With respect to the in-lieu payment, there cannot be a negative effect on either the host or the generating county. The special tariff provision payable to the host district will be set to recover unavoidable fixed costs of the authority but no variable costs for the disposal capacity that is no longer being utilized. The regular disposal tariff applicable to the host district which will have to actually dispose of the waste is established to recover both fixed and variable costs. Therefore, both counties are wholly compensated for the proper and reasonable expenses of planning and designing for the district's disposal needs or for actual disposal.

Finally, with respect to the scales requirement and associated costs, all transfer stations and materials recovery facilities operating after January 1, 1985 and accepting in excess of 31,200 tons of non-liquid solid waste annually were required to install scales under the provisions of the Solid Waste Management Act, specifically N.J.S.A. 13:1E-117. This rule does not alter the scales requirement put in place by the statute. The additional recordkeeping requirements of the rule adoption may add to current operational costs, but these costs are anticipated to be marginal since the same basic recordkeeping system that has historically been used will be maintained, with relatively minor alterations.

Waste Types and Waste Flows

11. COMMENT: If the residue from a transfer station or materials recovery facility is classified by the Department as waste type 27, then, according to the proposed rules, such processible waste could be directed to a resource recovery facility for incineration, depending on the district, even though the residue may contain what was originally waste types 10, 13, 23, and 25. Waste which originally was not processible and acceptable for delivery to the resource recovery facility thereby would become processible. Therefore, with this classification system, materials might be incinerated or landfilled which were not intended to be incinerated or landfilled. This could result in the environmentally unsound disposal of some waste and also might interfere with achieving the goals of recycling 60 percent of the total waste stream and 50 percent of the municipal waste stream by December 31, 1995, as established by the Governor's Emergency Solid Waste Assessment Task Force. (C) (E) (G) (H) (J) (2) (4) (5) (8) (12) (13) (15) (18) (21)

RESPONSE: It is the responsibility of the transfer station or resource recovery facility to ensure that, after recyclables are removed from the various waste types that comprise the solid waste stream, the residue is segregated into these specific solid waste types, since certain waste types are not appropriate for incineration and may not be included in the resource recovery facility's permitted waste types. To ensure that only solid waste which is permitted to be incinerated at the resource recovery facility and which is combustible is, in fact, sent by the transfer station or materials recovery facility to the resource recovery facility, this segregation of solid waste into specific waste identification types is necessary. Since these waste types are typically tipped at the transfer station or resource recovery facility in separate trucks or containers as municipal, industrial, or construction waste, it should be possible to keep the solid waste types segregated after the recyclables are removed so that they may be sent to the designated disposal facility in accordance with the waste flow rules.

In response to the comments on this issue, however, the Department is not adopting the proposed amendment at N.J.A.C. 7:26-2.13c, which provided that residue which could not be categorized by specific type after processing at a materials recovery facility or a transfer station would be classified as ID 27 waste. The rule as revised on adoption makes clear that processing may not be used to change the original waste type designation of outgoing solid waste from a transfer station or materials recovery facility. Such waste after processing shall be designated as the same waste type originally received at the transfer station or materials recovery facility. This revision of the proposed rule does not represent a substantive change requiring reproposal. The adopted procedure which clarifies that processing may not be used to change waste type designations represents and codifies the Department's long-standing policy. Therefore, this change will not disrupt standard industry practice.

12. COMMENT: Space, time, personnel, equipment and economic constraints require that all loads that come into a transfer station and materials recovery facility be commingled and intermixed with other loads; they cannot be separated, sorted, processed, and recycled individually. However, the Department does not permit waste generated in one county to be deposited in a county-designated transfer station in a different county. It is impossible to operate a transfer station or materials recovery facility properly, efficiently, and effectively if the facility is required to separate the loads collected from the various counties and return the respective residues to the counties of origin. (A) (B) (D) (E) (F) (G) (4) (5) (13) (15) (21)

RESPONSE: Neither this rule nor the mixed loads policy that has been in place since 1983 requires transfer stations or material recovery facilities to establish separate tipping areas for each district serviced. The Department recognizes that keeping loads of waste from different counties separate at a transfer station or materials recovery facility is not practical. Therefore, the rule, like the policy it codifies, requires stringent recordkeeping but allows an equal amount and type of waste to be sent back to the generating county. Thus, any particular county is not deprived of a waste flow to which it is entitled nor does it receive more than that to which it is entitled. County-designated facilities receive assigned waste flows under the interdistrict and intradistrict waste flow rules and have been designed to accommodate these assigned waste flows. The mixed loads rule pertains only to materials recovery facilities and transfer stations which are not assigned waste flows but must be able to process multidistrict waste streams to accomplish recycling and remain economically viable.

Summary of Hearing Officer's Recommendations and Agency Responses:

Steve Gabel, Director of the Department's Division of Solid Waste Management, served as hearing officer at the public hearing held on October 20, 1992 at the Department's public hearing room. After reviewing the testimony presented at the public hearing, Mr. Gabel recommended that the Department adopt the proposed rule with six changes, noted below. The rule, as modified, is being adopted to put in place a uniform procedure to address the mixed loads issue on a statewide basis. Following the establishment of this uniform system, the Department will entertain more detailed requirements should the rule prove insufficient to monitor and control waste flow.

A copy of the record of the public hearing is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

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Janis E. Hoagland, Administrative Practice Officer
 Department of Environmental Protection
 and Energy
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The Department accepts the recommendations of the hearing officer. Based upon written comments which the Department received and its review of the rule, the Department has made the following changes from the proposal as explained below and in the summary of Public Comments and Agency Responses:

1. In response to numerous comments, the Department has changed N.J.A.C. 7:26-2.13(a)8iv(3) and 2.13(e)1iv to require the specific location and name of each end-market, manufacturer or recycling center for recyclable material.

2. In response to numerous comments, the Department has amended the provisions requiring that waste remaining after processing that cannot be categorized by type be classified as ID 27 waste. Specifically, N.J.A.C. 7:26-2.13(c), (e)1viii and (g)1vi have been modified to reflect this change.

3. The Department has further clarified N.J.A.C. 7:26-6.8(a) to include language describing the purpose for which transshipment of solid waste between districts is allowed, that is, for the processing or recovery of materials.

4. In response to numerous comments, the Department has made permissive, not mandatory, the provisions regarding in-lieu payment rates for solid waste. Accordingly, N.J.A.C. 7:26-2B.10(b) and (c) and N.J.A.C. 14:11-7.10(a) have been so modified to reflect this change. Also, the Department has not adopted the provision regarding the filing of an in-lieu tariff for special in-lieu payment or the petitioning of a waiver from such filing for economic or environmental reasons. Accordingly, N.J.A.C. 7:26-2B.9(b)3iii(1) and N.J.A.C. 14:11-7.10(b) have not been adopted.

5. In response to numerous comments, the Department has made more flexible the basis upon which a designated agency may request access to customer lists. Specifically, N.J.A.C. 14:3-10.15(b)4 has been modified to reflect this change.

6. The Department has changed N.J.A.C. 7:26-2.11(b)15 to delete any reference to the inclusion of materials removed for handling and storage in the determination of a facility's capacity as specified within a solid waste facility permit. It was not the Department's intention to impose such a requirement.

The Department is preparing additional amendments at N.J.A.C. 7:26-2.8(p) and 2.13(k) concerning solid waste facility registration and recordkeeping, respectively, that will be published in a separate proposal in late 1993. Generally, these additional changes will require all transfer stations and materials recovery facilities to apply for a new or revised registration statement in order to provide the Department with more detailed operational information on the acceptance of solid waste from multiple waste flow districts. Also, the new provisions will require the Department to maintain a separate registration and recordkeeping system for transfer stations and materials recovery facilities to which counties, authorities, private sector parties and the general public may request access. Finally, within the same proposal the Department is preparing amendments at N.J.A.C. 14:11-7.10 to establish a procedural mechanism whereby private entities can request a solid waste disposal utility to file an in-lieu payment tariff schedule. The additional regulations will also specify the need for county concurrence in the establishment and use of special in-lieu payments and may contain appeal provisions to provide for dispute resolution by the DEPE in cases where county governments and private utilities can not agree.

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

7:26-2.11 General operational requirements

(a) The operational requirements identified in this section are general requirements for all solid waste facilities. Additional requirements for sanitary landfills are set forth in N.J.A.C. 7:26-2A.8. Additional operational requirements for thermal destruction facilities are set forth in N.J.A.C. 7:26-2B.8. Additional requirements for transfer stations and materials recovery facilities are set forth in N.J.A.C. 7:26-2B.9.

(b) The general operational requirements for all solid waste disposal facilities are as follows:

1.-12. (No change.)

13. The operator shall maintain a record of the quantity of each authorized waste type accepted for disposal, in accordance with N.J.A.C. 7:26-2.13 and 3.2. In the event that the facility is exempt from the use of scales to physically weigh the waste, volume to weight conversions shall be made by means of formulae furnished by the department. Transfer stations and materials recovery facilities shall use the formula in N.J.A.C. 7:26-2B.

14. (No change.)

15. The quantity of waste received by the facility operator shall not exceed the system's designed handling, storage, processing or disposal capacity as identified in that facility's SWF permit or other permit certificate. The designed ***[handling, storage,]*** processing and disposal capacity approved within any solid waste facility permit, other permit certificate or approval conditions as a ton per day operational maximum shall be inclusive of all solid waste received at the facility as well as all tonnages of source separated recyclables received ***[and any materials removed for recycling during a facility's daily processing operation]***;

16.-18. (No change.)

7:26-2.13 Solid waste facility; records

(a) Each solid waste facility permittee shall maintain a daily record of wastes received. The record shall include:

1.-5. (No change.)

6. The place of origin of the waste identified by municipality, county and State or in the case of the waste from a transfer station or materials recovery facility, the facility ID number of the transfer station shall also be listed.

7. (No change.)

8. In addition to the information required in (a)1 through 7 above, transfer stations and materials recovery facilities which are not specifically provided with waste flow to their facility pursuant to N.J.A.C. 7:26-6, and which accept solid waste from districts or states other than where the facility is located, shall maintain the following additional information in the daily record:

i. The tonnages and types of solid waste received by municipality and by district or by out-of-State source. This amount shall be the total received prior to removal of materials for recycling. The types shall be listed by each ID type;

ii. The tonnages and types of solid waste returned to the state or county (including municipality) of origin. The transfer station and materials recovery facility is not considered the origin of the solid waste it receives;

iii. The tonnages and types of source separated recyclable materials and recyclable materials separated from the solid waste received by origin (by county and municipality); and

iv. The tonnages, types and destinations of recyclable materials which leave the transfer station or materials recovery facility to end markets, manufacturers or recycling centers for further processing pursuant to the following:

(1) Recyclable materials may only be transported to the above noted destinations, pursuant to the requirements of N.J.A.C. 7:26A;

(2) End markets, manufacturers and recycling centers shall mean the same as the definitions found at N.J.A.C. 7:26A-1.3;

(3) Destinations for recyclable material shall ***[only]*** be listed by ***[type of facility (that is, end-market, manufacturer or recycling center) and not by specific location or name]*** ***specific location and name of each end-market, manufacturer or recycling center***; and

(4) Class B recyclable materials transported to an in-state recycling center for further processing shall be transported only to those recycling centers approved by the Department pursuant to N.J.A.C. 7:26A.

(b) The daily record shall be maintained at the operating facility on forms provided by the Department or duplication of same, or on systems acceptable to the Department, shall be kept for five years, and shall be available for inspection by representatives of the Department, county lead agency certified by the Department pursuant to

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N.J.S.A. 26:3A2 for any county from which solid waste is received, or the local health department at any time during normal working hours.

(c) The information required to be recorded in the daily record, as set forth in (a) above, shall be supplied by the transporter to the facility operator and by the facility weighmaster or operator on a waste origin/disposal (O and D) form (or duplication of same). Where processing takes place at a transfer station or materials recovery facility prior to delivery to a district designated facility pursuant to N.J.A.C. 7:26-6, ***[and]*** the waste remaining after processing ***[cannot be categorized by type, the remaining residue]*** shall be designated within the O and D form and daily record as ***[“ID 27 residue” pursuant to (g)1vi below.]*** ***the same waste type as originally received at the transfer station or materials recovery facility. At no time may processing be used to change the original waste type designation of outgoing solid waste from a transfer station or materials recovery facility. Further, at no time may ID 27 solid waste be subjected to mechanized processing, such as grinding, shredding or baling, at transfer stations or materials recovery facilities, such that the physical appearance of the material is altered prior to disposal at a district designated facility.***

1.-5. (No change.)

(d) (No change.)

(e) Monthly summaries of wastes received shall be submitted by the owner/operator of each facility to the Division of Solid Waste Management, the county within which the facility is located and any solid waste authority operating within the county within which the facility is located on forms provided by the Department (or duplication of same), no later than 20 days after the last day of each month.

1. All solid waste facilities shall include the following within the monthly summary:

i. The tonnages and types of solid waste received by origin from each county (including municipality) and out-of-State source;

ii. The tonnages and types of solid waste returned to the county or state of origin by facility of receipt;

iii. The tonnages, types and origin (by county and municipality) of source separated recyclable materials or recyclable materials removed from the waste stream. In cases where recyclable materials are separated from mixed solid waste at the transfer station or materials recovery facility, and hence the origin (by county and municipality) cannot be identified at the time of receipt, the transfer station shall allocate the amount of recyclable materials proportionally to each municipality on the basis of the total amount of solid waste received for the calendar month;

iv. The identification of end-markets, manufacturers or recycling centers ***by specific name and location*** used for the materials designated as recyclable materials and the amount of materials sent to ***each specific*** end-market*[s]*, manufacturer*[s]* or recycling center*[s]*. The requirements for transportation to, and identification of, end-markets, manufacturers and recycling centers shall be the same as N.J.A.C. 7:26-2.13(a)8iv above;

v. The tonnage and types of recyclable materials being stored at the transfer station or materials recovery facility at the end of the reporting month;

vi. Payments made to a designated district facility in lieu of disposing of solid waste pursuant to N.J.A.C. 7:26-2B.9(a)iii. The summary shall include the name of the district to which the payment was made, the amount of solid waste not delivered and the amount of the payment;

vii. The tonnage and types of solid waste sent to the designated facility in the county in which the transfer station or materials recovery facility is located where an in-lieu of payment has been made; and

[viii. In cases where the waste type cannot be established following processing at a transfer station or materials recovery facility, the remaining residue shall be designated within the monthly summary as “ID 27 residue” pursuant to 2.13(g)1vi below.]

2. Discrepancies between the amount and/or type of solid waste received at a transfer station or materials recovery facility and the amount and/or type of solid waste returned to the district designated facility or transported out-of-State which are not substantiated in

the monthly summary pursuant to (e)1 above shall be deemed a violation of N.J.S.A. 13:1E-1 et seq., N.J.S.A. 48:13A-1 et seq., this chapter and in violation of the registration to operate a solid waste facility issued pursuant thereto and shall subject the facility to the provisions and penalties of N.J.S.A. 13:1E-9 and 48:13A-12 and all other applicable laws. Any discrepancy listed in (e)2i*[.]* ***or*** ii*[.], iii or iv]* below is a violation of N.J.S.A. 13:1E-1 et seq., N.J.S.A. 48:13A-1 et seq., this chapter, and the registration to operate a solid waste facility issued pursuant thereto, and shall subject the facility to penalties under N.J.S.A. 13:1E-9, 48:13A-12, and all other applicable laws and regulations:

i. A discrepancy between the following amounts:

(1) The amount or type of source-separated recyclables received at the facility for the month plus the amount or type of recyclables removed from solid waste received by the facility for the month as reported under (e)1iii above; and

(2) The change since the preceding month in the amount of each type of recyclable materials stored at the facility as reported under (e)1v above plus the amount or type of recyclable materials sent to end-markets at the end of the month as reported under N.J.A.C. 7:26-2.13(e)1iv.

ii. A discrepancy between the following amounts:

(1) The amount and type of solid waste received at the facility for the month as reported under (e)1i above; and

(2) The amount and type of solid waste returned to the county or state of origin as reported under (e)1ii above plus the amount and type of solid waste for which in-lieu payments have been made as reported under (e)1vi above.

iii. A discrepancy between the following amounts:

(1) The amount and type of solid waste received at the facility for which in-lieu payments have been made as reported under (e)1vi above; and

(2) The amount and type of solid waste sent to the designated facility in the county in which the transfer station or materials recovery facility is located as reported under (e)1vii above.

iv. A discrepancy between any of the amounts listed in (e)2i through iii above, and the corresponding amounts reported in the monthly summary under (e)1 above.

(f) Any certified county or local health agency certified by the Department pursuant to N.J.S.A. 26:3A2 or a local health department authorized to perform solid waste enforcement which seeks to obtain customer lists for enforcement purposes, shall comply with the procedures at N.J.A.C. 14:3-10.15(b)4.

(g) Waste identification and definition of solids include the following:

1. Solid wastes; waste ID number and definitions;

i.-v. (No change.)

vi. 27 Dry industrial waste: Waste materials resulting from manufacturing, industrial and research and development processes and operations, and which are not hazardous in accordance with the standards and procedures set forth at N.J.A.C. 7:26-8. Also included are nonhazardous oil spill cleanup waste, dry nonhazardous pesticides, dry nonhazardous chemical waste, asbestos and asbestos containing waste managed in accordance with 40 CFR 61 and N.J.A.C. 7:26-2A.8(1), and residue from the operations of a scrap metal shredding facility. ***[ID 27 includes residue from a transfer station or materials recovery facility for which the ID type cannot be established after processing.]***

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

(j) Solid waste shall be identified at the point of generation. For waste received at a transfer station or materials recovery facility, the transfer station is not the point of generation. Solid waste which is received by a transfer station or materials recovery facility shall retain the ID type identified in the O and D form. The type of solid waste shall not change due to the removal of recyclable materials or the processing of solid waste ***[except as provided in (g)1vi above]***.

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7:26-2B.9 Additional operational requirements for transfer stations and materials recovery facilities not specifically provided with a waste flow to their facility pursuant to N.J.A.C. 7:26-6.

(a) This section sets forth additional operational requirements for transfer stations and materials recovery facilities not specifically provided with a waste flow to their facility pursuant to N.J.A.C. 7:26-6.

(b) Transfer stations and materials recovery facilities may accept solid waste from any in-State solid waste district, out-of-State source, or any combination thereof provided:

1. The transfer station or materials recovery facility has been formally included within the district solid waste management plan of the district(s) within which it is located and has received all necessary State and local approvals. Transfer stations and materials recovery facilities do not need to be incorporated within the solid waste management plan of each district from which solid waste or recyclables are collected; only the district within which its facility is located;

2. The recordkeeping and O and D form requirements of N.J.A.C. 7:26-2.13 are met;

3. For solid waste from in-State:

i. Solid waste received at the facility is returned to the district where the waste was originally generated or the same amount and type of solid waste is brought to the district where the waste was originally generated no later than by the end of the next calendar month following receipt at the transfer station or materials recovery facility;

ii. Where material is removed for recycling from the solid waste received, the same type or amount of solid waste less the amount of materials removed for recycling shall be returned to the district in which the material was originally generated no later than by the end of the next calendar month following receipt at the transfer station or materials recovery facility; or

iii. On the 30th day of the next calendar month following receipt at the transfer station or materials recovery facility, an in-lieu payment is made to the district designated disposal facility in an amount suitable to compensate for the tonnage which would otherwise have gone to the facility. The payment shall be made pursuant to the designated facility's tariff for special in-lieu payments pursuant to N.J.A.C. 14:11-7.10 for the amount and type of waste which was generated in that district and not returned. In such instances, said waste shall be disposed of at the designated facility in the district in which the transfer station or materials recovery facility is located. Records maintained pursuant to N.J.A.C. 7:26-2.13 shall so indicate the disposal and the in-lieu payments made.

(1) Upon application supported by compelling economic or environmental grounds, including, but not limited to, accelerated depletion of disposal capacity, a designated disposal facility may petition the Department for an exemption from being the recipient disposal facility of solid waste disposed of in accordance with (a)3iii above from transfer stations and materials recovery facilities located within that county.]

4. For solid waste from out-of-State:

i. Solid waste received at the facility or the same amount and ID type of solid waste is transported out-of-State no later than by the end of the next calendar month following receipt at the transfer station or materials recovery facility; or

ii. If material is removed from recycling from the solid waste received, the same ID type or amount of solid waste less the amount of materials removed for recycling shall be transported out-of-State no later than by the end of the next calendar month following receipt at the transfer station or materials recovery facility; and

5. The receiving facility's tariff and permit requirements are met.

(c) Transfer stations and materials recovery facilities which receive more than 31,200 tons of solid waste annually shall install and operate computerized scales for the reporting requirements in N.J.A.C. 7:26-2.13 and 3.2. Transfer stations and materials recovery facilities which do not have scales must report data on a cubic yard basis.

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(d) The transfer station or materials recovery facility shall determine the ID type of the solid waste as provided at N.J.A.C. 7:26-2.13. As provided therein, the transfer station is not the generator of solid waste received from other counties.

7:26-2B.10 Additional operational requirements for transfer stations and materials recovery facilities provided with waste flow to their facility pursuant to N.J.A.C. 7:26-6

(a) This section sets forth additional operational requirements for transfer stations and materials recovery facilities provided with waste flow to their facility pursuant to N.J.A.C. 7:26-6.

(b) All district designated facilities shall accept solid waste from transfer stations or materials recovery facilities *[or payments in-lieu of the solid waste provided the requirements of N.J.A.C. 7:26-2.13 are met.]* ***provided that the requirements of N.J.A.C. 7:26-2.13 are met. A district designated facility that has established a tariff for special in-lieu payment pursuant to N.J.A.C. 14:11-7.10 may accept payment from transfer stations or materials recovery facilities pursuant to that tariff, in-lieu of accepting the solid waste.***

(c) Pursuant to N.J.A.C. 14:11-7.10, all transfer stations and materials recovery facilities subject to this section *[shall]* ***may*** establish a tariff rate for in-lieu payments made pursuant to N.J.A.C. 7:26-2B.9.

(d) Transfer stations and materials recovery facilities subject to this section which receive more than 31,200 tons of solid waste annually shall install and operate computerized scales for the reporting requirements in N.J.A.C. 7:26-2.13 and 3.2. Transfer stations and materials recovery facilities which do not have scales must report data on a cubic yard basis.

7:26-6.2 Purpose

The New Jersey Department of Environmental Protection and Energy has reviewed and approved the adopted solid waste management plans for all 22 of the solid waste management districts in New Jersey. Based on these plans, it is evident that interdistrict solutions to planning issues through regional cooperation are required. Further, the Department has determined that the public interest requires the designation of in-State specific disposal facilities to serve as the ultimate destination facility of certain waste streams. This subchapter shall set forth the designations by the Department of intradistrict and interdistrict waste flows, designated specific facilities to serve specific geographic areas. This subchapter shall also set forth the policy for the flow of solid waste prior to receipt at the ultimate designated facility.

7:26-[6.8]****6.9*** Transporting solid waste between solid waste districts and out-of-State

(a) Notwithstanding the designation of specific disposal facilities for ultimate disposal of certain waste streams, it shall not be a violation of N.J.A.C. 7:26-6 or any franchise approvals issued pursuant to N.J.S.A. 48:13A-5 or solid waste generated in a district to be transported out of that district or for out-of-district waste to enter a solid waste district ***for the processing or recovery of materials*** provided the requirements of N.J.A.C. 7:26-2.11, 2.13, and 2B.9 are met.

(b) Facilities designated by solid waste districts for the ultimate in-State disposal of solid waste shall accept out-of-district waste from transfer stations or materials recovery facilities provided the requirements of N.J.A.C. 7:26-2.13 are met.

14:3-10.15 Filing of annual reports and customer lists

(a) (No change.)

(b) Every utility engaged in solid waste collection shall file no later than March 31 of each year, with the Department of Environmental Protection and Energy, a complete list, made under oath, of all residential, commercial, industrial and institutional customers.

1.-3. (No change.)

4. Pursuant to N.J.S.A. 47:1A-2 of the Right to Know Law, N.J.S.A. 47:1A-1 et seq., the customer lists filed with the Department pursuant to this section shall not be deemed to be public records and the public, including solid waste or other utilities, shall not have the right to inspect, copy or obtain a copy of same. Upon receipt of customer lists, the Department shall keep the lists under lock

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and take appropriate measures to maintain the lists in confidence. Access to such lists shall be limited to agents, employees and attorneys of the Department and, in the discretion of the Department, certified local health agency certified by the Department pursuant to the N.J.S.A. 26:3A2 or local boards of health responsible for enforcement of laws related to the collection and disposal of solid waste. All such governmental agencies shall be subject to the confidentiality requirements contained in this paragraph. In order to obtain a customer list, a certified local health agency or local board of health must submit a written request to the Department ***[showing that the agency has a good faith reason to believe that for any two months in a four month period, a materials recovery facility or transfer station has violated the in-lieu payment provision of 2B-9 or the waste flow directions of N.J.A.C. 7:26-6 as it relates to the requesting agency's county. Despite a finding of good faith, the]*** ***setting forth the information requested and the reasons for the request. The*** Department in its discretion may deny a request for release of a customer list if the Department determines to take enforcement action or if the Department determines for any other reason that granting the request would not be in the public interest. 5.-6. (No change.)

14:11-7.10 In-lieu payment rates for solid waste

[(a)] All solid waste facilities identified in N.J.A.C. 7:26-6 as disposal facilities to which a waste flow has been directed ***[must]*** ***may*** file with the Department ***[within 30 days of the effective date of this rule,]*** an initial tariff for special in-lieu payment applicable to transfer stations and materials recovery facilities. ***[Said]*** ***Should this optional tariff be pursued, said*** tariff must be calculated to enable the disposal facility to recover all costs of debt service, administrative cost, depreciation and anticipated equity return which represents the costs the disposal facility would have recovered if the waste had been received excluding the cost of disposing of such waste.

***[(b)]** Upon application supported by compelling economic or environmental grounds, including, but not limited to, accelerated depletion of remaining disposal capacity, a designated disposal facility may petition the Department for a waiver of the requirement set forth at (a) above to file in initial tariff for special in-lieu payment.]*

(a)

COMMISSION ON RADIATION PROTECTION

**Medical Diagnostic X-ray Installations
Dental Radiographic Installations**

**Adopted Repeals and New Rules: N.J.A.C. 7:28-15
and 7:28-16.8**

Adopted Amendment: N.J.A.C. 7:28-16.2

Proposed: January 4, 1993 at 25 N.J.R. 7(a); see also 25 N.J.R. 1039(a).

Adopted: August 25, 1993 by the Commission on Radiation Protection, Henry J. Powsner, M.D., Chairman.

Filed: September 24, 1993 as R.1993 d.510, **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. 26:2D-1 et seq., including N.J.S.A. 26:2D-7, 26:2D-9(h), 26:2D-9(i), and 26:2D-10.

DEPE Docket Number: 60-92-12.

Effective Date: October 18, 1993.

Expiration Date: July 30, 1995.

Summary of Public Comments and Agency Responses:

The Commission on Radiation Protection (the Commission) proposed the new rules, amendments and repeals on January 4, 1993. Secondary notice was accomplished by publication in the Trenton Times, the Newark Star Ledger and the Camden Courier Post, and by direct mail to 11 professional societies and three licensing boards. A copy of the proposal was sent to 65 registrants whose facility files indicate they have x-ray equipment that will be affected by the proposed ban on non-image-

intensified fluoroscopic x-ray systems. Copies were also mailed to individuals who requested a copy of the rule proposal. The public comment period conclusion for this proposal was extended from March 5, 1993 to April 14, 1993.

A public hearing was held on February 24, 1993 at the Radiation Protection Program's office, 729 Alexander Road, Princeton, New Jersey. Dr. Henry J. Powsner, Chairman of the Commission, presided at the hearing, at which eight individuals presented testimony. The public hearing record may be inspected, or a copy obtained upon payment of the Department of Environmental Protection and Energy's (the Department) nominal charge for copying, by contacting:

Janis Hoagland, Esq.
Office of Legal Affairs
Department of Environmental Protection
and Energy
CN 402
Trenton, New Jersey 08625

In addition to the oral and/or written comments received at the public hearing, the Commission and the Department received written comments from eight individuals. The Commission reviewed all of the oral and written comments received, and the rule as adopted reflects that consideration.

The following individuals submitted oral and/or written comments:

1. Ira M. Garelick, M.S., Health Physicist, St. Barnabas Medical Center, Livingston, N.J.
2. Fred M. Palace, M.D., F.A.C.R., Attending Radiologist, Morristown Memorial Hospital, Morristown, N.J.
3. Charles A. Janousek, Executive Director, New Jersey Board of Medical Examiners, Department of Law and Public Safety, Trenton, N.J.
4. Agnes M. Clarke, Executive Director, New Jersey Board of Dentistry, Department of Law and Public Safety, Newark, N.J.
5. Stephen H. Mahood, M.S., President, New Jersey Medical Physics Society, New Jersey Chapter of the American Association of Physicists in Medicine.
6. Emanuel M. Sichel, M.D., A.C.R., F.A.C.C., Lakewood, N.J.
7. Ken Kopecky, Clara Maass Medical Center, Belleville, N.J.
8. Michael Mink, New Jersey Medical Physics Society, Hasbrouck Heights, N.J.
9. Robert J. Tokarz, Piscataway, N.J.
10. K. David Steidley, Ph.D., Short Hills, N.J.
11. Donald Brunda, Trenton, N.J.
12. Linda Veldcamp, JFK Medical Center, Edison, N.J.
13. A. Maxwell Perlsweig, D.D.S., New Jersey Dental Society, North Brunswick, N.J.
14. Robert Stanton, Ph.D., Associate Physicist, Cooper Hospital/University Medical Center, Camden, N.J.
15. Jonathan N. Law, DABR, DABMP, Director, Medical Physics, Atlantic City Medical Center, Atlantic City, N.J.

General Comments

Comments addressing the same topic have been grouped together into the same section. The response follows.

1. COMMENT: This document represents the first major State revision for diagnostic x-ray units in over 30 years. It is imperative that the public comment period be extended to December 31, 1993 and that implementation be delayed until the radiology community can further evaluate the proposed regulations. A comment period of two months is hardly sufficient for reviewing a document of such magnitude. Many diagnostic units in the field do not meet certain new requirements. It would not be cost-effective to modify them, nor would "grand-fathering" them be practical if some models were overlooked. Since these regulations will greatly affect the practice of diagnostic radiology in New Jersey, sufficient time should be given for physicians, physicists, and manufacturers to review them. After 30 years, an additional 10 months will not pose an undue burden to either the Bureau of Radiological Health or the radiology community.

RESPONSE: At its February 24, 1993 meeting held after the public hearing, the Commission on Radiation Protection voted to extend the written public comment period to April 14, 1993, notice of which appeared in the March 15, 1993 New Jersey Register. As stated in the Summary document of this rule proposal, the proposed regulations are consistent with the Federal Performance Standards which have been in effect since August 1, 1974. For CT systems, the Federal performance standards went into effect in August 1984. Since most physicists currently

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use these performance standards when evaluating the diagnostic x-ray equipment for which they are responsible, the Commission felt it was not necessary for an additional 10 months to evaluate these regulations.

2. COMMENT: As a practicing radiologist, I am aware of the intricacies and technical minutia associated with the Radiation Protection Program of the State of New Jersey. I would like to commend the Chairman, Dr. Powsner, the Commission on Radiation Protection and its staff for an excellent job in revisiting an outdated regulation and improving the level of protection of the population of this state in terms of reducing the possibility of excess radiation exposure.

The Board of Medical Examiners supports these proposed regulations.

The New Jersey Medical Physics Society wishes to express our gratitude to all who have participated in the writing of this comprehensive document. The proposed regulations will certainly affect the practice of diagnostic radiology both in hospitals and private clinics operating in the State of New Jersey.

RESPONSE: The Commission appreciates the support for the regulations.

3. COMMENT: Specific testing methods that the individual inspectors utilize should be standardized and employed by all inspectors. The testing methods should reflect relevant clinical ranges instead of overall range capabilities.

RESPONSE: The Bureau of Radiological Health's inspectors use the same testing methods as outlined in the Bureau's Standard Operating Procedures (SOP) Manual. The Commission agrees with the commenter that testing should be in the relevant clinical ranges; this is the Bureau's current practice. The inspection SOP manual is available for review.

4. COMMENT: I must comment that licensed [registered] facilities are still allowed to use conventional Calcium Tungstate (CaWO_4) screens under the proposed regulations. Requiring the use of Rare Earth screens reduces patient exposure by approximately 50 percent. Perhaps the regulations should specify the use of rare earth screens.

RESPONSE: The Commission agrees with the commenter that rare earth screens do reduce patient exposure. However, they may not be appropriate for all studies and are, therefore, not being required by these regulations.

5. COMMENT: The implementation of the quality assurance (QA) programs for mammography, CT, and simulators is commendable. However, QA should not be limited to these areas. The majority of diagnostic procedures, and the majority of radiation exposure, come from radiographic and fluoroscopic examinations. QA on these units should be addressed.

Many specific requirements are demanded of the equipment without rules as to when these should be tested by the owner. A general phrase to require yearly testing of equipment should be added. It will improve compliance with the regulations since most owners will try to repair a non-compliant item once they are aware of it, and many sites are not inspected on an annual basis.

RESPONSE: The Commission appreciates the support for the quality assurance programs for mammography, CT and therapy simulators found in the regulations. The Commission has chosen these three areas as especially critical at this time. Mammography was chosen because excellent image quality for mammography is essential for proper diagnosis. CT was chosen because the radiation dose received by the patient is among the highest of all x-ray procedures performed. The accuracy of therapy simulator procedure is critical for proper radiation therapy treatments. The Commission will develop QA programs for radiographic and fluoroscopic units. Annual testing is recommended for those units for which a quality assurance program is not yet required.

6. COMMENT: The potential economic impact could be substantial to those facilities which would have to replace or upgrade equipment under the currently proposed regulations. I think it imperative that the State carefully study the potential impact by allowing the inspection team to inspect each facility's equipment on the basis of the proposed regulations and determine the degree of compliance, estimated costs for compliance and the estimated man-rem reduction as a result of compliance.

RESPONSE: The Commission addressed the potential economic impact of the proposed regulations in the Economic Impact Statement published with the rule proposal in the January 4, 1993 issue of the New Jersey Register. The primary expenditure to be incurred by the registrant will be for service or maintenance contracts to assure that the equipment meets the regulations set forth in N.J.A.C. 7:28-15. The cost will vary depending on the number of x-ray units the registrant owns and the service contract agreement he or she obtains.

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The Commission proposed to ban uncertified non-image intensified fluoroscopic equipment one year after the adoption of proposed N.J.A.C. 7:28-15. Replacement of the equipment will be a major expense. The Commission estimated that only 35 units would be affected. Based on the responses from practitioners who have this type of unit, most have written that they had already discontinued the use of this equipment.

The cost to a facility to comply with the proposed mammography section will depend on whether the facility has already achieved ACR accreditation for each mammography unit under its jurisdiction. This includes establishment of a quality assurance program. The Commission believes that the cost to achieve and maintain ACR accreditation or its equivalent is far outweighed by the benefits of dose reduction to the patient and better images from which the physician can make a diagnosis.

7. COMMENT: A commenter expressed an opinion that "... it's time for everyone to become concerned about the EMF's [electromagnetic fields] generated by this x-ray equipment."

RESPONSE: The Commission acknowledges the commenter's concern about electromagnetic fields (EMF) generated by x-ray equipment. The Commission believes that the commenter's concerns about EMF should be addressed to the manufacturers of the x-ray equipment, as CORP establishes requirements for the user of the equipment.

SUBCHAPTER 15. MEDICAL DIAGNOSTIC X-RAY INSTALLATIONS

N.J.A.C. 7:28-15.11(d)

8. COMMENT: The statement is made "The registrant shall ensure that all ionizing-radiation-producing machines under his or her jurisdiction are operated only by persons authorized pursuant to the Radiologic Technologist Act, N.J.S.A. 26:2D-24 through 36, and applicable provisions of N.J.A.C. 7:28-19.1." Unfortunately there is no definition in this subchapter or N.J.S.A. 26:2D of the word "operated." Recently the State of New Jersey has been presented in its implementation of the Radiologic Technologist Act by disagreements on the word "operate." The Board of Radiologic Technology Examiners had determined the verb "to operate" shall be defined as turning on the equipment, implementing the fluoroscopic mode, resetting the timers, as well as changing the technical parameters during a fluoroscopic procedure, etc. It has been held contrariwise by persons who wish to operate cardiac catheterization equipment that the word "operation" consists of only the stepping on the fluoroscopic pedal and initiating fluoroscopy and/or radiography and that all other aspects of the "operation" can be performed by persons not licensed or trained as Radiologic Technologists. I recognize that these regulations are not designed to deal with issues other than the requirements for installation of radiographic and fluoroscopic machinery. But it offers a vehicle for dealing with this significant issue in a timely and effective fashion.

RESPONSE: The Commission agrees that a definition of "operate" is necessary to clarify the radiation protection regulations. However, due to the subtleties in drafting this definition, and due to the broad applicability of this definition to the entire chapter, the Commission concluded that it could not add this definition upon adoption of N.J.A.C. 7:28-15 without providing notice and an additional opportunity for the public to comment. Therefore, the Commission intends to amend N.J.A.C. 7:28-1.4 by proposing to add a definition of "operate."

N.J.A.C. 7:28-15.2

9. COMMENT: The definition of radiation therapy simulator systems must also include dedicated CT-based radiation therapy simulator systems, as there are many in use.

RESPONSE: CT systems are used for radiation therapy treatment planning and do not directly simulate treatment set-up. Computed tomography used for radiation therapy treatment planning must meet the CT regulations.

10. COMMENT: The definition of "protective barrier" (both primary and secondary) should be revised to read "two millirems in any one hour." This should also be changed in the dental regulations at N.J.A.C. 7:28-16.2.

RESPONSE: The Commission agrees with the commenter and has changed N.J.A.C. 7:28-15.2 and N.J.A.C. 7:28-16.2 to correct the definition. These changes reflect the Commission's original intent.

11. COMMENT: In N.J.A.C. 7:28-15.4, the word xeromammography should be defined.

RESPONSE: For clarification, the Commission has added a definition for the term "xeromammography" to N.J.A.C. 7:28-15.2.

ENVIRONMENTAL PROTECTION**ADOPTIONS**

12. COMMENT: The definition of "scan increment" contains the word "believes," which should be "between."

RESPONSE: The Commission agrees that the correct word in the definition of "scan increment" is "between" and is correcting the typographical error.

13. COMMENT: The definition of "qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulator systems" needs to be amended. According to the text in the proposal, it is virtually impossible for a new graduate to gain the required experience to perform radiation surveys. In the section addressing bachelor's, master's and doctorate degrees, the addition of "under the supervision of" would be appropriate. This would allow new graduates to gain the required experience under the supervision of a qualified individual.

RESPONSE: The Commission agrees that there should be a provision to allow individuals to gain experience to become a "qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulator systems." The Commission, however, disagrees that this provision should be included in the definition because to do so would lessen the requirements under this definition. Rather, the Commission has added the term "or supervises the performance of" in N.J.A.C. 7:28-15.10(b)1 and 2. The Commission has also changed N.J.A.C. 7:28-16.8(a)1 and 2 to be consistent with N.J.A.C. 7:28-15.10(b)1 and 2 since the same individuals survey both medical and dental x-ray equipment. These changes are clarifications of the Commission's original intent pursuant to N.J.A.C. 1:30-4.3(c)2.

N.J.A.C. 7:28-15.3

14. COMMENT: How will manufacturer's specifications be shared with Bureau of Radiological Health (BRH) personnel and the medical physics community?

RESPONSE: It is the responsibility of the registrant to have the manufacturer's operating manual and specifications at the facility for review by BRH and the medical physics community.

15. COMMENT: Will the miscalibration of an individual kVp or time station cause the failure of an entire system?

RESPONSE: Yes, miscalibration of either kVp or time station would be a noncompliance with whichever parameter fails the regulation.

16. COMMENT: The penalty aspect of these regulations require further communication with the entire radiology community.

RESPONSE: Penalties for violating the Radiation Protection Act and the Radiologic Technologist Act and regulations promulgated thereto are set forth in N.J.S.A. 26:2D-1 et seq. Specifically, N.J.S.A. 26:2D-13 states "... Any person who violates the provisions of this act or any rule, regulation or order promulgated or issued pursuant hereto or uses, removes, or disposes of any property in violation of an embargo imposed under the provisions of this act shall be liable to a penalty of not more than \$2,500.00 to be collected in a civil action by a summary proceeding under 'the penalty enforcement law' (N.J.S.A. 2A:58-1 et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. ..."

N.J.A.C. 7:28-15.3(g)1

17. COMMENT: The 10 percent timer accuracy requirement is too strict, especially in the lower millisecond range. Most departments incorporate phototiming and the need for accurate timers has been reduced. For non-compliance, we recommend that the timer has to be inaccurate by more than 10 percent and that the reproducibility must exceed five percent for certified units and seven percent for uncertified units. Many older units are inaccurate but reproducible. The clinical techniques that are based on an inaccurate timer can generate quality films without increasing the dose to the patient. Compliance should be determined by the accuracy and reproducibility, not by accuracy and reproducibility independently.

RESPONSE: The Commission feels that timer accuracy is important, as not everyone uses automatic exposure control. The timer is one of the primary components in the formation of the x-ray beam. Accuracy of kVp, mA, and time are necessary for producing a quality image. Timer accuracy is checked against the manufacturer's specifications, which vary. If the manufacturer's specifications are not available, the 10 percent limit is enforced. Based on the Department's review of the manufacturer's specifications, the Commission feels that this requirement is reasonable, necessary, and achievable. Timer accuracy and exposure reproducibility are separate parameters and, therefore, are tested and enforced as such.

N.J.A.C. 7:28-15.3(i)

18. COMMENT: The U.S. Food and Drug Administration's Center for Devices and Radiological Health (CDRH) is considering eliminating the positive beam limitation (PBL) regulation. The Commission on Radiation Protection should eliminate the PBL requirement. In the clinical setting, this is the most unreliable part of the x-ray system. Most technologists will collimate closer than four percent of the SID as required of the PBL in the proposed regulations. While the PBL system has to operate, it does not have to be used. This regulation will increase service costs to the community, and not provide any dose reduction to the patient.

RESPONSE: When the Commission proposed N.J.A.C. 7:28-15.3(i) in the January 4, 1993 issue of the New Jersey Register, a Federal regulation required that all certified equipment have PBL. The Commission's proposed regulation addressing PBL was, at the time of proposal, consistent with the Federal regulation. On May 3, 1993, the Food and Drug Administration promulgated a final rule amending the Federal performance standards addressing, among other things, PBL. The Federal PBL regulation now makes PBL optional, but requires equipment that is provided with PBL to have it operational in accordance with 21 C.F.R. §1020.31(g). Since Federal law requires the Commission to be consistent with the Federal performance standards, the Commission has amended N.J.A.C. 7:28-15.3(i) accordingly.

N.J.A.C. 7:28-15.3(j)6

19. COMMENT: In N.J.A.C. 7:28-15.3(j)6, the requirement for wearing a lead apron should be dropped. Utilizing the six-foot exposure cord reduces scatter radiation to minimal levels, especially since this extends the distance from the patient (that is, the scatter source) to about 10 feet. This sentence should read "protected with a lead apron ... or is at least six feet from the patient."

Mobile radiography should be performed by an operator wearing a 0.25 mm lead equivalent apron. N.J.A.C. 7:28-15.3(j)6 should also allow for an operator to stand at least six feet from the patient without a lead apron during mobile radiography. Scatter measurements have shown that the exposure to the operator at six feet from the patient is minimal.

RESPONSE: The Commission does not agree with the commenter. It is not always possible for a radiologic technologist to be six feet from the patient; therefore, a lead apron provides the best protection for the operator.

N.J.A.C. 7:28-15.4

20. COMMENT: It appears that the entire mammography section is based on the American College of Radiology's (ACR) quality control manuals. If the proposed regulations require ACR accreditation within two years, then ACR accreditation should eliminate the need for N.J.A.C. 7:28-15.4(h), (i) and (j). Since the ACR is more likely to revise its requirements before the State of New Jersey, we recommend deleting all tolerances in N.J.A.C. 7:28-15.4(f) and referencing the tolerances in the most recent ACR manual.

RESPONSE: It is possible for a facility to take two years to achieve ACR accreditation; therefore, it is necessary to have regulations in place which ensure that the equipment is safe even before ACR accreditation or its equivalent has been attained.

The Commission has chosen not to incorporate by reference the current ACR manual, as the ACR manuals are guidelines to be used to achieve accreditation. The regulations established by the Commission are consistent with the limits recommended in these manuals in order to maintain clarity and consistency.

21. COMMENT: The section on mammography requires all units to be ACR accredited within two years. We agree that for screening and diagnostic machines this is appropriate; however, units that are purchased strictly for stereotactic radiography for performing biopsies should be excluded from this requirement.

RESPONSE: The Commission agrees that mammography units used exclusively for stereotactic radiography for performing breast biopsies should be exempt from the Commission's requirement that they achieve ACR accreditation. These units must still meet all other requirements of this subchapter. Mammography units used for both stereotactic and diagnostic and screening mammography must meet all the requirements of N.J.A.C. 7:28-15.4, as well as all other requirements of this subchapter. The Commission intended to require ACR accreditation for all mammography units used for diagnostic and screening procedures and did not intend to require ACR accreditation for stereotactic radiography for performing biopsies. The rule has been changed to clarify the original intent.

ADOPTIONS**N.J.A.C. 7:28-15.4 and 15.9**

22. COMMENT: N.J.A.C. 7:28-15.4 and 15.9 require that written quality assurance manuals and safety rules be provided in each radiology setting and that workers using the equipment sign a document acknowledging that the quality assurance and safety manuals have been read. The Medical Board asks the Department to consider offering to radiology settings sample quality assurance manuals and safety rules for the types of equipment discussed in the rule. Physicians can then have the option of purchasing such Department-approved manuals. This would ensure not only efficiency but also accuracy and uniformity of the wording.

RESPONSE: The minimum items to be contained in the quality assurance manuals are listed in N.J.A.C. 7:28-15.4(j), 15.6(c) and 15.7(d). The minimum requirements for the items to be included in a radiation safety manual are contained in N.J.A.C. 7:28-15.9. In accordance with N.J.A.C. 7:28-2.2, all sources of radiation shall be supervised by an individual who is knowledgeable and experienced in the principles and practices of radiation protection. This individual should be able to compile such a manual, using the regulations and his or her expertise.

The Commission will study the need to develop a regulatory guide for a quality assurance manual.

N.J.A.C. 7:28-15.4(d)

23. COMMENT: I have a concern for the statement in N.J.A.C. 7:28-15.4(d) which states "the registrant shall ensure that each mammography unit under the registrant's jurisdiction is operated by a licensed diagnostic x-ray technologist or a licensed practitioner as prescribed in N.J.A.C. 7:28-19." I know of no licensed practitioner (medical doctor, doctor of chiropractic medicine, doctor of osteopathic medicine, doctor of podiatric medicine, or dentist) whose training includes the performance of the technologist's role in mammography. The fact that a licensed practitioner is authorized to operate ionizing-radiation-producing equipment is, I believe, a throwback to the days when physicians could, by virtue of their training, do almost anything and everything. This is a situation that is no longer true (if ever it was) and 1993 regulations should reflect this reality. At the very least, the Commission should require that a licensed practitioner be required to register with the Bureau of Radiological Health his or her intention to operate such equipment and should certify to the satisfaction of the Commission of Radiation Protection that he has been so specifically trained.

RESPONSE: The Commission appreciates and agrees with the comments, and intends to study this issue. However, the commenter should understand that the Commission does not have the statutory authority to regulate physicians.

N.J.A.C. 7:28-15.4(e)

24. COMMENT: N.J.A.C. 7:28-15.4(e) will prohibit the use of a mammography unit within two years of the effective date of the rule or within two years of the installation of the unit, whichever is later, unless the unit is accredited by the American College of Radiology or meets an equivalent standard acceptable to the Commission. Members of the Board of Medical Examiners have expressed concern that the American College of Radiology may delay the review of applications for accreditation which may render it impossible to achieve accreditation within that stated time limit, notwithstanding bona fide attempts by the physicians to comply. The Board, therefore, requests that the Commission modify this provision to allow a "provisional" registration for a unit where the owning entity can demonstrate, to the satisfaction of the Commission, that timely application had been submitted for accreditation, but the ACR has not yet acted.

RESPONSE: The Commission agrees with the commenter that the registrant cannot be responsible for ensuring ACR's timeliness in responding to the registrant's application. The Commission will consider on a case-by-case basis situations where ACR accreditation is delayed beyond the two year limit.

N.J.A.C. 7:28-15.4(f)1

25. COMMENT: In N.J.A.C. 7:28-15.4(f)1, "dedicated" units are not applicable for those performing xeromammography.

RESPONSE: The Commission feels that the use of a unit specifically designed for mammography (also termed a dedicated mammography unit) is essential for mammography. A unit that is not a dedicated mammography unit cannot be used regardless of the image receptor. Xeromammography is one type of image receptor used in mammography procedures.

ENVIRONMENTAL PROTECTION**N.J.A.C. 7:28-15.4(f)2**

26. COMMENT: In N.J.A.C. 7:28-15.4(f)2, the requirement for light-field localizer should be deleted. There are units in the field without them that have been ACR accredited. Also, lack of a light field localizer will not be a problem as long as the fixed beam-limiting device meets the requirements of N.J.A.C. 7:28-15.4(f)4.

RESPONSE: 21 U.S.C.A. §360ss requires states to be identical to the Federal performance standards if such Federal standards have been promulgated. The Federal requirements addressing light localizer appear in 21 C.F.R. §1020.31(d)2ii. Therefore, in order to comply with Federal law, the Commission has amended N.J.A.C. 7:28-15.4(f)2 to make the requirements for a light localizer applicable only when such feature is provided on the mammography unit. The Commission believes that a light localizer is valuable in positioning the patient; however, it agrees with the commenter that a light localizer is not essential to restrict the x-ray field to the image receptor.

N.J.A.C. 7:28-15.4(f)6

27. COMMENT: The ACR does not require a mammography unit to have phototiming. We are aware of several units that are ACR accredited without having a phototimer. The proposed requirement is more restrictive than current ACR requirements and should be deleted.

RESPONSE: The Commission is retaining the requirement for the capability of automatic exposure control to ensure high-quality images and to maintain current standard of practice. The Commission feels that there is a far greater need for appropriate and reproducible film density in mammography than in most radiological procedures and that this accuracy and reproducibility cannot be reliably obtained using manual exposure settings.

Mammography units are currently manufactured with the capability to do phototiming, now termed "automatic exposure control (AEC)." It is the Commission's understanding that most facilities use automatic exposure control (phototiming) for the majority of their mammography procedures. ACR has specific performance guidelines for AEC in its Quality Assurance Program Manual. Moreover, Medicare screening mammography regulations at 42 C.F.R. §494 require the capability of automatic exposure control. Since there are no Federal performance standards specifically addressing mammography, the Commission is retaining the requirement for the capability of automatic exposure control.

N.J.A.C. 7:28-15.4(f)9iii

28. COMMENT: The requirements for kVp increments in N.J.A.C. 7:28-15.4(f)9iii should be deleted. Many Siemens and Philips units, for instance, have fixed settings at 25 and 28 kVp. These units still produce quality radiographs and have been ACR accredited.

RESPONSE: In response to the commenter, the Commission is revising the requirement for kVp increment selection from two to three to allow the continued use of these units that are already manufactured and which have received ACR accreditation. The settings of 25 and 28 kVp are the two most commonly used kV settings, and are among the normal clinical ranges for mammography procedures. This is a minor substantive change pursuant to N.J.A.C. 1:30-4.3(c)3, which has no adverse effect on patient safety.

N.J.A.C. 7:28-15.5

29. COMMENT: The majority of patient dose and operator exposure arises from fluoroscopic procedures. Over the past 10 years many physicians who lack radiation protection training are performing a substantial number of fluoroscopic examinations. We suggest that all clinicians who perform fluoroscopy must attend a radiation protection training program.

RESPONSE: The Commission agrees with the commenter that all physicians performing fluoroscopy should attend a radiation protection program. The Commission, however, does not have the statutory authority to regulate physicians. The Commission recommends that the facility provide a radiation protection program for physicians using its fluoroscopy equipment. The Commission has been and will continue to study this issue.

N.J.A.C. 7:28-15.5(b)1i and ii

30. COMMENT: The medical fluoroscopic x-ray systems in N.J.A.C. 7:28-15.5(b)1i and ii should be specifically modified to exclude radiation therapy simulators. The fluoroscopes thus used are movable in order to be able to scan the large fields used for therapy and to evaluate the borders of these fields. While the fluoroscope is being moved to the beam edges, it does not "intercept the entire cross section of the useful beam" and therefore violates the proposed regulation. The medical use,

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however, requires such movement and does not hurt the patient in any way considering the radiation dose to be given in the therapeutic beam later on. For the same reasons, N.J.A.C. 7:28-15.5(b)3 should be modified to exclude simulators as already done in N.J.A.C. 7:28-15.5(b)5, 6 and 9.

RESPONSE: The Commission agrees with the commenter and has added the exemptions to the regulation to be consistent with the Federal performance standards at 21 C.F.R. §1020.32(a)1.

N.J.A.C. 7:28-15.5(b)3v

31. COMMENT: There is a typographical error in N.J.A.C. 7:28-15.5(b)3v. "Beam-lighting" device should be "beam-limiting" device.

RESPONSE: The Commission agrees that the correct wording is "beam-limiting" device and is correcting this typographical error.

N.J.A.C. 7:28-15.5(b)14 and 15

32. COMMENT: The medical fluoroscopy systems under N.J.A.C. 7:28-15.5(b)14 and 15 should exclude radiation therapy simulators. It appears that N.J.A.C. 7:28-15.5(b)14 and 15 were intended for undertable fixed fluoroscopic tables only. Therefore, overtable tube (remote), C-arms, special procedures, and cardiac catheterization fluoroscopy units should be excluded from N.J.A.C. 7:28-15.5(b)14 and 15.

RESPONSE: The Commission agrees with the commenter that N.J.A.C. 7:28-15.5(b)14 should be more explicit and should exclude radiation therapy simulator systems. It has been reworded to clarify the original intent. The statement "A fluoroscopic table that has been provided with an undertable tube and a bucky shall be provided with a bucky slot cover" has been added to the regulation for clarification purposes only. By definition and design, overtable tubes, therapy simulator systems, C-arms, and special procedures units are exempt.

The Commission disagrees with the commenter that N.J.A.C. 7:28-15.5(b)15 should exclude radiation therapy simulators. Additional protective shielding is important. Shielding is available in a variety of formats that would make it feasible to be provided. For clarification, commas are being added to N.J.A.C. 7:28-15.5(b)15 to separate the words "... such as a drape ..." to indicate that it is an example of protective shielding. Therefore, therapy simulator systems will not be exempted from the requirements of N.J.A.C. 7:28-15.5(b)15.

N.J.A.C. 7:28-15.6(c)1i

33. COMMENT: The AAPM Report #13 is not generally available in the medical libraries. It would be good to abstract the appropriate sections for the guidelines regarding QA programs referred to in N.J.A.C. 7:28-15.6(c)1i.

RESPONSE: The AAPM Report #13 should be familiar to the radiation therapy physicist and should already be available in the radiation therapy department. It can be purchased from the AAPM at the following address:

American Associates of Physicists in Medicine (AAPM)
334 East 45th Street
New York, NY 10017
Telephone: 212-661-9494

After October 15, 1993, the AAPM will join with and be relocated to the following address:

American Center for Physics
1 Ellipse Drive
College Park, MD 20740-3843

N.J.A.C. 7:28-15.7(b)3

34. COMMENT: The phantom specifications listed in N.J.A.C. 7:28-15.7(b)3 should be deleted. How can the BRH place limitations on the future development of different types of phantoms and materials?

RESPONSE: The phantom requirements are consistent with the phantom requirements in 21 CFR 1020.33(b)6, as required by 21 U.S.C.A. §360ss.

N.J.A.C. 7:28-15.7(b)5

35. COMMENT: The text in N.J.A.C. 7:28-15.7(b)5 is vague; clarification is requested.

RESPONSE: The Commission wrote this section to be consistent with 21 CFR 1020.33(f)2i and (f)2ii of the Federal performance standards. Given the generality of this comment, the Commission is unable to provide the clarification requested.

N.J.A.C. 7:28-15.7(b)13

36. COMMENT: Tolerances listed in N.J.A.C. 7:28-15.7(b)13 for the beam entrance widths are too restrictive. I think the Commission should

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consider increasing the tolerances. Perhaps plus or minus one mm would be more appropriate.

RESPONSE: At this time, the Commission is deleting the beam entrance width requirement in N.J.A.C. 7:28-15.7(b)13 because clarification is needed as to whether these tolerances are manufacturing standards set by the Food and Drug Administration ("FDA") or simply adjustments made on the machine. Since the Commission's regulations must be consistent with the Federal performance standards and no specific beam entrance width requirements with respect to computed tomography have yet been set, the Commission has chosen not to regulate this aspect of machine performance at this time but will continue to review this issue and will resolve the issue within the next year.

N.J.A.C. 7:28-15.7(d)2i and ii

37. COMMENT: The text in N.J.A.C. 7:28-15.7(d)2i and ii is vague regarding calibration and spot checks for computed tomography; clarification is requested.

RESPONSE: The Commission agrees with the commenter that the meaning of spot check in N.J.A.C. 7:28-15.7(d)2i is unclear. The specific test that constitutes the spot check will be determined by the qualified medical physicist for the supervision of quality assurance programs. By calibration, the Commission means the service engineer's reports.

The Commission disagrees with the commenter that N.J.A.C. 7:28-15.7(d)2ii is unclear because it specifically states that the information available near the control panel must include detailed instructions on the use of the phantom, including a testing schedule, acceptable parameter variations and recent test results. This information is usually available in the operator's manual provided by the manufacturer.

N.J.A.C. 7:28-15.7(d)2iii

38. COMMENT: In N.J.A.C. 7:28-15.7(d)2iii, what is meant by a "technique chart"? Most CT-system protocols are menu-driven and technique charts may not be applicable.

RESPONSE: A technique chart lists the machine settings for a specific procedure prior to that procedure being performed. CT computer menu-driven selections incorporate the technique factors in the menu. Therefore, this menu-driven chart would be acceptable.

N.J.A.C. 7:28-15.7(d)3

39. COMMENT: Further clarification is needed on N.J.A.C. 7:28-15.7(d)3. Does the physicist have to personally perform these tests? May he or she supervise these tests? May they be done with service personnel as part of a manufacturer's preventative maintenance instructions?

RESPONSE: The intent of the Commission is that the qualified medical physicist must personally perform these tests. However, this does not preclude a manufacturer's representative or a medical physicist in training, or a CT technologist from working side-by-side with the qualified medical physicist, as long as the medical physicist is ultimately responsible that these tests are performed properly.

40. COMMENT: The CT dose should be measured annually. However, N.J.A.C. 7:28-15.7(d)3 requires that the computed tomography dose index (CTDI) be measured. This section should allow for other appropriate CT dose methodology, including TLD and MSAD measurements.

RESPONSE: The regulation states that a qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment does performance testing procedures which "... shall include but not be limited to ... CTDI". CTDI is required in 21 CFR 1020.33(c). Other tests and measurements can also be made at the discretion of the qualified medical physicist. CTDI can be calculated from measurements that can be made by any of several methods. It is the responsibility of the medical physicist to select the method to be used.

41. COMMENT: Dose measurement should be at the discretion of the physicist and not limited to CTDI.

RESPONSE: N.J.A.C. 7:28-15.7(d)3 lists the minimum tests to be conducted. CTDI is only one of the tests listed and the dose measurement technique is at the discretion of the medical physicist. The regulation states that the testing procedures be done "... annually, which shall include but not be limited to CTDI, nominal tomographic section thickness accuracy, incremental table movement accuracy, noise, and high/low contrast resolution." This is consistent with the Federal regulations. In order to be technically correct, the Commission is correcting the wording in the regulation to state "... high contrast and low contrast resolution."

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N.J.A.C. 7:28-15.8(b)2

42. COMMENT: In N.J.A.C. 7:28-15.8(b)2, the type of survey instrument should be specified.

RESPONSE: The survey instrument to be used is a survey instrument appropriate for the energy and type of radiation that is emitted by the radiation-producing machine. The qualified individual listed in N.J.A.C. 7:28-15.8(b)3 will know the appropriate survey instrument to use.

N.J.A.C. 7:28-15.8(b)3

43. COMMENT: In N.J.A.C. 7:28-15.8(b)3, leakage radiation measurements on medical cabinet systems should be performed annually.

RESPONSE: The Commission disagrees. The requirements for leakage radiation measurements are that they must be performed whenever the unit is installed, modified, repaired, or moved. The Commission recommends annual leakage measurements if any of the foregoing did not occur within that year.

N.J.A.C. 7:28-15.8(b)4v

44. COMMENT: In N.J.A.C. 7:28-15.8(b)4v, interlock testing should be done annually. Current manufacturing does not warrant more frequent testing.

RESPONSE: This requirement is consistent with N.J.A.C. 7:28-17.7 for non-medical cabinet x-ray systems. The Commission feels that interlock testing every six months is not burdensome and is necessary to insure safety of personnel.

N.J.A.C. 7:28-15.9(a)2iii

45. COMMENT: While no licensed technologist should have to hold a patient during exposures, occasionally the need for this arises for a procedure to be performed. N.J.A.C. 7:28-15.9(a)2iii should be changed from "... except in a life-threatening situation" to "except when all other means are exhausted."

RESPONSE: The Commission feels that an occupationally exposed person should not hold a patient unless the patient's life would be endangered if the x-ray procedure was not performed immediately. The Commission feels that this wording is more restrictive and will result in facilities critically evaluating situations in which a technologist would have to hold a patient. In order to keep exposure as low as possible, the National Council on Radiation Protection and Measurements Reports advises against an occupationally exposed individual holding a patient.

N.J.A.C. 7:28-15.9(a)3

46. COMMENT: N.J.A.C. 7:28-15.9(a)3 is too vague and general. Who would make the judgement on interference and sterility? Should elderly patients be shielded? Either delete this or replace "shall" with "should."

RESPONSE: The radiologist would determine interference with the x-ray procedure and would set the facility's protocol to determine the reproductive status of a patient. All patients must be shielded regardless of their age unless the shield would obstruct the area that is being x-rayed for a diagnosis.

N.J.A.C. 7:28-15.9(a)8 and 11

47. COMMENT: The written safety rules in N.J.A.C. 7:28-15.9(a)8 are too general. What constitutes an appropriate manual? We request that this section be revised to include specific guidelines such as a regulatory guide so that the facility and inspectors expect to see the same information.

RESPONSE: The Commission agrees that the facility and inspectors should expect to see the same information in a safety manual. N.J.A.C. 7:28-15.9 lists basic safety requirements that must be described in a safety manual.

N.J.A.C. 7:28-15.10(b)3iii

48. COMMENT: Some of the information required to be on the survey report is available on the registration form and need not be on the survey report.

RESPONSE: Registration forms are frequently completed by a facility's administrative office and may not be complete. Radiation safety surveys are submitted to the Department separately from the registration form. In order to positively identify both the facility and the unit, detailed identifying information is necessary on the survey report. The Commission feels that the information required to be included in the survey report is not burdensome to the surveyor.

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N.J.A.C. 7:28-15.10(b)3vii

49. COMMENT: N.J.A.C. 7:28-15.10(b)3vii should eliminate the requirement of listing the construction data, such as the thickness of lead shielding, and wall and floor construction on the survey report as it is not always available. The actual survey measurements will show whether or not the building material provides sufficient radiation protection.

RESPONSE: Wall, ceiling, and floor construction materials become important if the qualified individual for the performance of radiation safety surveys is unable to get into adjoining areas to take actual survey measurements. The qualified individual for the performance of radiation safety surveys would need to calculate exposure levels in those areas. The Commission recognizes that specific information may not be available; however, this information must be provided to the extent that it is known.

N.J.A.C. 7:28-15.11

50. COMMENT: Several letters were received from practitioners whose x-ray equipment is affected by the proposed ban on uncertified non-image intensified fluoroscopic equipment. These letters stated that they had already discontinued the use of this component of their combination radiographic-fluoroscopic x-ray equipment.

RESPONSE: The Commission appreciates the practitioners' review of the proposed regulations and their comments. The Commission has proposed to ban this older type of equipment because it cannot achieve the lower radiation doses and increased safety that is available from more modern equipment with image intensification.

N.J.A.C. 7:28-16.8(a)1 and 2

51. COMMENT: The Board of Dentistry is concerned with the proposed shortening of the time requirement of having the radiation area safety survey performed within 60 days and a copy of the survey sent to the Department within 30 days to the new requirement that the survey must be performed and a copy of the report sent to the Department within 30 days of the date the x-ray unit is acquired. The Board maintains there is a very limited number of physicists available in the State to survey the equipment. Even with the current time frame of 60 days it is difficult to schedule an appointment with a physicist. The New Jersey Dental Association requests that the Commission amend N.J.A.C. 7:28-16.8 to allow a registrant 60 days following installation to submit a radiological survey to the Bureau. We understand the necessity of the survey. We are asking for a reasonable amount of time in which to engage a qualified individual, to have that individual perform the survey, to receive the written findings, and to submit a copy of the survey report to the Department.

RESPONSE: The requirement of N.J.A.C. 7:28-16.1(b) states that "No person shall operate or permit the operation of x-ray equipment used in the practice of dentistry unless the equipment and installation meet the requirements of this subchapter." The Commission recognizes that the registrant has the responsibility for ensuring that the equipment and shielding meet the requirements from the date acquired, which the proposed definition states is the day the unit is available for clinical use on patients. The Commission feels that extending the time for the survey will not jeopardize public health and safety. The Commission agrees to change the timeframe for the survey to be completed and a copy sent to the Department to 60 days from the date the machine is acquired. To be consistent, the Commission is changing the timeframe in N.J.A.C. 7:28-15.10(b)1 and (b)2 for having a survey performed and a copy sent to the Department to 60 days from the date the machine is acquired since the same qualified individual performs both medical and dental radiation area surveys. This is a minor substantive change in accordance with N.J.A.C. 1:30-4.3(c)3, and will not cause any health and safety problems.

N.J.A.C. 7:28-16.8

52. COMMENT: The Dental Association requests that the Commission reconsider the proposed requirement that the original survey report be kept for as long as the unit is registered plus one year to as long as the registration period plus one year. The Dental Association would like this requirement changed to require the registrant to keep the original survey report for only as long as the time the unit remains on premises.

RESPONSE: The maximum period of time to keep a unit in storage is one year. At the end of one year, the unit may be either reactivated or junked. This requirement of keeping the survey for as long as the unit is registered plus one year takes into account the possibility that

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a unit in storage may be reactivated after the one year storage period expires. If the unit is reactivated, the shielding survey will already be on file at the facility. While the Commission understands the commenter's concern if the unit is discarded and immediately removed from the premises, the Commission does not believe this requirement is an administrative burden.

It is important for a facility to keep survey report records in case a patient or member of the public has a question as to the radiation levels surrounding the unit and the adequacy of the shielding provided.

Summary of Hearing Officer's Recommendations and Commission Responses:

Henry J. Powsner, M.D., Chairman, Commission on Radiation Protection ("Commission"), served as the hearing officer at the February 24, 1993 public hearing held at the Department of Environmental Protection and Energy's Radiation Protection Programs offices located at 729 Alexander Road, Princeton, New Jersey. Chairman Powsner recommended that the Commission adopt the rules at N.J.A.C. 7:28-15 and N.J.A.C. 7:28-16.2 and 16.8 as proposed, with minor changes as described above in the Summary of Public Comments and Agency Responses and below in the Summary of Commission-Initiated Changes. The Commission accepts the recommendation.

A copy of the record of public hearing, which includes the hearing officer's report is available upon payment of the Department of Environmental Protection and Energy's normal charges for copying. Persons requesting copies should contact:

Janis E. Hoagland, Esq.
Administrative Practice Officer
Department of Environmental Protection and Energy
Office of Legal Affairs
401 East State Street
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Trenton, New Jersey 08625-0402

Summary of Commission-Initiated Changes:

Between the Commission's proposed repeal and new rules of N.J.A.C. 7:28-15 and 16.8 and proposed amendment of N.J.A.C. 7:28-16.2 and the adoption of these rules, the Food and Drug Administration ("FDA") promulgated a final rule amending the Federal Performance Standards for Diagnostic X-ray Systems and Their Major Components, which appear at 21 C.F.R. Part 1020. See, 58 Fed. Reg. 26386 (1993). As discussed throughout the Commission's rule proposal at 25 N.J. Reg. 7(a) (1993), States may adopt standards governing x-ray machine performance only if they are identical to or consistent with the Federal Manufacturing Performance standards. 21 U.S.C.A. §360ss. The recent amendments to the Federal performance standards, therefore, resulted in the Commission reviewing its proposed rules in order to ensure consistency with the Federal standards. Based on its review, the Commission identified several areas which it believes must be changed to comply with Federal law. These changes, along with typographical, punctuation, spelling and grammatical corrections and language changes to clarify the proposal, have been made in accordance with N.J.A.C. 1:30-4.3, and are identified below:

N.J.A.C. 7:28-15.1 Scope

In N.J.A.C. 7:28-15.1(d), the reference to N.J.A.C. 7:28-19.1 was deleted and replaced by a reference to N.J.A.C. 7:28-19, since it was the Commission's intent that the entire subchapter 19 be included in the reference.

N.J.A.C. 7:28-15.2 Definitions

In the definition of "cassette holder," a comma is being inserted to correct a typographical error.

In the definition of "protective barrier," the word "protective" is being changed to "protection" to correct a typographical error.

In the definition of "qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulator systems" in subparagraph 1i, the word "and" is replaced by the word "in" to correct the typographical error in the certification title. In paragraph 5, the word "the" is added for clarity.

For clarity and convenience, the Commission is repeating the definition of "registrant" which appears in N.J.A.C. 7:28-1.4(a).

In the definition of "x-ray equipment," an "s" is being deleted from the word "subsystem" to correct a typographical error.

N.J.A.C. 7:28-15.3 General requirements for radiographic installations

In N.J.A.C. 7:28-15.3(c)1, a comma is being deleted as a typographical error.

In N.J.A.C. 7:28-15.3(c)1ii, the visual definition requirements for radiographic systems will now apply to "portable" equipment, which is defined at N.J.A.C. 7:28-15.2. This change is required in order to be consistent with the recently amended Federal performance standards at 21 C.F.R. §1020.31(d)2iii, which now extends the visual definition requirements to "portable" equipment.

In N.J.A.C. 7:28-15.3(e), a typographical error was corrected. The word "persons" was changed to "person."

In N.J.A.C. 7:28-15.3(e)1, the table of half-value layers has been slightly changed in order to remain identical with the amended table that appears at 21 C.F.R. §1020.30(m). In particular, the kVp values in the column entitled "Designed Operating Range" were changed from "Below 50," "50 to 70" and "Above 70" to "Below 51," "51 to 70" and "Above 70."

The values in the column entitled "Measure Operating Potential" were changed from "30," "40," and "49" in the "Below 50" category to "30," "40," and "50" in the "Below 51" category. The minimum half-value layer at "50" was reduced from "1.2" to "0.5" mm of Al. In the "51" to "70" category, the value "51" was added with a corresponding half-value layer of "1.2" mm of Al.

The half-value layer is the amount of aluminum added to the radiation beam to reduce the radiation by half. These changes (one kilovolt) are minor substantive changes, pursuant to N.J.A.C. 1:30-4.3(c)3, which have virtually no effect on radiation exposure to the patient."

In N.J.A.C. 7:28-15.3(f)1i, the Commission added the term "greater than one-half second" to the requirement that the operator shall be able to terminate the x-ray exposure at any time during an exposure that is greater than one-half second. This change was made to be consistent with the Federal performance standard at 21 C.F.R. §1020.31(a)2i. This change reflects the limitations of current x-ray equipment technology."

In N.J.A.C. 7:28-15.3(g)6ii, the Commission has made the linearity requirements for x-ray equipment having a combined x-ray tube current-exposure time product (mAs) selector setting, the average ratios of exposure to the indicated milliamperes-seconds product (mR/mAs) or (C/kg/mAs) values obtained at any two consecutive mAs selector settings applicable only to equipment manufactured after May 3, 1994. This change was made to be consistent with the amended Federal performance standards at 21 C.F.R. 1020.31(c)2. This amendment gives manufacturers time to conform to these requirements.

In N.J.A.C. 7:28-15.3(g)6iii, the Commission has amended the language used to define the variables in the average exposure ratio equation for calculating linearity. Specifically, the Commission deleted the term "X₁ and X₂" and replaced it with the term "X₁ and X₂". In addition, the Commission inserted the term "mA or mAs" between the terms, "tube" and "setting." By making these changes, the Commission has made this requirement consistent with 21 C.F.R. §1020.31(c)1, which it is required to do pursuant to Federal law.

In N.J.A.C. 7:28-15.3(i), the word "uncertified" is being deleted to correct a technical error because PBL was never intended to be required on uncertified equipment. PBL requirements are also being changed to be consistent with the Federal manufacturing performance standards in 21 CFR 1020.31(g), as addressed in the response to comments above.

N.J.A.C. 7:28-15.4 Mammography radiographic installations

In N.J.A.C. 7:28-15.4(e), the phrase "the registrant shall ensure that each mammography unit under the registrant's jurisdiction shall be accredited by the American College of Radiology (ACR) or shall meet an equivalent standard acceptable to the Commission" has been revised for clarity as follows: "the registrant shall not operate or permit the operation of each mammography unit under the registrant's jurisdiction unless the mammography unit is accredited by the American College of Radiology (ACR) or meets an equivalent standard acceptable to the Commission."

In N.J.A.C. 7:28-15.4(f)2, the requirements for the tube housing assembly were moved to make N.J.A.C. 7:28-15.4(f)3 and subsequent paragraphs were recodified. The requirements set forth therein remain unchanged.

In N.J.A.C. 7:28-15.4(f)10ii, the Commission has made the mammography linearity requirements for x-ray equipment having a combined x-ray tube current-exposure time product (mAs) selector setting, the average ratios of exposure to the indicated milliamperes-seconds product (mR/mAs) or (C/kg/mAs) values obtained at any two consecutive mAs

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selector settings applicable only to equipment manufactured after May 3, 1993. This change was made to be consistent with the amended Federal performance standards at 21 C.F.R. 1020.31(c)2. This amendment gives manufacturers time to conform to these requirements.

In N.J.A.C. 7:28-15.4(f)11iii, the Commission has amended the language used to define the variable in the average exposure ratio equation for calculating linearity for mammography equipment. Specifically, the Commission deleted the term “ X_1 and X_2 ” and replaced it with the term “ X_1 and X_2 ”. In addition, the Commission inserted the term “mA or mAs” between the terms, “tube” and “setting”. By making these changes, the Commission has made this requirement consistent with 21 C.F.R. §1020.31(c)1, which it is required to do pursuant to Federal law.

N.J.A.C. 7:28-15.4(f)11 was changed to correct a typographical error in the HVL equation, replacing “ \geq ” with “ \leq ” to conform to the narrative text.

In N.J.A.C. 7:28-15.4(f)12, the character \pm was deleted to correct a typographical error.

In N.J.A.C. 7:28-15.4(f)13, the character \pm was added to correct a typographical error.

N.J.A.C. 7:28-15.5 Medical fluoroscopic x-ray systems

In N.J.A.C. 7:28-15.5(b), a typographical error, “X-ray” to “x-ray” was corrected.

In N.J.A.C. 7:28-15.5(b)1ii, the word “intensifier” has been changed to correct a typographical error. The correct spelling is “intensifier.”

In N.J.A.C. 7:28-15.5(b)1iii, the word “of” in the third sentence was changed to “or” to correct a typographical error.

In N.J.A.C. 7:28-15.5(b)2, the word “certified” was added for clarification pursuant to N.J.A.C. 1:30-4.3(c)2.

In N.J.A.C. 7:28-15.5(b)3, the Commission is exempting fluoroscopic systems used for radiation therapy simulation from the field limitation requirements which are generally applicable to fluoroscopic equipment. This change is also being made to be consistent with the Federal performance standards governing field limitation for image-intensified fluoroscopy units in 21 C.F.R. 1020.32(b)2. The Commission believes this exemption is necessary for proper radiation therapy treatment planning because the need for accurate delineation of the treatment field justifies the increased dose to the patient.”

In N.J.A.C. 7:28-15.5(b)6, the phrase “manual mode” has been added to clarify the reference to “fluoroscopic equipment which is not provided with automatic exposure rate control . . .” Fluoroscopic equipment that does not have automatic exposure rate control is commonly known as equipment with a “manual mode.”

N.J.A.C. 7:28-15.7 Computed tomography equipment

In N.J.A.C. 7:28-15.7(d)3, the wording “high/low resolution” was revised to “high contrast and low contrast resolution” for technical correctness.

N.J.A.C. 7:28-15.8 Medical cabinet x-ray systems

In N.J.A.C. 7:28-15.8(b)3, the word “and” was deleted at the end of the paragraph to correct a typographical error.

N.J.A.C. 7:28-16.2 Definitions

In N.J.A.C. 7:28-16.2, the Commission is correcting a typographical error that appeared in the definition of “coefficient of variation.” The change consists of adding a barline above the second “X” in the term “ $(X_i - \bar{X})^2$.” This represents the correct character for the mean.

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 15. MEDICAL DIAGNOSTIC X-RAY INSTALLATIONS

7:28-15.1 Scope

(a) This subchapter establishes the requirements for medical radiographic and fluoroscopic installations of certified and uncertified ionizing-radiation-producing machines used in all the healing arts, except where exempted by the rules in N.J.A.C. 7:28-16, Dental Radiographic Installations.

(b) No person shall operate or permit the operation of x-ray equipment used in the healing arts unless the equipment and installation meet the applicable requirements of this subchapter.

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(c) Provisions of this subchapter are in addition to and not in substitution for the applicable provisions of N.J.A.C. 7:28.

(d) The registrant shall ensure that all ionizing-radiation-producing machines under his or her jurisdiction are operated only by persons authorized pursuant to the Radiologic Technologist Act, N.J.S.A. 26:2D-24 through 36, and applicable provisions of N.J.A.C. 7:28-[19.1]**19*.

7:28-15.2 Definitions

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

“Accessible surface” means the external surface of the enclosure or housing provided by the manufacturer.

“Acquired date” means the date the unit has been installed and is capable of use on patients.

“Aluminum equivalent” means the thickness of aluminum (type 1100 alloy) affording the same attenuation, under specified conditions, as the material in question.

“Anti-collision device” means either an electronic position sensor combined with a microprocessor or a mechanical touch bar microswitch which will stop all equipment movement and radiation exposures to prevent collision of any part of the radiation therapy simulator system with the patient, or damage to other components of the simulator system.

“Assembler” means any person engaged in the business of assembling, replacing, or installing one or more components into a diagnostic x-ray system or subsystem. The term includes the owner of an x-ray system or his or her employee or agent who assembles components into an x-ray system that is subsequently used to provide professional or commercial services.

“Automatic exposure control” means a device which automatically controls one or more technique factors in order to obtain a required quantity of radiation at a preselected location(s) (for example, phototimer).

“Beam axis” means a line from the source through the center of the x-ray field.

“Beam-limiting device” means a mechanism which provides a means to restrict the dimensions of the x-ray field.

“C-arm x-ray system” means an x-ray system in which the image receptor and x-ray tube housing assembly are connected by a common mechanical support system in order to maintain a desired spatial relationship. This system is designed to allow a change in the projection of the beam through the patient without a change in the position of the patient.

“Cassette holder” means a device*,* other than a spot-film device, that supports and/or fixes the position of an image receptor during an x-ray exposure.

“Certified components” means components of x-ray systems which are subject to the regulations promulgated under Public Law 90-602, the Radiation Control for Health and Safety Act of 1968, 21 Code of Federal Regulations, Chapter 1, Subchapter J, Radiological Health (21 C.F.R. Part 1020 et seq., Performance Standards for Ionizing Radiation Emitting Products).

“Certified system” means any x-ray system which has all certified components. Also known as a certified unit or a certified diagnostic x-ray system.

“Coefficient of variation” means the ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

$$C = \frac{s}{\bar{X}} = \frac{1}{\bar{X}} \left[\sum_{i=1}^n \frac{(X_i - \bar{X})^2}{n - 1} \right]^{1/2}$$

where:

- s = estimated standard deviation of population
- \bar{X} = mean value of observations in sample
- X_i = ith observation in sample
- n = number of observations in sample

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"Computed tomography" (CT) means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

"Computed tomography dose index" (CTDI) means the integral of the dose measured along a line perpendicular to and centered at the tomographic plane divided by the product of the nominal tomographic section thickness and the number of tomograms produced in a single scan, that is:

$$CTDI = \frac{1}{nT} \int_{-7T}^{+7T} D(z) dz$$

where:

z = position along a line perpendicular to the tomographic plane

$D(z)$ = Dose at position z

T = nominal tomographic section thickness

n = number of tomograms produced in a single scan

This definition assumes that the dose profile is centered around $z=0$ and that, for a multiple tomogram system, the scan increment between adjacent scans is nT .

"Contrast scale" (CS) for computed tomography means the change in the linear attenuation coefficient per CT number relative to water, that is:

$$CS = \frac{\mu_x - \mu_w}{(CT)_x - (CT)_w}$$

where:

μ_x = linear attenuation coefficient of material of interest

μ_w = linear attenuation coefficient of water

$(CT)_x$ = CT number of the material of interest

$(CT)_w$ = CT number of water

"Contrast ratio" for a light field is the ratio of the illumination three millimeters from the edge of the field towards the center of the field to the illumination three millimeters from the edge of the field away from the center of the field.

"Control panel" means the part of the x-ray control upon which are mounted the switches, knobs, push-buttons, and other hardware necessary for manually setting the technique factors.

"CT conditions of operation" means all selectable parameters governing the operation of a CT x-ray system, including nominal tomographic section thickness, filtration, and the technique factors.

"CT number" means the number used to represent the x-ray attenuation associated with each elemental area of the CT image.

"Dedicated mammography unit" means an x-ray system specifically designed for mammographic procedures.

"Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

"Diagnostic type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation at a distance of one meter from the target cannot exceed 100 milliroentgens in one hour when the tube is operated at its maximum continuous rated current for the maximum continuous rated tube potential.

"Diagnostic x-ray system" means an x-ray system designed for irradiation of any part of the human body for the purpose of diagnostic imaging or measurement.

"Emergency off switch" means a switch located near the table or near the console which, when operated, turns off all power to the system.

"Entrance exposure rate" means the exposure per unit time at the point where the center of the useful beam enters the patient.

"Equipment" means x-ray equipment.

"Exposure" means a measure of the quantity of x or gamma radiation based upon its ability to ionize air through which it passes.

"Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

"Fluoroscopic imaging assembly" means a subsystem in which x-ray photons produce a fluoroscopic image. The subsystem includes the image intensifier, spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

"General purpose radiographic x-ray system" means any radiographic x-ray system which is not limited by its design to the radiographic examination of a specific anatomical region.

"Half-value layer" (HVL) means the thickness of specified material which attenuates the x-ray beam so that the exposure is reduced to one-half of its original value.

"Image intensifier" means a device, installed in its housing, which instantaneously converts an x-ray pattern into a corresponding light image.

"Image receptor" means any device, such as a fluorescent screen or radiographic film, which transforms incident x-ray photons either into a visible image or into another form which can be made into a visible image by further transformations. In those cases where means are provided to preselect a portion of the image receptor, the term "image receptor" shall mean the preselected portion of the device.

"Image receptor support" means that part of the system designed to support the image receptor during a radiographic examination.

"kV" means kilovolts.

"kVp" (see "peak tube potential").

"Leakage radiation" means radiation emanating from the diagnostic source assembly except for the useful beam and radiation produced when the exposure switch or timer is not activated.

"Leakage technique factors" means the technique factors associated with the diagnostic source assembly which are used in measuring leakage radiation. They are defined as follows:

1. For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum-rated number of exposures in an hour for operation at the maximum-rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs that is 10 milliamperere seconds (mAs) or the minimum obtainable from the unit, whichever is larger.

2. For diagnostic source assemblies intended for field emission equipment rated for pulsed operations, the maximum-rated peak tube potential and the maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential.

3. For all other diagnostic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

"Light field" means the area of the intersection of the light beam from the beam-lighting device and one of the set of planes parallel to the plane of the image receptor as well as at the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

"mA" means milliamperere.

"mAs" means milliamperere second.

"Mobile x-ray equipment" means completely assembled x-ray equipment, which is mounted on a permanent base with wheels and/or casters and is used in multiple locations.

"Motor vehicle mounted" means an x-ray system permanently mounted and operated in a motor vehicle.

"Multiple-tube installation" means a radiographic installation in which one control panel may energize more than one radiographic x-ray tube.

"Noise" for computed tomography means the standard deviation of the fluctuations in CT number expressed as a percent of the attenuation coefficient of water. Its estimate (S_n) is calculated using the following expression:

$$S_n = \frac{100 \times CS \times s}{\mu_w}$$

where: CS = contrast scale
 μ_w = linear attenuation coefficient of water
 s = estimated standard deviation of the CT numbers of picture elements in a specified area of the CT image

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"Nominal tomographic section thickness" means the full width at half-maximum of the sensitivity profile taken at the center of the cross-sectional volume over which x-ray transmission data are collected.

"Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

"Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

"Positive beam-limiting device" (PBL) means a device which automatically restricts the x-ray field to the size of the image receptor.

"Portable x-ray equipment" means x-ray equipment designed to be hand-carried.

"Primary protective barrier" see "protective barrier".

"Protective barrier" means a barrier of radiation-absorbing material used to reduce radiation exposure. The types of protective barriers are as follows:

1. "Primary protective barrier" means the material, excluding filters, intercepting the useful beam for *[protective]* ***protection*** purposes to reduce the radiation exposure so that it does not exceed two millirems *[per]* ***in any one*** hour; and

2. "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to reduce radiation exposure so that it does not exceed two millirems *[per]* ***in any one*** hour.

"Qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulator systems" as required in this subchapter means an individual who meets at least one of the following criteria:

1. Certification by one of the following agencies in the specialty listed:

i. The American Board of Radiology *[and]* ***in*** Diagnostic Radiological Physics or Radiological Physics;

ii. The American Board of Health Physics in Comprehensive Health Physics;

iii. The American Board of Medical Physics in Diagnostic Imaging Physics or Medical Health Physics;

iv. Certification issued by the Fellowship in the Canadian College of Physicists in Medicine which is equivalent to 1i or iii above; or

v. Certification by other national certifying boards which may be recognized by the Commission on Radiation Protection (Commission) where the person seeking recognition as a qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulator systems has petitioned the Commission in writing and where the Commission has issued a written determination that the certification in question meets the criteria of a qualified individual pursuant to this definition;

2. A bachelor's degree from an accredited college in biology, chemistry, radiation sciences, physics, engineering, or mathematics and at least five years of professional technical experience in the field of radiological physics or in the use of medical ionizing-radiation-producing equipment;

3. A master's or doctorate degree from an accredited college in radiological health, radiation sciences, physics, chemistry, environmental sciences, engineering or a related field and at least two years of professional technical experience in the field of radiological physics or in the use of medical ionizing-radiation-producing equipment;

4. Ten years of professional technical experience in the field of radiological physics or in a radiation protection activity. At least five years of the required health physics experience shall have been with medical ionizing-radiation-producing equipment; or

5. Any individual who does not meet at least one of the foregoing criteria may petition the Commission for recognition as a "qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulator systems". The individual shall submit a written petition to ***the*** Commission which contains sufficient information on his or her educational, professional, clinical, technical, employment and/or any other relevant experience. The Commission may approve any such petition based on its determination that the individual demonstrates competence to act as a

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qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulator systems.

"Qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment" as required in this subchapter means an individual who meets at least one of the following criteria:

1. Certification by one of the following agencies in the specialty listed:

i. The American Board of Radiology in Diagnostic Radiological Physics or Radiological Physics;

ii. The American Board of Medical Physics in Diagnostic Imaging Physics;

iii. Certification issued by the Fellowship in the Canadian College of Physicists in Medicine which is equivalent to 1i or ii above; or

iv. Certification by other national certifying boards which may be recognized by the Commission where the person seeking recognition as a qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment has petitioned the Commission in writing and where the Commission has issued a written determination that the certification in question meets the criteria of a qualified medical physicist pursuant to this definition;

2. A master's or doctorate degree from an accredited college in radiological health, radiation sciences, physics, chemistry, environmental sciences, engineering or a related field and at least three years of professional, clinical and technical experience in the field of radiological physics obtained under the supervision of a qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment; or

3. Any individual who does not meet at least one of the foregoing criteria may petition the Commission for recognition as a qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment. The individual shall submit a written petition to the Commission which contains sufficient information on his or her educational, professional, clinical, technical, employment and/or any other relevant experience. The Commission may approve any such petition based on its determination that the individual demonstrates competence to act as a qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment.

"Qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems" means an individual who meets at least one of the criteria listed below:

1. Is certified by the American Board of Radiology in therapeutic radiological physics or by the American Board of Medical Physics with special competency in radiation oncology physics;

2. Is certified by the American Board of Radiology in Radiological Physics which includes all three subspecialties of diagnostic radiological physics, therapeutic radiological physics, and medical nuclear physics.

3. Is certified by the American Board of Radiology or the American Board of Medical Physics in a specialty other than therapeutic radiological physics or radiation oncology physics and has at least three years of professional, clinical and technical experience obtained under the supervision of a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems;

4. Certification issued by the Fellowship in the Canadian College of Physicists in Medicine which is equivalent to 1, 2, or 3 above;

5. Certification by other national certifying boards which may be recognized by the Commission where the person seeking recognition as a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems has petitioned the Commission in writing and where the Commission has issued a written determination that the certification in question meets the criteria of a qualified medical physicist pursuant to this definition;

6. A master's or doctorate degree from an accredited college in radiological health, radiation sciences, physics, chemistry, environmental sciences, engineering or a related field and at least three years of professional, clinical and technical experience in the field

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of radiological physics obtained under the supervision of a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems; or

7. Any individual who does not meet at least one of the foregoing criteria may petition the Commission for recognition as a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems. The individual shall submit a written petition to the Commission which contains sufficient information on his or her educational, professional, clinical, technical, employment and/or any other relevant experience. The Commission may approve any such petition based on its determination that the individual demonstrates competence to act as a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems.

"Quality assurance" means an organized effort by the registrant to maintain a level of equipment performance to assure consistent production of diagnostic images without unnecessary radiation exposure. It includes quality control procedures and administrative procedures.

"Quality control" is the routine measurement of image quality and the performance of the diagnostic x-ray imaging system, from x-ray beam output to the viewing of radiographs, and the continual adjustment of that performance to an optimal and consistent level.

"Radiation therapy simulation system" means a radiographic or fluoroscopic x-ray system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

"Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

"Radiographic imaging system" means any system whereby a permanent or temporary image is recorded on an image receptor by the action of ionizing radiation.

"Reference plane" for computed tomography means a plane which is displaced from and parallel to the tomographic plane.

"Registrant" means a person who is required to register a source of radiation with the Department pursuant to this chapter.

"Scan" for computed tomography means the complete process of collecting x-ray transmission data for the production of a tomogram. Data can be collected simultaneously during a single scan for the production of one or more tomograms.

"Scan increment" for computed tomography means the amount of relative displacement of the patient with respect to the CT x-ray system *[believes]* ***between*** successive scans measured along the direction of such displacement.

"Scan time" means the period of time between the beginning and end of photon transmission data accumulation for a single scan.

"Scan sequence" for computed tomography means a preselected set of two or more scans performed consecutively under preselected CT conditions of operation.

"Scattered radiation" means radiation that, during passage through matter, has changed in direction or in energy.

"Sensitivity profile" means the relative response of the CT x-ray system as a function of position along a line perpendicular to the tomographic plane.

"Single-purpose x-ray system" means an x-ray system which is limited by its design to the radiological examination of a specific anatomical region.

"Source" means the focal spot of the x-ray tube.

"Source-to-image receptor distance" (SID) means the distance from the source to the center of the input surface of the image receptor.

"Source-to-skin distance" (SSD) means the distance from the source of radiation to the patient's skin.

"Spot-film device" means a device intended to transport and/or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

"Stationary equipment" means equipment which is installed in a fixed location.

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"Technique factors" means the conditions of operation of a diagnostic x-ray system. They are specified as follows:

1. For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

2. For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

3. For computed tomography x-ray systems designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs.

4. For computed tomography x-ray systems not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time in seconds when the scan time in seconds and the exposure time are equivalent.

5. For all other equipment, peak tube potential in kV, and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

"Tomogram" means an image of a planar section of a body part or object.

"Tomographic plane" for computed tomography means that geometric plane which is identified as corresponding to the tomographic image.

"Tomographic section" for computed tomography means the volume of an object whose x-ray attenuation properties are imaged in a tomogram.

"Tube housing assembly" means the x-ray tube housing with the x-ray tube insert installed. It includes high-voltage and/or filament transformers and other components that are contained within the tube housing.

"Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

"Uncertified unit" means an x-ray system comprised of components that are not subject to the regulations promulgated under Public Law 90-602, the Radiation Control for Health and Safety Act of 1968, 21 Code of Federal Regulations, Chapter 1, Subchapter J Radiological Health (21 C.F.R. Part 1020 et seq., Performance Standards for Ionizing Radiation Emitting Products). An "uncertified unit" is also known as a noncertified unit or a noncertified diagnostic x-ray system.

"Useful beam" means the radiation which passes through the tube housing port and the aperture of the beam-limiting device when the exposure switch or timer is activated.

"Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

"Xeromammography" means the recording of an x-ray image of the breast using a uniformly charged photoconductive (selenium alloy) plate held in a light-proof cassette instead of using conventional x-ray film.

"X-ray control" means a device which controls input power to the x-ray high-voltage generator and/or the x-ray tube. It includes equipment such as timers, phototimers, automatic brightness control systems (stabilizers), and similar devices or means, which control the technique factors of an x-ray exposure.

"X-ray equipment" means an x-ray system, subsystem*[s,]* or component thereof.

"X-ray field" means that area of the intersection of the useful beam and any one of the set of planes parallel to the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

"X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the x-ray tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube(s), high-voltage switches, electrical protective devices, and other appropriate elements.

"X-ray system" means an assembly of components for the controlled production of x-rays. The system includes an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-

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limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

"X-ray subsystem" means any combination of two or more components of an x-ray system.

"X-ray tube" means any electron tube which is designed for the conversion of electrical energy into x-ray energy.

7:28-15.3 General requirements for radiographic installations

(a) The provisions of this section are in addition to and not in substitution for the applicable provisions of N.J.A.C. 7:28.

(b) No person shall operate or permit the operation of any certified or uncertified radiographic x-ray equipment used in the healing arts unless a diagnostic type protective tube housing is provided.

(c) No person shall operate or permit the operation of any certified or uncertified radiographic x-ray equipment used in the healing arts unless a device is used to collimate the useful beam, and this device provides the same degree of protection as required of the diagnostic type protective tube housing.

1. Any new or used x-ray machine sold or otherwise transferred after July 1, 1969 shall be equipped with an adjustable, rectangular collimator fitted with a light field or laser system for delineating the edges of the collimated x-ray beam. The light field and/or laser system shall be operational. There shall be provided a means for stepless adjustment of the size of the x-ray field. The minimum field size at*[,]* an SID of 100 centimeters (39.4 inches) shall be equal to or less than five centimeters by five centimeters (two inches by two inches). For equipment that employs a light field to define the x-ray field, the following criteria shall apply:

i. The light field shall have an average illumination of not less than 160 lux (15 footcandles) at 100 centimeters (39.4 inches) or at the maximum SID, whichever is less. The average illumination shall be based upon measurements made in the approximate center of each quadrant of the light field. Radiation therapy simulation systems are exempt from this requirement.

ii. The edge of the light field at 100 centimeters (39.4 inches) or at the maximum SID, whichever is less, shall have a contrast ratio, corrected for ambient lighting, of not less than four for beam-limiting devices designed for use on stationary equipment, and a contrast ratio of not less than three for beam-limiting devices designed for use on mobile ***and portable*** equipment.

iii. The total misalignment of the edges of the visually defined field with the respective edges of the x-ray field along either the length or width of the visually defined field shall not exceed two percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.

iv. If a laser system is used to delineate the edges of the collimated x-ray beam, this source shall provide illumination levels sufficient to determine the collimated edges under ambient light conditions.

2. A system not requiring a light-beam collimator shall have an assortment of removable, fixed-aperture, beam-limiting devices (diaphragms) sufficient to meet each combination of image receptor size and SID used. Each fixed-aperture beam-limiting device shall be clearly and permanently marked to indicate the image receptor size and SID for which it is designed. Each fixed-aperture beam-limiting device shall limit the size of the x-ray field to the size of the image receptor. It shall be the responsibility of the operator to ensure that the correct combination of diaphragm and image receptor size is used during the radiographic procedure.

3. A single-purpose x-ray system, such as chest x-ray equipment, may use a fixed collimator provided the x-ray field does not exceed the size of the image receptor and the beam is fully intercepted by the image receptor. If such an x-ray system is equipped with a light field system, it shall be exempt from (c)1 above.

(d) No person shall operate or permit the operation of any certified or uncertified radiographic x-ray equipment used in the healing arts unless the beam alignment and distance measurements meet the following requirements:

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1. Certified x-ray systems shall be provided with a means or device to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor;

2. The center of the x-ray field shall be aligned with respect to the center of the image receptor to within two percent of the SID when the x-ray beam is perpendicular to the plane of the image receptor; and

3. A means shall be provided to indicate the SID to within two percent. If it is a fixed SID, the distance shall be indicated on the unit with a permanent marking.

(e) No person*[s]* shall operate or permit the operation of any certified or uncertified radiographic x-ray equipment used in the healing arts unless the x-ray filtration and beam quality meet the following requirements:

1. The amount of total filtration permanently in the useful beam shall provide the minimum half-value layer specified in the following table:

*[

TABLE 1 TABLE OF HALF VALUE LAYERS		
Designed Operating Range (kVp)	Measured operating potential (kVp)	Minimum half-value layer (HVL) (mm of Al)
Below 50	30	0.3
	40	0.4
	49	0.5
50 to 70	50	1.2
	60	1.3
	70	1.5
Above 70	71	2.1
	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8
	150	4.1

]*

*TABLE 1
TABLE OF HALF VALUE LAYERS

Designed Operating Range (kVp)	Measured operating potential (kVp)	Minimum half-value layer (HVL) (mm of Al)
Below 51	30	0.3
	40	0.4
	50	0.5
51 to 70	51	1.2
	60	1.3
	70	1.5
Above 70	71	2.1
	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8
	150	4.1*

(f) No person shall operate or permit the operation of any certified or uncertified radiographic x-ray equipment used in the healing arts unless the exposure control and exposure timer meet the following requirements:

1. A device shall be provided to terminate the exposure at a preset time interval, preset product of current and time, preset number of pulses, or preset radiation exposure.

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i. Except during serial radiography, the operator shall be able to terminate the exposure at any time during an exposure ***greater than one-half second***.

ii. Except during serial radiography, termination of the exposure shall cause automatic resetting of the timer to its initial setting or to zero.

iii. Except during serial radiography, it shall not be possible to make an exposure when the timer is set to a zero or off position, if either position is provided.

iv. During serial radiography, the operator shall be able to terminate the x-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in process;

2. The x-ray control panel shall include a means for indicating x-ray tube voltage (kVp), tube current (mA), and time setting or the product of the tube current and time setting in milliampereseconds (mAs);

3. The x-ray control panel shall provide visual indication to the operator whenever x-rays are produced. Certified equipment shall also provide audible indication to the operator while x-rays are produced or on termination of the exposure;

4. The technique factors to be used during an exposure shall be indicated on the control panel before the exposure begins. If automatic exposure controls are used, the technique factors which are set prior to the exposure shall be indicated. For equipment having fixed technique factors, this requirement shall be met by permanent markings;

5. The exposure control switch when depressed shall not energize the x-ray tube when the timer is in the "off" or "zero" position;

6. The exposure control switch shall be arranged so that it can only be operated when the operator is within a shielded area; and

7. For equipment that provides an automatic exposure control, the following requirements shall be met:

i. There shall be a device on the control panel that indicates when this mode of operation is selected;

ii. For certified equipment only, a signal audible and visible to the operator shall indicate when an exposure has been terminated; and

iii. For uncertified equipment only, a signal visible to the operator shall indicate when the exposure has terminated.

(g) No person shall operate or permit the operation of any certified or uncertified radiographic x-ray equipment used in the healing arts unless the accuracy, reproducibility and linearity meet the following requirements:

1. The timer accuracy shall not exceed the limits specified by the manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed 10 percent of the indicated value;

2. The following timer reproducibility requirements shall apply:
i. For certified equipment only, the coefficient of variation of the timer reproducibility shall not exceed 0.05 for any specific combination of selected technique factors.

ii. For uncertified equipment only, the coefficient of variation of the timer reproducibility shall not exceed 0.07 for any specific combination of selected technique factors;

3. The following exposure reproducibility requirements shall apply:

i. For certified equipment only, the coefficient of variation of radiation exposure reproducibility shall not exceed 0.05 for any specific combination of selected technique factors;

ii. For uncertified equipment only, the coefficient of variation of radiation exposure reproducibility shall not exceed 0.07 for any specific combination of selected technique factors;

4. The kVp accuracy shall not exceed the limits specified by the manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed 10 percent of the indicated value;

5. The kVp reproducibility shall not exceed a coefficient of variation of 0.05; and

6. The following linearity requirements apply to x-ray equipment which allows a choice of x-ray tube current settings and is operated on a power supply as specified by the manufacturer for any fixed x-ray tube potential within the range of 40 percent to 100 percent of the maximum rating.

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i. For x-ray equipment having independent selection of x-ray tube current (mA), the average ratios of exposure to the indicated milliampereseconds product (mR/mAs) or (C/kg/mAs) obtained at any two consecutive tube current settings shall not differ by more than 0.10 times their sum.

ii. For ***equipment manufactured after May 3, 1994*** x-ray equipment having a combined x-ray tube current-exposure time product (mAs) selector, the average ratios of exposure to the indicated milliampereseconds product (mR/mAs) or (C/kg/mAs) values obtained at any two consecutive mAs selector settings shall not differ by more than 0.10 times their sum.

iii. The average exposure ratio for ***[15.3]*(g)6i** and ii above shall be expressed as follows:

$$|\bar{X}_1 - \bar{X}_2| \leq 0.10 (\bar{X}_1 + \bar{X}_2)$$

where X_1 and X_2 are the average mR/mAs or C/kg/mAs values obtained at each of two consecutive tube ***mA or mAs*** settings.

(h) No person shall operate or permit the operation of a certified or uncertified multiple-tube installation where a control panel can energize more than one x-ray tube unless the following additional requirements are met: (Interventional biplane radiographic systems shall be exempted from these additional requirements.)

1. Only one radiographic tube shall be capable of activation at any time;

2. Where two or more radiographic tubes are controlled by one exposure switch, the radiographic tube which has been selected shall be clearly indicated to the operator prior to initiation of the exposure. Certified units only shall be provided with such an indicator on both the x-ray control panel and at or near the radiographic tube housing assembly which has been selected; and

3. A radiographic tube shall be energized only when that specific radiographic tube is selected.

(i) No person shall operate or permit the operation of any certified ***[or uncertified]*** radiographic x-ray equipment ***that has been provided with positive beam limitation (PBL)*** unless the following requirements ***[for positive beam limitation]*** are met:

1. ***[Positive]* *When provided, positive*** beam limitation (PBL) shall ***[be provided on general purpose stationary radiographic systems which contain a tube housing assembly, an x-ray control, and an image receptor holder or table, if a table is provided, all certified in accordance with 21 C.F.R. 1020.30(c)]* *function as described in (i)2 below*** whenever all the following conditions are met:

i. The image receptor is inserted into a permanently mounted cassette holder;

ii. The image receptor length and width are each less than 50 centimeters (20 inches);

iii. The x-ray beam axis is within plus or minus three degrees of vertical and the SID is 90 centimeters (35.5 inches) to 130 centimeters (51 inches) inclusive; or the x-ray beam axis is within plus or minus three degrees of horizontal and the SID is 90 centimeters (35.5 inches) to 205 centimeters (81 inches) inclusive;

iv. The x-ray beam is perpendicular to the plane of the image receptor to within plus or minus three degrees; and

v. Neither tomographic nor stereoscopic radiography is being performed;

2. ***[Positive]* *When positive*** beam limitation (PBL) ***is provided it*** shall prevent the production of x-rays whenever:

i. Either the length or width of the x-ray field in the plane of the image receptor differs from the corresponding image receptor dimensions by more than three percent of the SID^{*}, except as permitted by (i)5 below^{*}; ***[or]***

ii. The sum of the differences, without regard to sign, between the length and width of the x-ray field in the plane of the image receptor and the corresponding dimensions of the image receptor exceeds four percent of the SID; ***or***

iii. The beam-limiting device is at an SID for which PBL is not designed for sizing.

3. Compliance with (i)2 above shall be determined when the equipment indicates that the beam axis is perpendicular to the plane

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of the image receptor and the provisions of (i)1 above are met. Determination of compliance shall be no sooner than five seconds after insertion of the image receptor;

*[4. If a means of overriding the positive beam limitation (PBL) system exists:

i. It shall be designed for use only in the event of PBL system failure or if the system is being serviced.

ii. If the override capability is in a position such that the operator would consider it part of the operational controls or if it is referenced in the operator's manual or in other materials intended for the operator:

(1) A key shall be required to defeat the PBL; and

(2) The key shall remain in place during the entire time the PBL system is overridden;]*

***4. If a capability for overriding PBL in case of system failure and for servicing the system is provided, it shall comply with the following:**

i. This override shall be for all SID and image receptor sizes;

ii. A key shall be required to defeat the PBL;

iii. The key shall remain in place during the entire time the PBL system is overridden; and

iv. Each key switch or key shall be clearly and durably labeled as follows:

For X-ray Field Limitation System Failure

The override capability is considered accessible to the operator if it is referenced in the operator's manual or in other material intended for the operator if its location is such that the operator would consider it part of the operational controls.*

5. *[The]* ***When provided, the*** positive beam limitation system shall be capable of operation, at the discretion of the operator, in such a manner that the size of the field may be made smaller than the size of the image receptor through stepless adjustment of the field size. The minimum field size at an SID of 100 centimeters (39.4 inches) shall be equal to or less than five centimeters by five centimeters (two inches by two inches); and

6. *[The]* ***When provided, the*** positive beam limitation system shall be so designed that if a change in image receptor does not cause an automatic return to the positive beam limitation function as described in (i)2 above, then any change of image receptor size or SID must cause the automatic return.

(j) No person shall operate or permit the operation of certified or uncertified mobile or portable radiographic x-ray equipment unless the following requirements are met:

1. These requirements are in addition to and not in substitution for the applicable requirements of this subchapter;

2. The equipment shall be provided with a collimator and a spacer device to limit the source-to-skin distance to not less than 30 centimeters (12 inches);

3. If the equipment was manufactured with a device to measure the SID, the device shall be present to measure the SID and the device shall indicate the SID to within two percent;

4. The exposure control switch shall be of the dead-man type and shall be so arranged that the operator can stand at least six feet from the patient for all exposures. The exposure control switch when depressed shall not energize the x-ray tube when the timer is in the "off" or "0" position;

5. A mobile or portable radiographic unit used routinely in one location shall be considered a permanent installation and shall comply with the requirements of N.J.A.C. 7:28-15.10; and

6. No person shall operate or permit the operation of certified or uncertified mobile or portable equipment unless the person operating the equipment is protected with a lead apron of at least 0.25 mm lead equivalent.

(k) No person shall operate or permit the operation of certified or uncertified ionizing-radiation-producing podiatric x-ray equipment unless the following requirements are met:

1. These requirements are in addition to and not in substitution for the applicable requirements of this subchapter; and

2. Certified and uncertified podiatric x-ray equipment shall be provided with an exposure control switch which will allow the

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operator to stand at least six feet (1.8 meters) from the patient or behind a protective barrier. The requirement set forth in this paragraph shall supersede the requirement in (f)6 above.

7:28-15.4 Mammography radiographic installations

(a) This section establishes the requirements for medical diagnostic and screening radiographic mammography procedures. Hereafter, all references to mammography shall mean mammography performed with ionizing-radiation-producing equipment.

(b) The provisions of this section are in addition to and not in substitution for the applicable provisions of N.J.A.C. 7:28.

(c) No person shall operate or permit the operation of x-ray equipment used for mammography unless the equipment and installation meet the applicable requirements of this subchapter.

(d) The registrant shall ensure that each mammography unit under the registrant's jurisdiction is operated only by a licensed diagnostic x-ray technologist or a licensed practitioner as prescribed in N.J.A.C. 7:28-19.

(e) ***[Within two years of the effective date of this rule]* *By October 18, 1995*** or within two years of the installation of a mammography unit, whichever shall be later, the registrant shall ***[ensure that]* *not operate or permit the operation of*** each mammography unit under the registrant's jurisdiction ***[shall be]* *unless the mammography unit is*** accredited by the American College of Radiology (ACR) or ***[shall meet]* *meets*** an equivalent standard acceptable to the Commission. Current accreditation by the ACR or its equivalent acceptable to the Commission shall be maintained for each mammography unit under the registrant's jurisdiction.

1. If a mammography unit is accredited or certified by an agency or organization other than ACR, a registrant may petition the Commission in writing for recognition of this agency's or organization's accreditation or certification as equivalent to ACR accreditation. The registrant shall submit sufficient documentation to the Commission related to machine performance standards, quality assurance, operating safety standards, and any additional information that the Commission may request in order to demonstrate equivalence to ACR accreditation.

2. The Commission may approve the registrant's petition based on the information contained in the petition and the Commission's determination that the alternative agency's or organization's accreditation or certification is equivalent to ACR accreditation.

3. A mammography unit that is used exclusively for stereotactic biopsies is exempt from the requirements of (e)1 and 2 above but shall meet the other requirements of this subchapter.

(f) No person shall operate or permit the operation of any radiographic equipment for mammography unless the equipment meets the following requirements:

1. It shall be a dedicated mammography unit;

2. The tube housing assembly shall be provided with a beam-limiting device*.* ***[and a light-field localizer. This assembly shall be so constructed that the leakage radiation measured at a distance of one meter (39 inches) from the source does not exceed 26 microcoulombs per kilogram (0.1 Roentgen) in any one hour when the source is operated at its leakage technique factors;]* *When a light localizer used to define the x-ray field is provided on the mammography unit, the light localizer shall provide an average illuminance of not less than 160 lux (15 footcandles) at 100 centimeters or at the maximum SID, whichever is less. The average illuminance shall be based upon measurements made in the approximate center of each quadrant of the light field;***

3. The tube housing assembly shall be so constructed that the leakage radiation measured at a distance of one meter (39 inches) from the source does not exceed 26 microcoulombs per kilogram (0.1 Roentgen) in any one hour when the source is operated at its leakage technique factors;

[3.]*4. A mark shall be provided on the visible exterior of the source assembly which indicates the location of the focal spot;

[4.]*5. An x-ray beam-limiting device shall be used to restrict the size of the x-ray beam to the size of the image receptor. Types of beam-limiting devices include, but are not limited to, diaphragms, cones, and adjustable collimators. The beam-limiting device shall provide the same primary beam attenuation as the tube housing.

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i. The misalignment between the edges of the light field and the x-ray field shall be less than two percent of the SID.

ii. The x-ray beam shall be totally intercepted by the image-receptor support, except for the edge of the image-receptor support designed to be adjacent to the chest wall. The x-ray field at the edge of the image-receptor support designed to be adjacent to the chest wall shall not extend beyond the edge of the image-receptor support by more than two percent of the SID;

*[5.]*6.* The image-receptor support shall transmit less than 0.026 microcoulombs (0.1 milliroentgens) per exposure at 5 centimeters (2 inches) beyond the support with no breast present for maximum kV and mAs values clinically used;

*[6.]*7.* The requirements for the control panel on the mammography system are as follows:

i. The mammography system shall have the capability of automatic exposure control;

ii. The control panel shall provide visual display of the x-ray tube voltage (kVp) and either the tube current (mA) and time setting (sec) or the product of the tube current and time setting in milliampere-seconds (mAs); and

iii. The control panel shall have a device or means for emitting a signal audible to the operator which indicates when the exposure has terminated and a device such as a light or milliammeter to give a visual indication when the beam is on;

*[7.]*8.* The radiation exposure reproducibility shall not exceed a coefficient of variation of 0.05. For manual mode this shall be for any selected technique factors. For automatic exposure control this shall be for any selected absorber or phantom;

*[8.]*9.* The timer shall meet the following requirements:

i. The timer reproducibility shall not exceed a coefficient of variation of 0.05 for any specific combination of selected technique factors; and

ii. The timer accuracy shall not exceed the limits specified by the manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed 10 percent of the indicated value;

*[9.]*10.* The kVp shall meet the following requirements:

i. The kVp accuracy shall not exceed the limits specified by the manufacturer. In the absence of manufacturer's specifications, the deviation shall not exceed \pm five percent from the nominal kVp setting;

ii. The kVp reproducibility shall not exceed a coefficient of variation of 0.02;

iii. The kVp shall be capable of being selected in increments of no greater than *[two]* *three* kVp whether kVp is selected manually or automatically; and

iv. The kVp shall be selected either manually or automatically;

*[10.]*11.* The following linearity requirements apply to mammography x-ray equipment which allows a choice of x-ray tube current settings and is operated on a power supply as specified by the manufacturer for any fixed x-ray tube potential within the range of 40 percent to 100 percent of the maximum rating:

i. For x-ray equipment having independent selection of x-ray tube current (mA), the average ratios of exposure to the indicated milliampere-seconds product (mR/mAs) or (C/kg/mAs) obtained at any two consecutive tube current settings shall not differ by more than 0.10 times their sum.

ii. For *equipment manufactured after May 3, 1994,* x-ray equipment having a combined x-ray tube current-exposure time product (mAs) selector, the average ratios of exposure to the indicated milliampere-seconds product (mR/mAs) or C/kg/mAs values obtained at any two consecutive mAs selector settings shall not differ by more than 0.10 times their sum.

iii. The average exposure ratio for *[(f)10i and ii]* *(f)11i and 11ii* above shall be expressed as follows:

$$\left| \bar{X}_1 - \bar{X}_2 \right| \leq 0.10 (\bar{X}_1 + \bar{X}_2)$$

where X_1 and X_2 are the average mR/mAs or C/kg/mAs values obtained at each of two consecutive tube *mA or mAs* settings

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*[11.]*12.* The measured HVL shall be equal to or greater than the value:

$$\text{HVL} \geq \frac{\text{kVp}}{100} \quad (\text{in units of mm of aluminum})$$

For film-screen mammography units only, the maximum measured HVL shall be equal to or less than the value:

$$\text{HVL} *[\geq]* *[\leq]* \frac{\text{kVp}}{100} + 0.1 \quad (\text{mm of aluminum})$$

*[12.]*13.* There shall be a device to maintain parallel breast compression. The degree of compression shall be adjustable and shall remain at the set level during the exposure. A device, scale or other means shall indicate the thickness of the compressed breast. The compression plate shall attenuate the beam by no more than the attenuation provided by *[\pm]* two mm of polymethylacrylate;

*[13.]*14.* There shall be a means or a device on the mammography unit to indicate the SID, if this is variable. The actual SID shall be posted on the mammography unit if this distance is fixed. Accuracy of the SID indicator shall be within \pm two percent of the indicated value;

*[14.]*15.* There shall be a means of determining the angulation on the mammography unit. This determination shall be displayed on the unit.

i. There shall be a means to lock the position and angulation of the source assembly;

ii. Such lock shall be deemed to have been provided if the position or angulation can only be changed by activation of a motor; and

*[15.]*16.* The exposure switch shall be a dead-man type and shall be arranged so that it can only be operated when the operator is within a shielded area. The exposure control when depressed shall not energize the x-ray tube when the timer is in the "off" or "zero" position.

(g) A radiation-protection barrier for the operator shall be provided in the room for a mammography unit that requires the operator to remain in the room during the exposure. The operator shall stand behind the protective barrier provided and shall observe the patient during each mammographic exposure.

(h) No person shall operate or permit the operation of a mammography unit unless the registrant has developed and maintains a quality assurance program that meets the requirements listed in (j) below.

(i) The registrant shall ensure that no person operates the mammography unit until he or she has reviewed the quality assurance manual and has documented that such review has been completed.

(j) The requirements for the quality assurance program shall be as follows:

1. The registrant shall develop and maintain a quality assurance manual that identifies and assigns over-all quality control responsibilities. The following items shall be in the quality assurance manual:

i. A list of the individuals responsible for testing, supervising, repairing or servicing the equipment. This list shall include the specific responsibilities for the radiologist, the qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment (the medical physicist), the diagnostic x-ray technologist (radiologic technologist), and repair or service personnel;

ii. A list of the equipment to be tested;

iii. A list of the tests to be performed. For each test, the following items shall be included:

(1) The frequency of performance of each test in accordance with (j)4, 6, 7, 8, 9, 10, and 11 below;

(2) The acceptability limits for each test; and

(3) A brief description of the procedures to be used for each test;

iv. The protocol for corrective action which shall be taken if the test results do not lie within the acceptability limits;

v. Sample forms to be used for each test and;

vi. Reference materials and their location;

2. The registrant shall present the quality assurance manual, records of all testing, test data, equipment maintenance and other

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required procedures to the department for review during any inspection;

3. For each mammography unit, the registrant shall ensure that tests are performed and records are maintained as listed below:

i. The initial test results shall be maintained for as long as the mammography unit is registered plus one year; and

ii. A record of each service to the mammography unit shall be kept for 36 months from the date of such service;

4. For each mammography unit, the registrant shall perform or have performed at least annually the test procedures listed below and shall maintain the records for as long as the mammography unit remains registered plus one year.

i. Measurement of breast entrance exposure and average glandular dose;

ii. Measurement of half-value layer;

iii. Measurement of accuracy and reproducibility of kVp settings;

iv. Measurement of linearity of exposure at various mA stations or mAs settings;

v. Measurement of accuracy and reproducibility of timer settings where these are adjustable;

vi. Measurement of exposure reproducibility at techniques representative of clinical use;

vii. Measurement of focal spot size;

viii. Assessment of performance of automatic exposure control system, including short-term reproducibility, kilovoltage and thickness compensation, density control selector function and back-up timer function;

ix. Assessment of mammography unit assembly, including accuracy of source-to-film distance indicator, physical integrity of breast thickness indicator, functioning of all locks, detents, angulation indicators and mechanical support for the x-ray tube and image-receptor-holder assembly; and

x. Assessment of collimation, including alignment of light field and x-ray field;

5. For each processor used for mammography, the registrant shall ensure that the records of maintenance and quality control tests are maintained in a processor maintenance log. Processor maintenance logs shall include preventive maintenance, cleaning performed and corrective actions taken. A record of each such measure taken shall be maintained in the log for at least 36 months;

6. For each processor used for film-screen mammography, the registrant shall perform or have performed quality control tests for each processor on each day the processor is used for mammography. For motor vehicle and mobile mammographic units with processing capability, quality control tests for each processor shall be performed at each new location.

i. Quality control tests shall include measurement of developer temperature, film sensitometry to indicate film speed, film contrast and base-plus-fog density;

ii. Logs, charts, or graphs of these measurements shall be maintained for 36 months from the dates of such measurements. The registrant may discard such records after 36 months, except that at least one representative set of quality control records from each year shall be maintained for an additional five years;

7. For each darkroom used for loading, storing or processing film used for mammography, the registrant shall ensure that:

i. Measurement of film fog is performed at least semiannually and test results are maintained for the current year and the preceding year; and

ii. Darkroom cleanliness is maintained and checked daily;

8. For each radiographic cassette used for film-screen mammography, the registrant shall ensure that:

i. The intensifying screen is cleaned and inspected at least weekly;

ii. The film-screen contact is tested at least semiannually and the record of each test is maintained for at least 36 months from the date of the test; and

iii. Uniformity of screen speed is assessed annually and the record of each test is maintained for at least 36 months from the date of the test;

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9. For each component used for xeromammography, the registrant shall perform or have performed the quality control tests listed below:

i. For the conditioner, tests for light leaks, temperature of relaxation oven, charging of the plate, and optimization for the kVp used shall be performed on each day the conditioner is used for mammography;

ii. For the processor, tests for light leaks, toner supply, back bias setting, and optimization for the kVp used shall be performed on each day the processor is used for mammography;

iii. Each cassette shall be cleaned and checked for dust particles and pressure artifacts every week; and

iv. Each selenium plate shall be examined for powder deficiency spots, powder efficiency spots, dark dusting, scratches, and artifacts on a monthly basis;

10. For each mammography unit, the registrant shall ensure that the following image quality assessments are performed:

i. A phantom is used whose image can be quantitatively scored;

ii. For fixed units, mammographic phantom image quality is tested monthly;

iii. For mobile units and motor vehicle mounted units, mammographic phantom image quality is tested after each relocation and at least monthly. Equipment must be recalibrated prior to use to maintain quality of the phantom image; and

iv. At least one test phantom image for each mammography unit is maintained for each month of the current calendar year and for the preceding year. The registrant shall also maintain at least one phantom image a year for each mammography unit beginning from the year of installation;

11. Repeat analysis shall be performed at least quarterly for film-screen mammography and xeromammography; and

12. Technique charts or standard settings of factors such as density, kVp, focal spot selection, listing of all factors appropriate to the design of the mammography unit shall be posted either next to or on each mammography unit.

7:28-15.5 Medical fluoroscopic x-ray systems

(a) The provisions of this section are in addition to and not in substitution for the applicable provisions of N.J.A.C. 7:28.

(b) No person shall operate or permit the operation of certified or uncertified fluoroscopic *[X-ray]* *x-ray* equipment used in the healing arts unless the equipment meets the following requirements:

1. The fluoroscopic imaging assembly shall be provided with a primary protective barrier which intercepts the entire cross section of the useful beam at any source-to-image receptor distance.

i. The x-ray tube used for fluoroscopy shall not produce x-rays unless the primary protective barrier is in position to intercept the entire useful beam. ***Radiation therapy simulator systems shall be exempt from this requirement provided the systems are intended only for remote control operation and the manufacturer sets forth instructions for assemblers with respect to control location as part of the information required to be in the manufacturer's specifications manual and provides the registrant with precautions concerning the importance of remote control operation.***

ii. The exposure rate due to transmission through the primary protective barrier with an attenuation block in the useful beam combined with the radiation from the image *[intensifier]* ***intensifier***, if provided, shall not exceed 5.2 E-6 Coulombs per kilogram (two milliroentgens per hour) at 10 centimeters (four inches) from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor for each Roentgen per minute of entrance exposure rate. The attenuation block shall be a block or stack, having dimensions 20 centimeters by 20 centimeters by 3.8 centimeters (eight inches by eight inches by 1.5 inches), of type 1100 aluminum alloy or aluminum alloy having equivalent attenuation. ***Radiation therapy simulator systems shall be exempt from this requirement provided the systems are intended only for remote control operation and the manufacturer sets forth instructions for assemblers with respect to control location as part of the information required to be in the manufacturer's specifications manual and provides the registrant with precautions concerning the importance of remote control operation.***

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iii. The exposure rate due to transmission through the primary barrier combined with radiation from the image intensifier, if provided, shall be determined by measurements averaged over an area of 100 square centimeters (15.5 square inches) with no linear dimension greater than 20 centimeters (eight inches). If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned 30 centimeters (12 inches) above the tabletop. If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device **[of]* *or** spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 30 centimeters (12 inches). Movable grids and compression devices shall be removed from the useful beam during the measurement. For all measurements, the attenuation block shall be positioned in the useful beam 10 centimeters (four inches) from the point of measurement of entrance exposure rate and between this point and the input surface of the fluoroscopic imaging assembly. For C-arm fluoroscopy equipment, the measurement shall be made with the end of the beam-limiting device at the minimum SID and the attenuation block not closer than 30 centimeters (12 inches) from the imaging assembly.

iv. For uncertified fluoroscopic equipment only, the fluoroscopic screen shall be covered with a transparent protective material such that under normal operating conditions the dose rate measured five centimeters from the viewer's side of the screen shall not be more than 20 milliroentgens per hour (5.2 E-6 Coulombs per kilogram) without a patient and with the screen 20 centimeters (eight inches) from the tabletop or panel);

2. For fluoroscopic equipment that does not have image intensification, the following field limitation requirements shall be met:

i. The x-ray field shall not extend beyond the visible area of the image receptor;

ii. Means shall be provided for stepless adjustment of the field size;

iii. The minimum field size at the greatest SID shall be equal to or less than five centimeters by five centimeters (two inches by two inches); and

iv. Equipment manufactured after February 25, 1978, which permits a variable angle between the image receptor and the axis of the x-ray beam shall be provided with a means to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor;

3. ***Except for fluoroscopic systems used for radiation therapy simulation,*** **[For]** image-intensified fluoroscopic equipment ***shall meet*** the following field limitation requirements **[shall be met]**:

i. Neither the length nor the width of the x-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than three percent of the SID;

ii. The sum of the excess length and the excess width shall be no greater than four percent of the SID. Compliance shall be determined with the beam axis indicated to be perpendicular to the plane of the image receptor;

iii. For rectangular x-ray fields used with circular image receptors, the error in alignment shall be determined by comparison of the length and width of the x-ray field with the diameter of the visible area of the image receptor which parallels each;

iv. Equipment manufactured after February 25, 1978, in which the angle between the image receptor and beam axis is variable, shall be provided with a means to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor;

v. **[Beam-lighting]** ***Beam-limiting*** devices manufactured after May 22, 1979, and incorporated in equipment with a variable SID and/or a visible area of greater than 300 square centimeters (46.5 square inches) shall be provided with ***a*** means for stepless adjustment of the x-ray field;

vi. Equipment with a fixed SID and a visible area of 300 square centimeters (46.5 square inches) or less shall be provided with either stepless adjustment of the x-ray field or with some other means to further limit the x-ray field size at the plane of the image receptor to 125 square centimeters (19.4 square inches) or less;

vii. Stepless adjustment shall, at the greatest SID, provide continuous field sizes from the maximum obtainable to a field size of five centimeters by five centimeters (two inches by two inches) or less; and

viii. fluoroscopic x-ray equipment that automatically adjusts the field size as the SID is changed may be provided with a capability for overriding the automatic adjustment in case of system failure. If it is so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic field adjustment is overridden. Each such system failure override switch shall be clearly labeled "FOR X-RAY FIELD LIMITATION SYSTEM FAILURE";

4. X-ray production in the fluoroscopic mode shall be controlled by a device which requires continuous pressure by the operator for the entire time of any exposure. When recording serial fluoroscopic images, the operator shall be able to terminate the x-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in progress;

5. Fluoroscopic equipment which is provided with automatic exposure rate control ***or with both automatic exposure rate control and manual mode (dual mode units)*** shall not be operable at any combination of tube potential and current which will result in an entrance exposure rate in excess of 10 Roentgens per minute (2.6 E-3 Coulombs per kilogram per minute) at the point where the center of the useful beam enters the patient except:

i. During the recording of fluoroscopic images; or

ii. When an optional high-level control is provided. When so provided, the equipment shall not be operable at any combination of tube potential and current which will result in an entrance exposure rate in excess of 5 Roentgens (1.3 E-4 Coulombs/kilogram/minute) at the point where the center of the useful beam enters the patient unless the high-level control is activated;

6. Fluoroscopic equipment which is not provided with automatic exposure rate control ***(manual mode)*** shall not be operable at any combination of tube potential and current which will result in an entrance exposure rate in excess of five Roentgens per minute (1.3 E-4 Coulombs/kilogram/minute) at the point where the center of the useful beam enters the patient, except:

i. During recording of fluoroscopic images; or

ii. When an optional high-level control is activated;

7. For equipment provided with high-level control, the following requirements shall be met:

i. Special means of activation of high-level controls shall be required (for example, two-step foot pedal);

ii. Continuous manual activation of the high-level control shall be provided by the operator; and

iii. A continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed;

8. Measuring compliance of entrance exposure rates shall be determined as follows:

i. When the source is below the table, the entrance exposure rate shall be measured one centimeter (0.4 inch) above the tabletop or cradle;

ii. When the source is above the table, the entrance exposure rate shall be measured at 30 centimeters (12 inches) above the tabletop with the end of the beam-limiting device or spacer positioned as close as possible to the point of measurement;

iii. For stationary and mobile c-arm types of fluoroscopes, the entrance exposure rate shall be measured 30 centimeters (12 inches) from the input surface of the fluoroscopic imaging assembly.

iv. In a lateral type of fluoroscope, the entrance exposure rate shall be measured 15 centimeters (5.9 inches) from the centerline of the x-ray table and in the direction of the x-ray source with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement. If the tabletop is movable, it shall be positioned as closely as possible to the lateral x-ray source, with the end of the beam-limiting device or spacer no closer than 15 centimeters (5.9 inches) to the centerline of the x-ray table;

9. Fluoroscopic radiation therapy simulation systems are exempt from the entrance exposure rate requirements of (b)5 and (b)6 above;

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10. The x-ray tube potential and current shall be continuously indicated to the operator and/or at the control panel during fluoroscopy and cinefluorography. Deviation of x-ray tube potential and current from the indicated values shall not exceed the maximum deviation as stated by the manufacturer;

11. A means shall be provided to limit the source-to-skin distance to not less than 38 centimeters (15 inches) on stationary fluoroscopes and to not less than 30 centimeters (12 inches) on mobile and portable fluoroscopes.

i. Image-intensified fluoroscopes intended for specific surgical applications that would be impossible to perform at the source-to-skin distances specified above, may be operated at shorter source-to-skin distances but in no case less than 20 centimeters (eight inches);

12. The following requirements shall apply to a fluoroscopic timer:

i. A means shall be provided to preset the cumulative on-time of the fluoroscopic tube. The maximum cumulative time of the timer shall not exceed five minutes without resetting;

ii. The timer shall either terminate the exposure or emit a signal audible to the fluoroscopist when the exposure time reaches five minutes. Such signal shall continue to sound while x-rays are produced until the timer is reset; and

iii. As an alternative to the requirements of (b)12ii above, radiation therapy simulation systems may be provided with a means to indicate the total cumulative exposure time during which x-rays were produced, and which is capable of being reset between x-ray examinations;

13. Mobile and portable fluoroscopes shall be provided with image intensification;

14. The fluoroscopy table ***[shall be] *that is* provided with *an undetectable tube and* a bucky *[slot cover and]* *shall* have a bucky slot cover *[and shall provide]* ***that provides* protection equivalent to at least 0.5 millimeters of lead*. Radiation therapy simulation systems are exempt from the requirements of this paragraph*;****

15. Protective shielding*,* such as a drape*,* shall be in place between the patient and fluoroscopist and shall provide protection equivalent to at least 0.5 millimeters of lead;

16. When a sterile field will not permit the use of the normal protective barriers, the requirements of (b)15 above may be omitted;

17. A mobile fluoroscopic unit used routinely in one location shall be considered a permanent installation and shall comply with the shielding and survey requirements in N.J.A.C. 7:28-15.10; and

18. The following requirements shall apply to spot-film devices except when the spot-film device is provided for use with a radiation therapy simulator system:

i. A means shall be provided between the source and the patient which will automatically limit the x-ray field at the time the exposure is initiated to no more than that portion of the image receptor chosen by the operator on the spot-film selector. If the x-ray field size is less than the size of the selected portion of the image receptor, the field size shall not open automatically to the size of the selected portion of the image receptor unless the operator has selected such a mode of operation;

ii. Neither the length nor the width of the x-ray field in the plane of the image receptor shall differ from the corresponding dimensions of the selected portion of the image receptor by more than three percent of the SID when adjusted for full coverage of the selected portion of the image receptor. The sum of the differences in length and width, without regard to the sign, shall not exceed four percent of the SID. Spot-film devices manufactured after February 25, 1978, which permit a variable angle between the plane of the image receptor and beam axis, shall be provided with a means to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor;

iii. The center of the x-ray field in the plane of the image receptor shall be aligned with the center of the selected portion of the image receptor to within two percent of the SID;

iv. Means shall be provided to reduce the x-ray field size in the plane of the image receptor to a size smaller than the selected portion of the image receptor such that:

(1) For spot-film devices used on fixed-SID fluoroscopic systems which are not required to provide, and do not provide stepless

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adjustment of the x-ray field, the minimum field size, at the greatest SID, shall not exceed five by five centimeters (two by two inches); or

(2) For spot-film devices used on fluoroscopic systems that have a variable SID and/or stepless adjustment of the field size, each dimension of the minimum field size, and the greatest SID, shall not exceed five centimeters (two inches); and

v. A capability may be provided for overriding the automatic x-ray field size adjustment in case of system failure. If it is so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic x-ray field size adjustment override is engaged. Each such system failure override switch shall be clearly labeled as follows: FOR X-RAY FIELD LIMITATION SYSTEM FAILURE.

7:28-15.6 Radiation therapy simulators

(a) No person shall operate or permit the operation of a radiation therapy simulator system unless it meets the requirements of this section and complies with all applicable requirements of this subchapter, unless otherwise exempted.

(b) Operation of a radiation therapy simulator system on a patient shall be performed only by a licensed practitioner, a licensed radiation therapy technologist, or a licensed diagnostic x-ray technologist, as prescribed in N.J.A.C. 7:28-19.

(c) No person shall operate or permit the operation of a radiation therapy simulator system unless it meets the following requirements:

1. A quality assurance program has been established in collaboration with a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems, and implemented by the registrant to ensure congruence of the position and size of the simulated field with the position and size of the irradiation field.

i. The quality assurance program is consistent with, but not limited to, the guidelines established by the American Association of Physicists in Medicine, (AAPM) Report Number 13;

ii. The quality assurance program is documented by the registrant; and

iii. The quality assurance program records are maintained by the registrant for at least 36 months, and are available for review at the facility by the department during any inspection;

2. Any radiation therapy simulator system, which uses a gantry rotation system when performing radiographic examinations, shall be equipped with a sensor mechanism that shall stop the gantry motion if necessary to prevent collision. This requirement shall take effect ***[one year after the effective date of this subchapter]* *October 18, 1994***.

i. Restarting the unit shall only be possible when the cause of the termination has been determined and corrected and the sensor mechanism is satisfied that a collision reoccurrence is not possible.

ii. Tests of the operation of the anti-collision sensor mechanism are performed and results are documented by those individuals listed in (b) above or by a qualified medical physicist for the supervision of quality assurance programs for therapy simulator systems at intervals not to exceed 12 months. The records shall be maintained for at least 36 months, and shall be available at the facility for review by the department during any inspection. A true copy of these records shall be sent to the department upon request;

3. A dead-man switch and/or an emergency "off" control shall be located on the remote control console and also at all places in the simulator room from which motions are controlled;

4. A radiation therapy simulator system attached to a megavoltage radiation therapy x-ray system shall meet the following requirements:

i. Exposure controls shall be located outside the therapy room;

ii. The operator shall be able to view the patient from the control panel at all times during the procedure. The viewing system may consist of, but is not limited to, a window, mirror, or closed circuit television; and

iii. A method for two-way aural communication between the patient and the operator shall be provided at the control panel and shall be operable at all times when the system is in operation;

5. A superficial or orthovoltage therapy x-ray system shall not be used for radiation therapy simulation except for treatments given on this system; and

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6. Protective aprons of at least 0.25 millimeters lead equivalent shall be worn by the operator or therapy physician during every instance in which entry into the simulator room is necessary while the patient exposure is in progress. Protective gloves of at least 0.25 millimeters lead equivalent shall be worn by the operator or therapy physician during every instance when the hands must be in the primary beam while the patient exposure is in progress. The exposure of such individuals shall be controlled by the use of shielding and protective clothing as necessary to ensure that they are not exposed to radiation doses in excess of those permitted by N.J.A.C. 7:28-6.

7:28-15.7 Computed tomography equipment

(a) The provisions of this section are in addition to and not in substitution for the applicable sections of this subchapter.

(b) No person shall operate or permit the operation of computed tomography equipment used in the healing arts unless the equipment meets the following requirements:

1. The registrant shall maintain the technical and safety information supplied by the manufacturer as required by the Code of Federal Regulations at 21 C.F.R. 1020.33(c) near the control panel and produce it to the department during any inspection;

2. The registrant shall ensure that a CT quality assurance phantom is available for testing the CT system. The use of the phantom and the physical properties of the phantom shall meet the following requirements:

i. Instructions on the use of the phantom shall be provided. The instructions shall include a schedule of tests appropriate for the CT system, the allowable variations for the test parameters, and a method to store the test results;

ii. Images of the phantom that demonstrate compliance with the CT's performance specifications shall be obtained on both film and digital archive media. These images shall be maintained and used to compare with current test results; and

iii. The phantom shall be capable of providing an indication of contrast scale, noise, nominal tomographic section thickness, the resolution capability of the system for low and high contrast objects, and measurement of the mean CT number of water or a reference material;

3. The registrant shall ensure that a CT dosimetry phantom is available for testing the CT system. The use of the phantom and the physical properties of the phantom shall meet the following requirements:

i. The phantom shall be a right circular cylinder of polymethylmethacrylate of density 1.19 ± 0.01 grams per cubic centimeter;

ii. The phantom shall be at least 14 centimeters in length and shall have a diameter of 32.0 centimeters for testing any CT system designed to image any section of the body (whole body scanners);

iii. The phantom shall be at least 16.0 centimeters in diameter for any system designed to image the head (head scanner) or for any whole body scanner operated in the head scanning mode;

iv. The phantom shall provide means for the placement of a dosimeter(s) along its axis of rotation and along a line parallel to the axis of rotation 1.0 centimeter from the outer surface and within the phantom; and

v. Any effect on the doses measured due to the removal of phantom material to accommodate dosimeters shall be accounted for through appropriate corrections to the reported data or included in the statement of maximum deviation for the values obtained using the phantom;

4. A visual indication of the conditions of operation to be used during a scan or scan sequence shall be indicated prior to initiation of a scan or scan sequence. On equipment having all or some of these conditions of operation at fixed values, this requirement may be met by permanent markings. Indication of CT conditions shall be visible from any position from which the scan can be initiated;

5. A means shall be provided to terminate the exposure automatically by either de-energizing the x-ray source or shuttering the x-ray beam in the event of equipment failure affecting data collection. A visible signal shall indicate when the x-ray exposure has been terminated by this means. Such termination shall occur within an interval that limits the total scan time to no more than 110 percent of the preset value through the use of either a backup timer or

devices which monitor equipment function. Means shall be provided such that the exposure from the system does not exceed 100 mR/scan except when x-ray transmission data are being collected for use in image production or technique factor selection;

6. The operator shall be able to terminate the x-ray exposure at any time during a scan or during a series of scans under the x-ray system control of greater than one-half second exposure. Termination of the x-ray exposure shall necessitate resetting of the CT conditions of operation prior to the initiation of another scan;

7. A means shall be provided to permit visual determination of the location of the tomographic plane or a reference plane offset from the tomographic plane;

8. If a device using a light source, including a laser source, is used to determine the location of the tomographic plane, this source shall provide illumination levels sufficient to permit visual determination of the location of the tomographic plane or reference plane under ambient light conditions of up to 500 lux;

9. The x-ray control and gantry shall provide visual indication whenever x-rays are produced and, if applicable, whether the shutter is open or closed. If the x-ray production period is less than one-half second, the indication of x-ray production shall be actuated for one-half second. Indicators at or near the housing of the scanning mechanism shall be discernible from any point external to the patient opening where insertion of any part of the human body into the primary beam is possible;

10. For systems that allow high voltage to be applied to the x-ray tube continuously and that control the emission of x-rays with a shutter, the radiation emitted shall not exceed 100 milliroentgens (2.6 E-2 Coulombs per kilogram) in one hour at any point five centimeters (two inches) outside the external surface of the housing of the scanning mechanism when the shutter is closed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters (15.5 square inches) with no linear dimensions greater than 20 centimeters (eight inches);

11. The deviation of indicated scan increment from actual scan increment shall not exceed 1 millimeter. Compliance shall be measured as follows: The determination of the deviation of indicated versus actual scan increment shall be based on measurements taken with a mass of 100 kilograms or less on the patient support. The patient support shall be incremented from a typical starting position to the maximum incremented distance or 30 centimeters (12 inches), whichever is less, and then returned to the starting position;

12. The distance between the indicated location of the tomographic plane or reference plane and its actual location may not exceed five millimeters; ***and***

[13. The beam entrance width at five millimeters or above shall not be more than ten percent greater than the nominal tomographic section thickness. At less than five millimeters the beam entrance width shall not be more than 20 percent greater than the nominal tomographic section thickness; and]

*[14.]**13.* An emergency off switch shall be available at the control panel and in the CT room.

(c) No person shall operate or permit the operation of computed tomographic equipment unless the facility meets the following:

1. Provision shall be made for two-way aural communication between the patient and the operator at the control panel; and

2. Windows, mirrors, closed-circuit television, or an equivalent shall be provided to permit continuous observation of the patient during irradiation and shall be so located that the operator can observe the patient from the control panel. When the primary viewing system is by electronic means, such as a closed-circuit television, an alternate viewing system, which may also be electronic, shall be provided to permit continuous observation of the patient during irradiation in the event of failure of the primary viewing system.

(d) No person shall operate or permit the operation of computed tomography x-ray equipment used in the healing arts unless the following operating conditions are met:

1. The CT system shall not be operated except by a licensed individual who has been specifically trained in its operation;

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2. Information shall be available near the control panel regarding the operation and calibration of the system. That information shall contain:

- i. Dates of the latest calibration and spot checks and the location within the facility where the results of these tests may be obtained;
- ii. Instructions on the use of the phantom(s), including a schedule of testing appropriate for the system, allowable variations for the indicated parameters, and the results of at least the most recent tests conducted on the system; and
- iii. A technique chart shall be available at the control panel; and

3. The registrant shall ensure that a qualified medical physicist for the supervision of quality assurance programs for diagnostic x-ray equipment does performance testing procedures annually, which shall include but not be limited to CTDI, nominal tomographic section thickness accuracy, incremental table movement accuracy, noise, and *[high/low]* ***high contrast and low contrast*** resolution.

7:28-15.8 Medical cabinet x-ray systems

(a) The requirements of this section are in addition to and not in substitution for the applicable requirements in N.J.A.C. 7:28.

(b) No person shall operate or permit the operation of a medical cabinet x-ray system used in the healing arts unless it meets the following requirements:

1. The registrant shall ensure and document that the operator has received a copy of the operator's manual, has been trained in the operating procedures for the system, and has demonstrated competence in operating the system to the registrant. This documentation shall be available to the department for review during any inspection. The registrant shall maintain a copy of the operator's manual in the proximity of the system;

2. Radiation emitted from the medical cabinet x-ray system shall not exceed an exposure of 0.5 milliroentgens in one hour at any point five centimeters outside the external surface;

3. No medical cabinet x-ray system shall be placed into operation until the registrant demonstrates that a qualified individual for the performance of radiation surveys for diagnostic x-ray equipment has determined that the exposure level in (b)2 above is not exceeded. Where an operating system is subsequently modified, repaired, or moved to a new location, the unit shall not be used until a qualified individual for the performance of radiation surveys for diagnostic x-ray equipment has determined compliance with this limit. The registrant shall maintain the original report(s) at the facility, and make the report(s) available to the Department during any inspection. The registrant shall submit a copy of the report(s) to the Department within 30 days of the date the determination has been completed; *[and]*

4. Safety interlocks shall be provided on medical cabinet x-ray systems as follows:

i. Each door of a cabinet x-ray system shall have a minimum of two safety interlocks installed in such a manner that the opening of any door would disconnect the energy supply circuit to the high-voltage generator;

ii. Each access panel on a cabinet x-ray system shall have at least one safety interlock;

iii. Following interruption of the energy supply circuit by the functioning of any safety interlock, a manually reset control switch shall be activated before x-ray production can resume;

iv. Failure of any single component of the medical cabinet x-ray system shall not cause failure of more than one required safety interlock;

v. Safety interlocks shall be tested for operation at intervals not to exceed six months. A record of these tests shall be maintained for review by the Department during any inspection;

5. A medical cabinet x-ray system shall have a permanent floor, which means the underside external surface of the cabinet;

6. There shall be permanently affixed or inscribed on the medical cabinet x-ray system at the location of any controls which can be used to initiate x-ray production a clearly legible and visible label bearing the statement or words having a similar meaning: "CAUTION: X-RAYS PRODUCED WHEN ENERGIZED"; and

7. All medical cabinet systems shall be provided with the following controls and indicators:

i. A key-activated control to insure that x-ray production is not possible with the key removed;

ii. A control button or control switch to initiate and terminate the production of x-rays other than by the functioning of a safety interlock or the main power control;

iii. A warning light at the control button or control switch that indicates when and only when x-rays are being produced. This light shall be clearly labeled with the words: "X-RAY ON";

iv. A warning light which indicates when and only when x-rays are being produced. This warning light shall be visible from each door, access panel, and port, and shall be clearly labeled with the words: "X-RAY ON"; and

v. A means to indicate the kilovoltage, current and time during the production of x-rays at each x-ray control button or control switch unless the x-ray tube current is preset.

7:28-15.9 Individual radiation safety

(a) No person shall operate or permit the operation of certified or uncertified medical radiographic and fluoroscopic equipment or therapy simulation systems unless the following conditions are met:

1. Only individuals required for the medical procedure, for training, or for equipment maintenance shall be in the radiographic or fluoroscopic or therapy simulator room during an exposure.

i. Individuals who are present in a radiographic or fluoroscopic or therapy simulator room during any exposure shall wear protective aprons of at least 0.25 mm lead equivalent during every exposure.

ii. Protective gloves of at least 0.25 mm lead equivalent shall be worn by the fluoroscopist and assistant(s) during every examination when it is required that their hands be placed in the useful beam;

2. When a patient must be provided with auxiliary support during a radiation exposure and mechanical holding devices are insufficient, the following procedures shall be followed:

i. The person holding the patient shall be protected with a lead apron of at least 0.25 mm lead equivalent;

ii. The person holding the patient shall be protected with lead gloves of at least 0.25 mm lead equivalent if the hands must be placed in the useful beam;

iii. No licensed practitioner shall order or otherwise cause an individual who is licensed pursuant to N.J.S.A. 26:2D and this chapter to hold a patient during a radiation exposure, except in a life-threatening situation;

iv. No person shall be employed, routinely assigned, or required to hold a patient during radiographic and fluoroscopic procedures;

v. If a patient must be held during the x-ray exposure, non-radiation workers such as aides, orderlies, nurses, or members of the patient's family may be asked to perform this duty; and

vi. No person other than the patient shall hold the film during the exposure;

3. Gonadal shielding of not less than 0.5 mm lead equivalent shall be used on a patient during radiographic and fluoroscopic procedures, except for cases in which this would interfere with the diagnostic procedure. If the patient is sterile, the use of gonadal shielding may be omitted;

4. The operator shall collimate x-ray units that do not have positive beam limitation to ensure that the x-ray field does not extend beyond the image receptor;

5. The radiographic field shall be restricted to the area of clinical interest as far as practical;

6. A method to observe the patient during the x-ray exposure shall be provided for all units. Observation of the patient shall be made from the shielded area;

7. During radiographic exposures, the operator shall stand behind the protective barrier;

8. The registrant shall provide written safety rules to each individual operating x-ray equipment including any restrictions as to the operating technique required for the safe operation of the particular x-ray apparatus, and require that the operator sign a form acknowledging that the safety manual was read. These safety rules and restrictions shall be made available for review by the Department during any inspection;

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9. No person shall permit or arrange for the intentional irradiation of a human being except for the purpose of medical diagnosis or treatment;

10. No person shall deliberately expose an individual to the useful beam for the sole purpose of training or demonstration; and

11. No person shall operate an ionizing-radiation-producing machine unless that person understands and uses the principles of radiation safety to keep radiation exposure as low as reasonably achievable.

7:28-15.10 Structural shielding and radiation safety surveys

(a) No person shall operate or permit the operation of x-ray equipment used in the healing arts unless permanent structural shielding and/or protective barriers are used as necessary to ensure that no person other than the patient being examined receives a dose in excess of the limits specified in N.J.A.C. 7:28-6.

(b) No person shall operate or permit the operation of x-ray equipment used in the healing arts unless the survey requirements listed below are met. To the extent that this section imposes more stringent requirements than the survey requirements in N.J.A.C. 7:28-7 and recordkeeping requirements in N.J.A.C. 7:28-8, the requirements of this section shall be followed.

1. The registrant of a medical ionizing-radiation-producing machine shall ensure that a qualified individual for the performance of radiation surveys for diagnostic x-ray equipment and therapy simulators performs ***or supervises the performance of*** a radiation safety survey of the environs and submits a copy of the radiation safety survey report to the Department within ***[30]* *60*** days of the date the machine is acquired. The registrant shall maintain the original survey report for as long as the machine is registered plus one year and shall make the original survey report available to the Department during any inspection.

2. The registrant of a medical ionizing-radiation-producing machine shall ensure that a qualified individual for the performance of surveys for diagnostic x-ray equipment and therapy simulator systems performs ***or supervises the performance of*** a radiation safety survey of the environs when changes have been made to shielding, equipment, or equipment location which affect the radiation levels of the environs. A copy of the survey report shall be submitted to the Department within ***[30]* *60*** days of the date of such change. The registrant shall maintain the original survey report for as long as the machine is registered plus one year and shall make the original survey report available to the Department during any inspection.

3. The minimum requirements for the information to be included in the radiation safety survey report are as follows:

- i. The name of the registrant of the installation as listed on form VRH-001, address, telephone number, and room location of the unit;
- ii. The New Jersey Registration Number, if available;
- iii. The manufacturer, model number, generator serial number, control panel serial number, tube manufacturer, tube serial number, and tube housing number;
- iv. The name and address of the qualified individual performing the survey;
- v. The date of survey;
- vi. The survey instrument manufacturer, model number, and date calibrated;
- vii. A diagram or floor plan of the area indicating the x-ray tube location, exposure switch location, normal operator position, lead shielding if present, wall, floor, and ceiling construction, labeling all areas adjacent to the exposure room including those above and below, and labeling of all areas as to occupancy and use;
- viii. Records of the measurement of radiation exposure with a suitable phantom in the average patient position. Measurements shall be taken at the operator's position and at all nearby locations which are normally occupied. For each measurement, the kVp, and mA, exposure time, instrument reading, and correction made to the instrument reading (such as energy response, calibration, etc.) shall be recorded; and
- ix. Exposure rates at each measured location shall be converted into Coulombs/kilogram/week or mR/week. Records shall include all

assumptions of workload, use and occupancy factors used in the calculations.

7:28-15.11 Prohibited installations

(a) No person shall operate, permit to be operated, maintain or display in working condition any of the following:

- 1. Shoe-fitting fluoroscopic devices;
- 2. Chest photofluorographic machine after ***[one year from the effective date of these rules]* *October 18, 1994***;
- 3. Fixed vertical systems designed for non-image intensified fluoroscopy used for radiography after ***[one year from the effective date of these rules]* *October 18, 1994***;
- 4. Uncertified fluoroscopic equipment that does not have image intensification after ***[one year from the effective date of these rules]* *October 18, 1994***; or
- 5. Hand-held fluoroscopic screens.

7:28-15.12 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the subchapter, which can be given effect without the invalid provision or application, and to this end, the provisions of this subchapter are declared to be severable.

7:28-16.2 Definitions

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

...
 "Coefficient of variation" or "C" means the ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

$$C = \frac{s}{\bar{X}} = \frac{1}{\bar{X}} \left[\sum_{i=1}^n \frac{(X_i - \bar{X})^2}{n-1} \right]^{1/2}$$

where:

- s = estimated standard deviation of population
- \bar{X} = mean value of observations in sample
- X_i = ith observation in sample
- n = number of observations in sample

...
 "Protective barrier" means a barrier of radiation absorbing material used to reduce radiation exposure. The types of protective barriers are as follows:

- 1. "Primary protective barrier" means the material, excluding filters, intercepting the useful beam for protection purposes to reduce the radiation exposure so that it does not exceed ***[to]* *two* millirems *per]* *in any one* hour.**
- 2. "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to reduce radiation exposure so that it does not exceed two millirems ***per]* *in any one* hour.**

7:28-16.8 Radiation safety surveys

(a) No person shall operate or permit the operation of x-ray equipment used for dental radiography unless the installation meets the following requirements:

- 1. The registrant of a dental ionizing radiation-producing machine shall ensure that a qualified individual performs ***or supervises the performance of*** a radiation safety survey of the environs and submits a copy of the radiation safety survey report to the Department within ***[30]* *60*** days of the date the machine is acquired. The registrant shall maintain the original survey report for as long as the machine is registered plus one year and shall make the original survey report available for review by the Department during any inspection;
- 2. The registrant of a dental ionizing radiation-producing machine shall ensure that a qualified individual performs ***or supervises the performance of*** a radiation safety survey of the environs when changes have been made to shielding, equipment, or equipment location which affect the radiation levels of the environs. A copy of the survey report shall be submitted to the Department within

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[30] *60* days of the date of such change. The registrant shall maintain the original survey report for as long as the machine is registered plus one year and shall make the original survey report available for review by the Department during any inspection; and

3. The minimum requirements for the information to be included in the radiation safety survey report are as follows:

i. The name of the registrant of the installation as it appears on form VRH-001, address, telephone number, and room location of the unit;

ii. The New Jersey Registration Number, if available;

iii. The manufacturer, model number, generator serial number, control panel serial number, tube manufacturer, tube serial number, and tube housing number;

iv. The name and address of the qualified individual performing the survey;

v. The date of survey;

vi. The survey instrument manufacturer, model number, and date calibrated;

vii. A diagram or floor plan of the area indicating the x-ray tube location, exposure switch location, normal operator position, lead shielding if present, wall, floor, and ceiling construction, labeling of all areas adjacent to the exposure room including those above and below, and labeling of all areas as to occupancy and use;

viii. Records of the measurement of radiation exposure with a suitable phantom in the average patient position. Measurements shall be taken at the operator's position and at all nearby locations which are normally occupied. For each measurement, the kVp, mA, exposure time, instrument reading, and correction made to the instrument reading (such as energy response, calibration, etc.) shall be recorded; and

ix. Exposure rates at each measured location shall be converted into Coulombs/kilogram/week or mR/week. Records shall include all assumptions of workload, use and occupancy factors used in the calculations.

(a)

ENVIRONMENTAL REGULATION

Notice of Administrative Correction

New Jersey Pollutant Discharge Elimination System Requirements Applicable to All Permittees

N.J.A.C. 7:14A-2.5

Take notice that the Department of Environmental Protection and Energy has discovered an error in the current text of N.J.A.C. 7:14A-2.5(a)1. A recent adopted amendment to that paragraph (see 24 N.J.R. 344(a) and 25 N.J.R. 547(a)) inadvertently resulted in the deletion of the following **boldface** phrase from the then current text (see 24 N.J.R. 2352(a) and 4088(a)): "The discharge of any pollutant not specifically **regulated in the NJPDES permit or listed and quantified** in the NJPDES application shall constitute a violation . . ." The omission of this phrase from the sentence was not an intentional deletion proposed and adopted by the Department, in that the text of the phrase did not appear in brackets signifying deletion in either rulemaking notice. Therefore, the phrase may be reinserted into the sentence through this notice of administrative correction, pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**):

7:14A-2.5 Requirements applicable to all permittees

(a) Permittees shall comply with the following:

1. The permittee shall comply with all the conditions of its permit including, but not limited to, effluent limitations based upon guidelines or standards established pursuant to the Federal Act or

ENVIRONMENTAL PROTECTION

the State Act together with such further discharge restrictions and safeguards against unauthorized discharge as may be necessary to meet water quality standards, areawide plans adopted pursuant to law, or other legally applicable requirements. All discharges shall be consistent at all times with the terms and conditions of the permit and no pollutant shall be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit. The discharge of any pollutant not specifically **regulated in the NJPDES permit or listed and quantified** in the NJPDES application shall constitute a violation of the permit, unless the permittee can prove by clear and convincing evidence that the discharge of the unauthorized pollutant did not result from any of the permittee's industrial activities which contribute to the generation of its wastewaters, or unless the NJPDES permit is a general NJPDES permit for stormwater point sources or separate storm sewers that expressly exempts permittees from this provision, in which case the exemption shall apply only to the discharge authorized by the permit. Any permit noncompliance constitutes a violation of the State Act or other authority of this chapter and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. The Department shall not issue a NJPDES permit when the conditions of the permit do not provide for compliance with the applicable requirements of the State and Federal Acts or regulations.

2.-16. (No change.)

(b)

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Notice of Administrative Correction

Toxic Catastrophe Prevention Act Rules

Registration; Risk Management Program Checklist

N.J.A.C. 7:31-2.5 and 7:31 Appendix I

Take notice that the Department of Environmental Protection and Energy has discovered errors in the current text of N.J.A.C. 7:31-2.5(h) and 7:31 Appendix I.

In N.J.A.C. 7:31-2.5(h), reference is made to the question set forth in N.J.A.C. 7:31-2.5(g)2ii as being question 3 in Section B of the Toxic Catastrophe Prevention Act Registration Form. This Form, set forth in N.J.A.C. 7:31 Appendix II, shows subparagraph (g)2ii's question as question 2 rather than question 3.

In N.J.A.C. 7:31 Appendix I, under the heading "STANDARD OPERATING PROCEDURES," item 7 refers to a listing of items in a standard operating procedure as being those in "(c) above," when, in fact, there is no item "(c)"; instead, the standard operating procedure items appear in item 4.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

7:31-2.5 Registration

(a)-(g) (No change.)

(h) The Department will suspend from registration a registrant who submits a registration form showing a negative answer to question [3] 2 of Section B (above at (g)2ii of the registration form.

(i)-(j) (No change.)

TREASURY-TAXATION

ADOPTIONS

STP-011
2/93

APPENDIX I
NEW JERSEY DEPT. OF ENVIRONMENTAL PROTECTION AND ENERGY
Division of Environmental Safety, Health and Analytical Programs
CN 424, Trenton, N.J. 08625-0424
"TOXIC CATASTROPHE PREVENTION ACT"
RISK MANAGEMENT PROGRAM CHECKLIST

STANDARD OPERATING PROCEDURES

- 1.-6. (No change.)
- 7. Has a current table of contents of each EHS standard operating procedures listing the items of [(c)] 4 above, the documents in which those items are located and the location of such documents with corresponding latest dates of issue and issue identification number been maintained, filed and distributed to the responsible manager?

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Local Property Tax; Real Property Defined

Adopted Amendments: N.J.A.C. 18:12-10.1, 10.2 and 10.3

Proposed: January 4, 1993 at 25 N.J.R. 61(a).
 Adopted: September 14, 1993 by Leslie A. Thompson, Director,
 Division of Taxation.
 Filed: September 15, 1993 as R.1993 d.504, **without change.**
 Authority: N.J.S.A. 54:4-2.2k.
 Effective Date: October 18, 1993.
 Expiration Date: October 4, 1998.

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

Full text of the adoption follows:

18:12-10.1 Definitions

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

"Machinery, apparatus or equipment" means any machine, device, mechanism, instrument, tool, tank or item of tangible personal property used or held for use in business. The term includes, but is not limited to, that machinery, apparatus or equipment described in N.J.A.C. 18:24-4.2. The term also includes machinery, apparatus or equipment directly used in the production of sale of gas, water, steam, electricity or telecommunication services and such items directly used in the production of property on farms as defined in N.J.S.A. 54:32B-8.16.

"Production process" means the process of commencing with the introduction of raw materials or components into a systematic series

of manufacturing, assembling, refining or processing operations and ceasing when the product is in the form in which it will be sold to the ultimate consumer.

"Used or held for use in business" means any item of machinery, apparatus or equipment used or held for use in a business transaction, activity or occupation conducted for profit in New Jersey.

18:12-10.2 Real and personal property

(a) Real property means all lands and improvements thereon and includes personal property affixed to real property or an appurtenance thereto, unless personal property so affixed meets all of the conditions in (a)1 through 3 below or in (a)4 below.

1.-3. (No change.)

4. The personal property so affixed is machinery, apparatus, or equipment used or held for use in business and is neither a structure nor machinery, apparatus or equipment the primary purpose of which is to enable a structure to support, shelter, contain, enclose or house persons or property. For purposes of this subsection, real property includes pipe racks, and piping and electrical wiring up to the point of connections with the machinery, apparatus, or equipment of a production process.

(b) Personal property includes only the machinery, apparatus or equipment of a petroleum refinery that is directly used to manufacture petroleum products from crude oil in any of the series of petroleum refining processes commencing with the introduction of crude oil and ending with refined petroleum products, excluding items of machinery, apparatus or equipment which are located on the grounds of a petroleum refinery but which are not directly used to refine crude oil into petroleum products.

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

18:12-10.3 Tanks with a capacity in excess of 30,000 gallons

A storage tank having a capacity of more than 30,000 gallons is deemed to be real property. The fact that products are mixed, blended, heated or subjected to a similar non-production process within a storage tank shall not in itself render that tank personal property.

EMERGENCY ADOPTION

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration

Prepaid Health Care Services: Medicaid Eligibles State-defined HMOs

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 10:49-19.1, 19.4 and 19.7

Adopted Emergency New Rule and Concurrent Proposed New Rule: N.J.A.C. 10:49-19.11

Emergency Amendment and New Rule Adopted and Concurrent Proposed Amendment and New Rule Authorized: September 30, 1993 by William Waldman, Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): October 1, 1993.

Emergency Amendment Filed: October 4, 1993 as R. 1993 d.525.

Authority: N.J.S.A. 30:4D-1, 2, 3, 6, 7, 7a, b and c; 30:4D-12; 1902(e) of the Social Security Act, 42 U.S.C. 1396a; 1903(m) of the Social Security Act, 42 U.S.C. 1396b; 42 CFR 417.108; 42 CFR 434; 42 CFR 447.361.

Emergency Amendment Effective Date: October 4, 1993.

Emergency Amendment Expiration Date: December 3, 1993.

Submit comments by November 17, 1993 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
Mail Code #26 CN 712
Trenton, NJ 08625-0712

These amendments and new rule were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(C) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency amendments and new rule are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted amendments and new rule become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed prior to the expiration of the emergency period.

The emergency adoption and concurrent proposal follows:

Summary

The Division of Medical Assistance and Health Services (the Division) is amending N.J.A.C. 10:49, Administration, in order to provide a State definition of a health maintenance organization. Present health maintenance organization providers for Medicaid recipients include the Garden State Health Plan, which has been uniquely defined through Congressional legislation, and a Federally qualified health maintenance organization. An amendment is proposed for a State definition for a health maintenance organization provider type other than a Federally qualified or Federally approved health maintenance organization.

Under managed care, a Medicaid recipient enrolls in a managed care plan that makes available a personal physician to each member. This physician assumes responsibility for coordinating all of the health care needed by an individual patient on a 24 hour, seven day a week basis. For each Medicaid member enrolled, the State pays a capitation rate to the health maintenance organization (HMO). In return, the HMO provides a contracted package of health services to the enrolled Medicaid recipients. The managed care provider is financially at risk for the cost of care beyond the agreed upon payment, and more prudently manages the use of services.

Services covered by the New Jersey Medicaid program (in accordance with New Jersey's Medicaid State Plan) but which are not within the

HMO's contracted service package will be provided to eligible recipients by fee for service providers.

The State needs to amend the Administrative Code to include a State definition of a health maintenance organization, in addition to Federally qualified HMOs and the Garden State Health Plan, to permit expanded authority for the Medicaid program to contract with managed health care entities other than those already defined. This will permit a greater choice of such providers through increased HMO contracting authority.

Features of the State defined HMO which differ from the Federally qualified HMO and the Garden State Health Plan include: (1) the absence of a six-month guaranteed period of Medicaid eligibility, regardless of the recipient's potential loss of Medicaid eligibility; (2) the absence of lock-in commitment for the recipient; and (3) the provision for the recipient to withdraw upon written notification.

Social Impact

The proposed amendments and new rule will enable the Division to expand its capacity to arrange for coordinated health care services for Medicaid recipients.

The amendments and new rule will impact on non-Federally qualified HMOs that seek to become providers in the New Jersey Medicaid program. However, the impact will be more economic than social.

Economic Impact

The HMO providers will be paid a monthly capitation rate by the Division for each enrolled recipient.

Medicaid recipients will pay nothing for services rendered by or through the HMO.

The cost to the Division is the capitation rate, which is still being negotiated, but will be no more than the current cost of the fee-for-service program. Federal regulation requires that the cost of providing services through a health maintenance organization not exceed the cost of the regular fee-for-service Medicaid program.

Regulatory Flexibility Analysis

The proposed amendments and new rule impose some recordkeeping or other compliance requirements upon HMOs, some of whom may be considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. All HMOs are required to meet applicable contract requirements contained in Federal regulations (42 CFR 434). All HMOs are required to meet requirements contained in State law, such as N.J.S.A. 26:25.

Recordkeeping and compliance requirements are already specified in New Jersey Medicaid statutes, N.J.S.A. 30:4D-12. Providers who render health care services are required to keep and maintain such individual records as are necessary to fully disclose the name of the recipient to whom the service was rendered, the date of the service rendered, the nature and extent of each such service rendered, and any additional information, as the department may require by regulation. These requirements are the same for all providers of health services. In addition, the records are necessitated because of considerations of persons' health and well being, and of the verification of expenditures of governmental funds. There is no differentiation based upon size.

All HMOs must employ sufficient professional staff, including physicians. There may be capital costs in order for an HMO to meet the requirements of Medicaid participation.

The Division has attempted to minimize any adverse economic impact on small businesses by limiting reporting, recordkeeping and other compliance requirements to those already necessitated by Federal and State law and regulation.

Full text of the emergency adopted and concurrent proposed new rule and amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

10:49-19.1 Definitions

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

...
"Health maintenance organization" or "HMO" means a public or private organization, organized under State law which:

1. Is a Federally qualified HMO (defined above); or

HUMAN SERVICES

2. Meets the State Plan's definition of an HMO which includes at a minimum the following requirements:

i. Is organized primarily for the purpose of providing health care services;

ii. Makes the services it provides to its Medicaid enrollees as accessible to them (in terms of timeliness, amount, duration, and scope) as those services are to non-enrolled Medicaid eligible individuals within the area served by the HMO; [and]

iii. Makes provision, satisfactory to the Division, against risk of insolvency, and assures that Medicaid enrollees will not be liable for the HMO's debts if it does become insolvent[.]; **and**

iv. **Has a Certificate of Authority granted by the State of New Jersey to operate in all or selected counties in New Jersey.**

10:49-19.4 Marketing and enrollment

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

(c) The following pertain to enrollment:

1.-4. (No change.)

5. At any time during the first 30 days of each six month enrollment period, the enrollee may elect to disenroll from the contractor's plan, upon written notification to the contractor, without stating a cause and with cause thereafter. The contractor may terminate an enrollee's enrollment for reasonable cause, through a grievance process which is consistent with applicable State and Federal regulations and is approved by the Division.

i. **There is an exception for State-defined HMOs as found in N.J.A.C. 10:49-19.11.**

EMERGENCY ADOPTION

6.-7. (No change.)

(d) (No change.)

10:49-19.7 Financial arrangements

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

(e) [A stop loss provision may be made available for risk contracts as determined appropriate by the Division; the amount of the stop loss would be specified in the contract.] **The Division does not provide stop loss for risk contracts.**

(f)-(h) (No change.)

10:49-19.11 State-defined HMOs

(a) **A State-defined HMO is subject to all of the requirements of N.J.A.C. 10:49-19.1 through 19.10 with the following exceptions noted:**

1. **A guarantee of Medicaid eligibility cannot be offered to enrollees of a State defined HMO. (1902(e)(2)(A) of the Social Security Act)**

2. **The State may not restrict the period for requests for termination of enrollment without cause to the first month of each period of enrollment for enrollees of a State-defined HMO. (1903(m)(2)(F) of the Social Security Act)**

(b) **Medicaid members of a State defined HMO receive all Medicaid services for as long as they remain Medicaid eligible.**

1. **Out-of-plan services are reimbursed through fee-for-service and do not require prior authorization by the HMO.**

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session

November 17, 1993

Take notice that the following agenda items are scheduled for Notice of Proposal in the January 18, 1994 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, November 17, 1993 from 3:00 P.M. to 6:00 P.M. in the 8th floor Training Room, 225 East State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, November 12, 1993.

Rule Proposals:

N.J.A.C. 6:30, Adult Education

N.J.A.C. 6:29-1.7, Eye Protection in Public Schools

N.J.A.C. 6:3-6.1, Pupil Records

N.J.A.C. 6:29-9.1, The Reporting of Allegations of Child Abuse

Please note: Publication of the above item is subject to change depending upon the actions taken by the State Board of Education at the December 1, 1993 monthly public meeting.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Atlantic County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Atlantic County Water Quality Management (WQM) Plan. This amendment proposal was submitted on behalf of the Mullica Township Board of Education to build a new wastewater treatment plant discharging to subsurface sewage disposal beds. This proposed amendment is a result of a State mandated upgrade to current substandard building conditions at the existing Elwood School. The new addition onto the existing Elwood School will allow the building to better serve as an elementary and middle school. This addition would increase building space by 15,867 square feet. Functional capacity of the new Elwood Elementary/Middle School would be 911. The new Elwood Elementary/Middle School anticipates a wastewater flow of 13,665 gallons per day.

This notice is being given to inform the public that a plan amendment has been proposed for the Atlantic County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Land and Water Planning, CN423, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. to 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the proposed amendment to Dr. Daniel J. Van Abs, Office of Land and Water Planning, at the NJDEPE address cited above with a copy sent to Mr. John Helbig, Adams, Rehmann & Heggan Assoc., Inc., 850 South White Horse Pike, Post Office Box 579, Hammonton, New Jersey 08037-2019. All comments must be submitted within 10 working 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 NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE 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 ten working days of this public notice to Dr. Van Abs at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(c)

DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES

Notice of Increase in Surf Clam Harvest Quota

Take notice that the Department of Environmental Protection and Energy, pursuant to N.J.A.C. 7:25-12.10, announces that the harvest quota for the 1993-94 season will be 600,000 bushels of surf clams. The Department, with the advice of the Atlantic Coast Shellfish Council and the Surf Clam Advisory Committee, established the season quota at a level that provides additional benefits to the industry without detriment to the resource.

(d)

DIVISION OF SOLID WASTE

Notice of Receipt of Petition for Rulemaking Economic Regulation of the Solid Waste Industry

Petitioner: Sandra T. Ayres

Take notice that on September 20, 1993, the Department of Environmental Protection and Energy (Department) received a petition for rulemaking requesting the identification of rules now codified in Title 14 of the New Jersey Administrative Code which are of continuing relevance to the solid waste industry and transferring these rules to Title 7 of the Administrative Code. The petition also requested the reproposal of rules that have been deleted from Title 14 but continue to be relied upon by the Department.

Petitioner Sandra T. Ayres is an attorney with Schwartz, Tobia & Stanziale in Montclair, New Jersey which represents solid waste companies subject to Department economic regulation.

Petitioner states that the regulatory authority over the solid waste industry was transferred two years ago from the former Board of Public Utilities to the Department. Since that time it is increasingly unclear which of the rules codified in Title 14 by the Board will be considered of continuing effect by the Department. Additionally, certain rules existing at the time of the transfer and subsequently changed or deleted by the Board of Regulatory Commissioners are still relied upon by the Department. Solid waste companies subject to the Department's economic regulation need regulatory clarity so that they may conform their activities to the requirements of the law.

Petitioner requests that the Department review Title 14, identify the rules relevant to the economic regulation of the solid waste industry, modify these rules to meet present day needs and repropose these rules in Title 7 of the Administrative Code. Petitioner also requests the reproposal of rules deleted from Title 14 but still relied upon by the Department.

HEALTH

(e)

THE COMMISSIONER

Notice of Certificate of Need Call

Take notice that, in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Bruce Siegel, M.D., M.P.H., Commissioner, New Jersey Department of Health, is inviting certificate of need applications for the following types of health care activities:

CORRECTIONS

PUBLIC NOTICES

1. Comprehensive rehabilitation beds in accordance with the provisions of N.J.A.C. 8:33M-1.6(c) in the following Local Advisory Board (LAB) regions where there is a documented, projected need:

Geographic Area to be Served	Need
LAB I	8
LAB II	59
LAB III	No Need
LAB IV	8
LAB V	29
LAB VI	9

2. Comprehensive rehabilitation beds in accordance with the provisions of N.J.A.C. 8:33M-1.6(d) in which consideration may be given to the addition of beds at an existing rehabilitation hospital with high occupancy rates.

3. Comprehensive outpatient rehabilitation facilities.

Date application is due: November 1, 1993.

Date application will be deemed complete for processing: January 14, 1994.

Date Local Advisory Boards will review the applications and submit recommendations to the Commissioner: On or before March 1, 1994.

Date State Health Planning Board will review the applications and submit recommendations to the Commissioner: On or before April 14, 1994.

Applications may be requested from and must be filed with:

New Jersey State Department of Health
Certificate of Need Program
CN 360
Trenton, NJ 08625-0360
609-292-6552

Applications must also be filed with: Local Advisory Board(s) serving the region of the proposed service.

CORRECTIONS

(a)

THE COMMISSIONER

Notice of Action on Petition for Rulemaking

Evidence Required

N.J.A.C. 10A:4-9.15

Petitioner: George R. Jacques, New Jersey State Prison.

Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 10A:1-1.2.

Take notice that on August 12, 1993, the New Jersey Department of Corrections received a petition for rulemaking from George R. Jacques, an inmate at New Jersey State Prison (see 25 N.J.R. 4517(b)). The petition seeks an amendment to N.J.A.C. 10A:4-9.15 regarding Inmate Discipline—Evidence Required.

The petitioner suggested that a subsection (c) be added to N.J.A.C. 10A:4-9.15 which would state that when an inmate is charged with a disciplinary infraction and the inmate is under the care or being treated by a psychologist or psychiatrist or the inmate has been placed in an observation cell as a result of alleged misconduct the treating physician must make a judgement and report to the Disciplinary Hearing Officer/Adjustment Committee as to:

1. Whether the inmate's current mental status precludes participation in the disciplinary process;
2. Whether the inmate's mental status contributed to the alleged disciplinary offense; and
3. Whether the inmate's mental status contraindicates any particular form of punishment.

The petitioner also suggested that if the Disciplinary Hearing Officer/Adjustment Committee finds that the alleged misbehavior of the inmate was caused by mental illness, the disciplinary report should be dismissed and the inmate referred to the correctional facility psychologist or psychiatrist for appropriate treatment, or transfer to a more appropriate mental health facility.

The proposed petition for rulemaking is too broad in scope. Many inmates are being treated by psychologists and/or psychiatrists either individually or in a group. Additionally, in accordance with the sentencing

provisions of N.J.S.A. 2C:47-3 and 2C:47-4 virtually every inmate incarcerated at the Adult Diagnostic and Treatment Center (A.D.T.C.) is under such treatment. The Department of Corrections believes that an inmate's participation in psychological and/or psychiatric treatment is an insufficient reason for requiring additional psychiatric/psychological report(s) in every instance of proposed disciplinary action that addresses the issues of the inmate's mental status at the time of the offense. The petitioner requests a finding in these cases as to whether the inmate's mental status contributed to the alleged disciplinary offense. However, the Department questions the probative value of such a finding, since it is not unreasonable to conclude that one's current mental status invariably contributes to one's behavior. The proposed petition for rulemaking that mandates dismissal of a charge based upon a judgement from the treating psychologist/psychiatrist would assign these mental health professionals an improper role in determining the guilt or innocence of an inmate under their care or treatment. This would constitute a usurpation of the Adjustment Committee/Disciplinary Hearing Officer's adjudicatory function and would cause unwarranted and counter-productive intrusions on the duties of the impartial adjudicator and the mental health professionals. Pursuant to N.J.A.C. 10A:4-9.17, disciplinary action shall be individualized and the underlying reasons for non-compliance shall be considered. Pursuant to N.J.A.C. 10A:4-9.18, the Adjustment Committee/Disciplinary Hearing Officer may suspend sanction(s) imposed upon an inmate for a violation of a prohibited act when, in their opinion, such action is warranted by the particular circumstances of the case. Pursuant to N.J.A.C. 10A:4-5.1, a recommendation can be made by the Adjustment Committee/Disciplinary Hearing Officer for the inmate to be assigned to a treatment program. Currently, the Adjustment Committee/Disciplinary Hearing Officer has the ability and flexibility to seek professional input on cases where mental illness may be a determining factor pursuant to N.J.A.C. 10A:16-4 and 10A:16-13. The Department of Corrections finds it inappropriate to develop the proposed rule and the petition for formal rulemaking is accordingly being denied.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF CRIMINAL JUSTICE

State Office of Victim-Witness Advocacy

Notice of Availability of Applications for

Determination of Eligibility to Apply for Grant Funds

Victim and Witness Advocacy Fund, Qualified Public Entities and Qualified Not-For-Profit Organizations, Application for Eligibility

Take notice that, in compliance with P.L. 1991, c.329, §20, which supplements N.J.S.A. 2C:43-3.1, the Division of Criminal Justice, State Office of Victim-Witness Advocacy announces the following availability of funds for qualified public entities and qualified not-for-profit organizations, determined to be eligible, to apply for awards, pursuant to N.J.S.A. 52:4B-43.1 for State Fiscal Year 1993-1994.

A. Name of the program that has funds available: Victim and Witness Advocacy Fund, established pursuant to N.J.S.A. 2C:43-3.1, and administered pursuant to N.J.S.A. 52:4B-43.1.

B. Purpose of the program: Pursuant to N.J.S.A. 52:4B-43.1, in order to support the development and provision of services to victims and witnesses of crimes and for related administrative costs, qualified public entities and qualified not-for-profit organizations that provide direct services to victims and witnesses of crimes, including, but not limited to, such services as: (1) shelter, food and clothing; (2) medical and legal advocacy services; (3) 24-hour crisis response services and 24 hour hotlines; (4) information and referral and community education; (5) psychiatric treatment programs; (6) expanded services for victim's families and significant others; (7) short and long term counseling and support groups; (8) emergency locksmith and carpentry services; or (9) financial services, shall be permitted to apply for eligibility to apply for an award from the Victim and Witness Advocacy Fund.

C. Amount of money in the program: The awards to qualified public entities and qualified not-for-profit organizations shall be up to a maximum amount of \$7,000.00.

PUBLIC NOTICES

D. Groups or entities which may apply for eligibility to apply for an award under the program: Qualified public entities and qualified not-for-profit organizations providing direct services to victims and witnesses of crimes as described in B above may apply to the Director of the Division of Criminal Justice for a determination of eligibility.

E. Qualification of an applicant to be considered for the program: In order to apply for an award of moneys from the Victim and Witness Advocacy Fund, qualified public entities and qualified not-for-profit organizations, including qualified not-for-profit organizations listed at N.J.S.A. 52:4B-43.1d, must submit an application to determine eligibility to the Director of the Division of Criminal Justice. Eligibility of a qualified public entity or qualified not-for-profit organization shall be determined based upon the submission of qualifying criteria to the Director of the Division of Criminal Justice. The burden of demonstrating eligibility shall be on the public entity or not-for-profit organization making the application. Public entity includes any public corporation or political subdivision of this State or agency of local government of this State providing direct services to victims or witnesses of crimes. Not-for-profit organization includes any corporation or other organization organized under Title 15A of the New Jersey Revised Statutes or otherwise qualified for non-profit tax exemption providing direct services to victims or witnesses of crimes.

F. Procedure for a qualified public entity or a qualified not-for-profit organization to apply for eligibility to apply for an award: To be eligible a qualified public entity or qualified not-for-profit organization must

LAW AND PUBLIC SAFETY

submit an eligibility application on forms prescribed by the Director, with supporting documentation.

Eligibility applications may be requested by writing to:

Pamela J. Fisher, Chief
Office of Victim-Witness Advocacy
Division of Criminal Justice
Richard J. Hughes Justice Complex
CN 085
Trenton, N.J. 08625-0085

or by telephone:

609-984-3880

G. Address of Division, office or official receiving the application: Same as F above.

H. Deadline by which eligibility applications must be submitted to the office: Eligibility applications must be received at the State Office of Victim-Witness Advocacy, on or before 5 P.M., Wednesday, November 17, 1993.

I. Date by which a qualified public entity or a qualified not-for-profit organization shall be notified of eligibility to apply for an award: A qualified public entity or a qualified not-for-profit organization shall be notified of its eligibility status no later than Friday, December 17, 1993. A qualified public entity or a qualified not-for-profit organization determined to be eligible shall receive an application to apply for an award along with the notification of eligibility.

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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the September 7, 1993 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 promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

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 AUGUST 16, 1993

NEXT UPDATE: SUPPLEMENT SEPTEMBER 20, 1993

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
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24 N.J.R. 3785 and 4144	November 2, 1992	25 N.J.R. 1913 and 2150	May 17, 1993
24 N.J.R. 4145 and 4306	November 16, 1992	25 N.J.R. 2151 and 2620	June 7, 1993
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25 N.J.R. 389 and 616	February 1, 1993	25 N.J.R. 3583 and 3884	August 16, 1993
25 N.J.R. 619 and 736	February 16, 1993	25 N.J.R. 3885 and 4360	September 7, 1993
25 N.J.R. 737 and 1030	March 1, 1993	25 N.J.R. 4361 and 4540	September 20, 1993
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25 N.J.R. 1309 and 1620	April 5, 1993	25 N.J.R. 4695 and 4812	October 18, 1993
25 N.J.R. 1621 and 1796	April 19, 1993		

N.J.A.C. CITATION

PROPOSAL NOTICE (N.J.R. CITATION)

DOCUMENT NUMBER

ADOPTION NOTICE (N.J.R. CITATION)

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14.1, 14.2, 14.3,
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1:13A-1.1, 14.2, 14.4, Lemon Law hearings
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25 N.J.R. 3888(a)

25 N.J.R. 2625(a) R.1993 d.422 25 N.J.R. 4063(a)

Most recent update to Title 1: TRANSMITTAL 1993-1 (supplement June 21, 1993)

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2:69 Commercial fertilizers and soil conditioners
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2:76-5.1-5.4 Soil and water conservation project cost-sharing
2:76-6.11 Farmland Preservation Program: acquisition of
development easements

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25 N.J.R. 3585(a)
25 N.J.R. 3279(a)
25 N.J.R. 3890(a)

Most recent update to Title 2: TRANSMITTAL 1993-5 (supplement August 16, 1993)

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3:41-2.1, 11 Cemetery Board: location of interment spaces and path
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25 N.J.R. 4545(a)
25 N.J.R. 3586(a)
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25 N.J.R. 3587(a)
25 N.J.R. 2799(a)
25 N.J.R. 1035(a)
25 N.J.R. 2625(b) R.1993 d.423 25 N.J.R. 4063(b)
25 N.J.R. 623(a)

Most recent update to Title 3: TRANSMITTAL 1993-6 (supplement July 19, 1993)

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5:18-4.3, 4.7	Fire Safety Code: fire suppression systems in hospitals and nursing homes	25 N.J.R. 1316(a)		
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5:18B-2.8	High level alarms	25 N.J.R. 4363(a)		
5:18C-1.4, 1.5, 1.7, 1.8, 1.9, 2.3	Fire service training and certification	25 N.J.R. 4363(a)		
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5:23-1.4, 2.7, 2.17A	Uniform Construction Code: minor work; ordinary repairs	25 N.J.R. 3692(a)		
5:23-1.4, 2.16, 2.17	Uniform Construction Code: prior approvals; abandoned wells	25 N.J.R. 2158(a)	R.1993 d.420	25 N.J.R. 4072(a)
5:23-2.6, 2.14, 2.23, 3.2, 3.4, 3.8A, 3.11A, 3.14-3.18, 3.20, 3.20A, 3.21, 4.3A, 4A.8, 4A.11, 12.2	Uniform Construction Code: subcodes	25 N.J.R. 3891(a)		
5:23-2.7, 9.3	Uniform Construction Code: ordinary repairs; interpretation	25 N.J.R. 2159(a)	R.1993 d.487	25 N.J.R. 4592(a)
5:23-2.17A	Uniform Construction Code: reroofing work	25 N.J.R. 4546(a)		
5:23-2.18A, 3.11, 4.20	UCC: utility load management device permits; mausoleum plan review; Department fees	25 N.J.R. 4546(b)		
5:23-2.23	Uniform Construction Code: ventilation system requirements in Class I and II business and education buildings	25 N.J.R. 2161(a)	R.1993 d.421	25 N.J.R. 4073(a)
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)		
5:23-4.5	Uniform Construction Code: "Notice of Elevator Device Sealed Out of Operation"	25 N.J.R. 3693(a)		
5:23-4.18	UCC: subcode training registration fee	25 N.J.R. 4548(a)		
5:26-8.2	Meetings of community associations	25 N.J.R. 3693(b)		
5:50	State Review Process for intergovernmental review of applications for Federal financial assistance and direct development activities	25 N.J.R. 3281(a)	R.1993 d.505	25 N.J.R. 4743(a)
5:51	Handicapped persons recreational opportunities	25 N.J.R. 2633(a)	R.1993 d.436	25 N.J.R. 4074(a)
5:70-6.3	Congregate Housing Services Program: service subsidy formula	25 N.J.R. 2634(a)	R.1993 d.437	25 N.J.R. 4075(a)
5:80-23.9	Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program fees	25 N.J.R. 3053(a)		
5:80-26.19	Housing and Mortgage Finance Agency: affordable housing controls	25 N.J.R. 4369(a)		
5:92-1.1	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		

Most recent update to Title 5: TRANSMITTAL 1993-8 (supplement August 16, 1993)

MILITARY AND VETERANS' AFFAIRS—TITLE 5A

5A:7-1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1317(a)		
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Most recent update to Title 5A: TRANSMITTAL 1992-2 (supplement September 21, 1992)

EDUCATION—TITLE 6

6:1 et seq.	Title 6, New Jersey Administrative Code: opportunity for public comment	25 N.J.R. 4369(b)		
6:2	Appeals to State Board of Education	25 N.J.R. 4548(b)		
6:22A	School facility lease purchase agreements	25 N.J.R. 3588(a)		
6:28-4.1	Special education: administrative correction			25 N.J.R. 4743(b)
6:78	Marie H. Katzenbach School for the Deaf	25 N.J.R. 3592(a)		

Most recent update to Title 6: TRANSMITTAL 1993-6 (supplement August 16, 1993)

ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7

7:0	Green glass marketing and recycling: request for public input on feasibility study	25 N.J.R. 1654(a)		
7:0	Regulated Medical Waste Management Plan: public hearing and opportunity for comment	25 N.J.R. 1654(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:0	Site Remediation Program: analysis of strict, joint and several liability under the New Jersey Spill Compensation Act	25 N.J.R. 3694(a)		
7:1D	Allocation of water supply costs for emergency water projects	25 N.J.R. 2635(a)	R.1993 d.497	25 N.J.R. 4595(a)
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1G-1-5, 7	Worker and Community Right to Know	25 N.J.R. 1631(a)		
7:1G-2.1, 6.4	Environmental Hazardous Substances and Industrial Survey lists: copper phthalocyanine compounds; confidentiality	25 N.J.R. 2166(a)		
7:1K-1.5, 3.1, 3.4, 3.9-3.11, 4.3, 4.5, 4.7, 5.1, 5.2, 6.1, 6.2, 7.2, 7.3, 9.2-9.5, 9.7, 12.6-12.9	Pollution Prevention Program requirements	25 N.J.R. 1849(a)		
7:2-2.20, 3.6, 6.4, 8.4, 8.6, 10.2, 16.5, 17.1, 17.3, 17.4, 17.5	State Park Service Code	25 N.J.R. 2799(b)		
7:4B	Historic Preservation Revolving Loan Program	25 N.J.R. 748(a)		
7:7A-1.4, 2.7	Freshwater Wetlands Protection Act rules: definition of project	25 N.J.R. 1642(a)		
7:7E-7.4	Coastal zone management: Outer Continental Shelf oil and gas exploration and development	25 N.J.R. 5(a)		
7:9-1.1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)		
7:9-4	Surface water quality standards: request for public comment on draft Practical Quantitation Levels	24 N.J.R. 4008(a)		
7:9-4 (7:9B)	Surface water quality standards; draft Practical Quantitation Levels; total phosphorus limitations and criteria: extension of comment periods and notice of roundtable discussion	25 N.J.R. 404(a)		
7:9-4 (7:9B-1), 6.3	Surface water quality standards	24 N.J.R. 3983(a)		
7:9-4.14 (7:9B-1.14)	NJPDES program and surface water quality standards: request for public comment regarding total phosphorous limitations and criteria	24 N.J.R. 4008(b)		
7:9-4.14, 4.15 (7:9B-1.14, 1.15)	Surface water quality standards: administrative corrections to proposal	24 N.J.R. 4471(a)		
7:9-4.15	Water surface quality standards: Wallkill River	25 N.J.R. 3755(a)		
7:13-7.1	Delaware River, Pohatcong Township: flood plain redelineation	25 N.J.R. 4370(a)		
7:13-7.1	Overpeck Creek, Englewood: flood plain redelineation	25 N.J.R. 4371(a)		
7:13-7.1	Poplar Brook, Deal: flood plain redelineation	25 N.J.R. 4372(a)		
7:14A	NJPDES Program: opportunity for interested party review of permitting system	25 N.J.R. 411(a)		
7:14A	NJPDES Program: extension of comment period for interested party review of permitting system	25 N.J.R. 1863(a)		
7:14A-1.8	NJPDES Program fees	25 N.J.R. 1358(a)	R.1993 d.477	25 N.J.R. 4486(a)
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)		
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:14A-2.5	NJPDES Program: administrative correction regarding permittee requirements	_____	_____	25 N.J.R. 4791(a)
7:14B-1.6, 2.2, 2.6, 2.7, 2.8, 3.1-3.8	Underground Storage Tanks Program fees	25 N.J.R. 1363(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:20A	Water usage certifications for agricultural or horticultural purposes	25 N.J.R. 3956(a)		
7:25-6	1994-95 Fish Code	25 N.J.R. 3053(b)		
7:25-7.13, 14.1, 14.2, 14.4, 14.6, 14.7, 14.8, 14.11, 14.12, 14.13	Crab management	25 N.J.R. 1371(a)		
7:25-11	Introduction of imported or non-native shellfish or finfish into State's marine waters	24 N.J.R. 3660(a)		
7:25-18.1	Marine fisheries: administrative correction	_____	_____	25 N.J.R. 4495(a)
7:25-18.1, 18.14	Summer flounder permit conditions	25 N.J.R. 2167(a)		
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	25 N.J.R. 754(a)		
7:26-1.4, 9.3	Hazardous waste management: satellite accumulation areas	25 N.J.R. 1864(a)		
7:26-1.9, 11.4, 12.9	Waste management: administrative corrections	_____	_____	25 N.J.R. 4595(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26-2.11, 2.13, 2B.9, 2B.10, 6.2, 6.8	Solid waste flow through transfer stations and materials recovery facilities	24 N.J.R. 3286(c)	R.1993 d.508	25 N.J.R. 4763(a)
7:26-6.6	Procedure for modification of waste flows	25 N.J.R. 991(a)		
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:26-12.3	Hazardous waste management: interim status facilities	24 N.J.R. 4253(a)		
7:26B-1.3, 1.10, 1.11, 1.12	Environmental Cleanup Responsibility Act Program fees	25 N.J.R. 1375(a)		
7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1.4, 2.1, 8.1, 8.2, 16, 17.1, 17.3, 17.4, 23.1-23.7, 25.1, 25.7	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)		
7:27-1.4, 2.1, 8.1, 8.2, 16, 17.1, 17.3, 17.4, 23.1-23.7, 25.1, 25.7	Air pollution control: extension of comment period	25 N.J.R. 4551(a)		
7:27-8.1, 8.3, 8.27	Air pollution control: requirements and exemptions under facility-wide permits	24 N.J.R. 4323(a)	R.1993 d.428	25 N.J.R. 4075(b)
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	25 N.J.R. 631(a)		
7:27-21.1-21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3, 25.4, 25.9, 25.10, 25.11, 25.12	Oxygenated fuels program	25 N.J.R. 4039(a)		
7:27-26	Low Emissions Vehicle Program	25 N.J.R. 1381(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.2, 3.10	Air pollution civil administrative penalties	25 N.J.R. 3339(a)		
7:27A-3.2, 3.10	Air pollution civil administrative penalties: extension of comment period	25 N.J.R. 4551(a)		
7:27A-3.5, 3.10	Control and prohibition of air pollution from oxides of nitrogen: civil administrative penalties	25 N.J.R. 631(a)		
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Oxygenated fuels program penalties	25 N.J.R. 4039(a)		
7:27B-3.1, 3.10	Air pollution sampling and analytical procedures	25 N.J.R. 3339(a)		
7:27B-3.1, 3.10	Air pollution sampling and analytical procedures: extension of comment period	25 N.J.R. 4551(a)		
7:27B-4.1, 4.5-4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations	25 N.J.R. 7(a)	R.1993 d.510	25 N.J.R. 4770(a)
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations; extension of comment period	25 N.J.R. 1039(a)		
7:36	Green Acres Program: opportunity to review draft rule revisions	25 N.J.R. 1473(a)		
7:31-2.5, App. I	Toxic Catastrophe Prevention Act rules: administrative corrections	_____	_____	25 N.J.R. 4791(b)
7:36	Green Acres Grant Program	25 N.J.R. 3405(a)		
Most recent update to Title 7: TRANSMITTAL 1993-8 (supplement August 16, 1993)				
HEALTH—TITLE 8				
8:2A-1	Access to death records	25 N.J.R. 3115(a)		
8:18	Catastrophic Illness in Children Relief Fund Program	25 N.J.R. 2169(a)	R.1993 d.438	25 N.J.R. 4128(a)
8:21-10.1, 10.2, 10.4, 10.6, 10.12	Milk and fluid milk products	25 N.J.R. 4373(a)		
8:23-6	Pilot low-cost spaying and neutering clinic surgery fees	25 N.J.R. 3116(a)		
8:24	Packing of refrigerated foods in reduced oxygen packages by retail establishments: preproposal	25 N.J.R. 660(b)		
8:25-2.1, 2.3	Youth Camp Safety Act standards: administrative corrections	_____	_____	25 N.J.R. 4744(a)
8:31B	Hospital financing: correction to proposal	25 N.J.R. 3566(a)		
8:31B-1.1	Hospital financing	25 N.J.R. 3117(a)		
8:31B-3.41, 4.38, 4.39, 4.40, 7	Hospital reimbursement: uncompensated care	25 N.J.R. 3125(a)		
8:31B-4.41-4.41N	Hospital reimbursement: charity care audit functions	25 N.J.R. 3707(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:33 8:33A-1.2, 1.16	Certificate of Need: application and review process Hospital Policy Manual: applicant preference; equity requirement	25 N.J.R. 2171(a) 24 N.J.R. 4476(a)	R.1993 d.442	25 N.J.R. 4129(a)
8:33A-1.10, 1.16, 1.29	Hospital Policy Manual: capital cap and review process	25 N.J.R. 3710(a)		
8:33E	Cardiac diagnostic facilities and surgery centers: certificate of need	25 N.J.R. 3712(a)		
8:33H	Long-term care services: certificate of need policy	25 N.J.R. 3719(a)		
8:33S	Surgical facilities: certificate of need	25 N.J.R. 2790(a)	R.1993 d.498	25 N.J.R. 4626(a)
8:34	Nursing home administrators: standards for licensing	25 N.J.R. 3727(a)		
8:36	Assisted living residences and comprehensive personal care homes: standards for licensure	25 N.J.R. 3734(a)		
8:40-1.1, 2.3, 2.7, 3.1, 4.12, 5.23, 6.26	Invalid coach and ambulance services: licensure; street EMS	25 N.J.R. 2663(a)		
8:41-4.1, 10.5-10.13, 11	Mobile intensive care programs: standing orders; paramedic clinical training objectives	25 N.J.R. 2665(a)		
8:43	Licensure of residential health care facilities	25 N.J.R. 25(a)	R.1993 d.473	25 N.J.R. 4631(a)
8:43	Licensure of residential health care facilities: public hearing	25 N.J.R. 757(a)		
8:43A	Ambulatory care facilities: public meeting and request for comments regarding Manual of Standards for Licensure	24 N.J.R. 3603(a)		
8:43A	Licensure of ambulatory care facilities	25 N.J.R. 757(b)	R.1993 d.443	25 N.J.R. 4140(a)
8:44	Operation of clinical laboratories	25 N.J.R. 3904(a)		
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)		
8:44-2.11	Clinical laboratories: reporting by supervisors	25 N.J.R. 3751(a)		
8:57-3.2	Physician reporting of occupational and environmental diseases and injuries	25 N.J.R. 2186(a)		
8:59-5.6	Worker and Community Right to Know: exclusions from labeling requirements	25 N.J.R. 3441(a)		
8:59-App. A, B	Worker and Community Right to Know Act: preproposal concerning Hazardous Substance List and Special Health Hazard Substance List	25 N.J.R. 792(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a), 4260(b); 25 N.J.R. 582(a))	24 N.J.R. 1674(a)	R.1993 d.226	25 N.J.R. 1970(b)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a); 25 N.J.R. 583(a))	24 N.J.R. 2414(b)	R.1993 d.338	25 N.J.R. 2882(b)
8:71	Interchangeable drug products (see 24 N.J.R. 4261(a); 25 N.J.R. 582(b))	24 N.J.R. 2997(a)	R.1993 d.225	25 N.J.R. 1970(a)
8:71	Interchangeable drug products (see 25 N.J.R. 580(b), 2883(a))	24 N.J.R. 4009(a)	R.1993 d.468	25 N.J.R. 4497(a)
8:71	Interchangeable drug products (see 25 N.J.R. 1221(a), 1969(c), 2882(a))	25 N.J.R. 55(a)	R.1993 d.467	25 N.J.R. 4496(b)
8:71	Interchangeable drug products (see 25 N.J.R. 1970(c), 2881(b))	25 N.J.R. 875(a)	R.1993 d.469	25 N.J.R. 4497(b)
8:71	Interchangeable drug products (see 25 N.J.R. 2881(a))	25 N.J.R. 1814(b)	R.1993 d.466	25 N.J.R. 4496(a)
8:71	Interchangeable drug products	25 N.J.R. 1815(a)	R.1993 d.334	25 N.J.R. 2879(c)
8:71	Interchangeable drug products	25 N.J.R. 2802(b)	R.1993 d.465	25 N.J.R. 4495(b)
8:71	Interchangeable drug products	25 N.J.R. 3906(a)		
8:71	List of Interchangeable Drug Products	25 N.J.R. 4377(a)		
8:100	State Health Planning Board: public hearings on draft chapters of State Health Plan	24 N.J.R. 3788(a)		
8:100	State Health Plan: draft chapters	24 N.J.R. 3789(a)		
8:100	State Health Plan: draft chapters on AIDS, and preventive and primary care	24 N.J.R. 4151(a)		

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HIGHER EDUCATION—TITLE 9

9:1	Licensing and degree approval standards	25 N.J.R. 3057(a)		
9:1-5.11	Regional accreditation of degree-granting proprietary institutions	24 N.J.R. 3207(a)	Expired	
9:2-11	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(a)		
9:5-2.1, 2.2, 2.3, 2.5, 2.7	Job training program: unemployed persons tuition waiver	25 N.J.R. 3593(a)		
9:7-9	Paul Douglas Teacher Scholarship Program	25 N.J.R. 3594(a)		
9:9	NJHEEA student loan programs	25 N.J.R. 2187(a)	R.1993 d.441	25 N.J.R. 4079(a)
9:11-1.1, 1.2, 1.4, 1.6, 1.10, 1.22, 1.23	Educational Opportunity Fund: student eligibility for undergraduate grants	25 N.J.R. 1663(a)	R.1993 d.480	25 N.J.R. 4596(a)
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	25 N.J.R. 1946(a)	R.1993 d.479	25 N.J.R. 4597(a)

Most recent update to Title 9: TRANSMITTAL 1993-5 (supplement August 16, 1993)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
HUMAN SERVICES—TITLE 10				
10:3	Contract administration	25 N.J.R. 3694(b)		
10:4	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(b)		
10:8	Patient advance directives; DNR orders; declaration of death	25 N.J.R. 2669(a)		
10:31-1.4, 2.1, 2.2, 2.3, 8.1, 9.1	Screening and Screening Outreach Programs: mental health services	25 N.J.R. 1324(a)		
10:37-5.37-5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:37A	Community residences for mentally ill adults	25 N.J.R. 2672(a)		
10:37B	Psychiatric community residences for youth	25 N.J.R. 2197(a)		
10:38-1.4, 2.1, 2.2, 3.3, 3.4, 3.6, 3.8, 4.3, 5.2, 7.2, 7.4, 7.5, App. C, E, G	Interim Assistance Program for discharged State psychiatric hospital clients	25 N.J.R. 3697(a)		
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:44A	Licensed community residences to developmentally disabled	25 N.J.R. 4378(a)		
10:49-19.1, 19.4, 19.7, 19.11	State-defined HMOs	Emergency (expires 12-3-93)	R.1993 d.525	25 N.J.R. 4793(a)
10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)	R.1993 d.434	25 N.J.R. 4082(a)
10:51-5.6	Pharmaceutical services: income eligibility limits	25 N.J.R. 3407(a)		
10:52-1.9, 1.13	Reimbursement methodology for distinct units in acute care hospitals and for private psychiatric hospitals	24 N.J.R. 4477(a)		
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)		
10:53-1.1	Reimbursement methodology for special hospitals	24 N.J.R. 4477(a)		
10:60-1.1-1.17, 2.2, 2.4, 2.5, 2.8, 2.9, 2.10, 2.12, 2.14, 2.15, 2.16, 3.2, 3.3, 3.6, 4.2, 6, App. A, H	Home Care Services Manual	25 N.J.R. 2803(a)		
10:62	Vision care services	25 N.J.R. 3907(a)		
10:66	Independent clinic services: Medicaid program services	25 N.J.R. 4379(a)		
10:66-1.2, 1.6, 1.7	Independent clinic services: ambulatory care/family planning/surgical facility	25 N.J.R. 2683(a)	R.1993 d.444	25 N.J.R. 4104(a)
10:66-1.5, 1.6, 3	Independent mental health clinics: personal care assistant services	25 N.J.R. 3058(a)	R.1993 d.475	25 N.J.R. 4498(a)
10:69-5.1	HAAAD income eligibility limits	25 N.J.R. 3407(a)		
10:69A-1.2, 6.2	PAAD income eligibility limits	25 N.J.R. 3407(a)		
10:69B	Lifeline Programs	25 N.J.R. 3701(a)		
10:69B-4.2	Lifeline programs: income eligibility limits	25 N.J.R. 3407(a)		
10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)		
10:81-8.22	Medicaid eligibility of dependent child of adolescent parent	25 N.J.R. 2815(a)		
10:81-10.7, 10.8	Refugee Resettlement Program: eligibility limitations	25 N.J.R. 3919(a)		
10:81-11.4, 11.16A, 11.20	Public Assistance Manual: closing criteria for IV-D cases; application fee for non-AFDC applicants	25 N.J.R. 881(a)		
10:81-11.7, 11.9	Non-AFDC child support orders	25 N.J.R. 2816(a)		
10:81-11.21	Review and adjustment of child support orders in AFDC, foster care, and Medicaid Only cases	25 N.J.R. 2818(a)		
10:81-14.18A	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:82-3.2	Assistance Standards Handbook: administrative correction regarding exempt resources	_____	_____	25 N.J.R. 4597(b)
10:82-3.14	Deeming income of parents or guardians of adolescent parent	25 N.J.R. 2819(a)		
10:82-5.3	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:84	Administration of public assistance programs: agency action on public hearing	24 N.J.R. 4480(a)		
10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)		
10:86-10.2, 10.6	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:97-1.3, 3.1	Commission for the Blind and Visually Impaired: licensing procedure for Business Enterprise Program	25 N.J.R. 4551(d)		
10:121A-5.10	Requirements for adoption agencies: searches	25 N.J.R. 3415(a)		
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses	25 N.J.R. 2684(a)	R.1993 d.489	25 N.J.R. 4598(a)
10:126	Family day care registration: manual of requirements	25 N.J.R. 3703(a)		
10:133C-4	Division of Youth and Family Services: case goals	25 N.J.R. 1947(a)	R.1993 d.490	25 N.J.R. 4598(b)
10:133D-2	DYFS case management: case plan	25 N.J.R. 2209(a)		
10:133D-4	DYFS case management: in-person visits with clients and substitute care providers	25 N.J.R. 2210(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:140	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(a)		
Most recent update to Title 10: TRANSMITTAL 1993-7 (supplement August 16, 1993)				
CORRECTIONS—TITLE 10A				
10A:1-1.2, 2.7	Rulemaking petitions; rule exemptions: administrative changes	_____	_____	25 N.J.R. 4105(a)
10A:1-1.3, 1.4	Public information requests; reimbursement for copying costs	25 N.J.R. 4552(a)		
10A:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(b)		
10A:3-9.6	Recall of inmate to court	25 N.J.R. 2820(a)	R.1993 d.435	25 N.J.R. 4105(b)
10A:4-4.1	Inmate discipline: sexual assault	25 N.J.R. 3416(a)	R.1993 d.488	25 N.J.R. 4599(a)
10A:4-5.1, 5.2, 5.3	Sanctions for prohibited acts committed by inmates	25 N.J.R. 4435(a)		
10A:9-5.5	Restoration to inmates of forfeited commutation credits	25 N.J.R. 4553(a)		
10A:16-9.1	Blood donation by inmates: autologous donations	25 N.J.R. 3920(a)		
10A:31-6.13	Reimbursement for copy costs	25 N.J.R. 4552(a)		
10A:71-7.16	State Parole Board: general conditions of parole and future eligibility upon revocation	25 N.J.R. 3597(a)		
Most recent update to Title 10A: TRANSMITTAL 1993-4 (supplement August 16, 1993)				
INSURANCE—TITLE 11				
11:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1327(a)		
11:1-7	New Jersey Property-Liability Insurance Guaranty Association: plan of operation	25 N.J.R. 1045(a)		
11:1-31	Surplus lines insurer eligibility	25 N.J.R. 1819(a)		
11:1-32.4, 35	Insurance holding company systems	Emergency (expires 10-15-93)	R.1993 d.445	25 N.J.R. 4275(a)
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
11:1-36	Examination of insurers	Emergency (expires 10-15-93)	R.1993 d.446	25 N.J.R. 4284(a)
11:2-17.11	Payment of third-party claims: written notice by insurer to claimant	25 N.J.R. 3921(a)		
11:2-27	Determination of insurers in a hazardous financial condition	Emergency (expires 10-15-93)	R.1993 d.447	25 N.J.R. 4286(a)
11:2-28	Credit for reinsurance	Emergency (expires 10-15-93)	R.1993 d.448	25 N.J.R. 4289(a)
11:2-33.4	Workers' compensation self-insurance: administrative correction	_____	_____	25 N.J.R. 4179(a)
11:2-34	Surplus lines: allocation of premium tax and surcharge	25 N.J.R. 1827(a)		
11:2-36	Risk retention groups and purchasing groups	Emergency (expires 10-15-93)	R.1993 d.449	25 N.J.R. 4298(a)
11:2-37	Producer-controlled insurers	Emergency (expires 10-15-93)	R.1993 d.450	25 N.J.R. 4304(a)
11:2-38	Increase in property and casualty capital and surplus requirements	Emergency (expires 10-15-93)	R.1993 d.451	25 N.J.R. 4306(a)
11:2-39	Increase in capital and surplus requirements for life and health insurers	Emergency (expires 10-15-93)	R.1993 d.452	25 N.J.R. 4309(a)
11:2-40	Life, health and annuity reinsurance agreements	Emergency (expires 10-15-93)	R.1993 d.453	25 N.J.R. 4314(a)
11:3-2.2, 2.4, 2.5, 2.6, 2.11, 2.12	Personal Automobile Insurance Plan	25 N.J.R. 2212(a)		
11:3-3	Limited assignment distribution servicing carriers	25 N.J.R. 1327(b)		
11:3-16.7	Automobile insurance: rating programs for physical damage coverages	24 N.J.R. 3604(a)		
11:3-16.10	Private passenger automobile insurance: rate filing requirements	25 N.J.R. 4436(a)		
11:3-20.5, 20A.1	Automobile insurers: reporting apportioned share of MTF losses in excess profits reports; ratio limiting the effect of negative excess investment income	25 N.J.R. 1829(a)		
11:3-28.1, 28.2, 28.4, 28.6, 28.10-28.13, App. A, B	Reimbursement of excess medical expense benefits paid by automobile insurers	25 N.J.R. 2636(b)		
11:3-29.6	Personal auto injury fee schedule: physician's services	25 N.J.R. 4554(a)		
11:3-42.2, 42.9	Producer Assignment Program: request for exemption	25 N.J.R. 2215(a)		
11:4-37	Selective contracting arrangements of insurers	25 N.J.R. 4554(b)		
11:5	Real Estate Commission rules	25 N.J.R. 3597(b)		
11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.43	Real Estate Commission: licensee provision of Agency Information Statement	25 N.J.R. 1948(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:5-1.43	Real Estate Commission: extension of comment period regarding licensee provision of Agency Information Statement	25 N.J.R. 2645(a)		
11:13-7.4, 7.5	Commercial lines: exclusions from coverage; refiling policy forms	25 N.J.R. 1053(a)		
11:17-1.2, 2.3-2.15, 5.1-5.6	Insurance producer licensing	24 N.J.R. 3216(a)	R.1993 d.507	25 N.J.R. 4744(b)
11:17-6	Managing general agents	Emergency (expires 10-15-93)	R.1993 d.454	25 N.J.R. 4318(a)
11:17-7	Reinsurance intermediaries	Emergency (expires 10-15-93)	R.1993 d.455	25 N.J.R. 4323(a)
11:17A-1.5	Activities for which licensure as insurance producer not required: administrative correction	_____	_____	25 N.J.R. 4179(b)
11:19-2.2, 2.3, 2.5, App. B	Data submission requirements for all domestic insurers	25 N.J.R. 2820(b)		
11:20	Individual Health Coverage Program	25 N.J.R. 2945(a)	R.1993 d.439	25 N.J.R. 4180(a)
11:20-11	Individual Health Insurance Reform Act: relief from obligations	25 N.J.R. 4559(a)		
11:21	Small Employer Health Benefits Program	25 N.J.R. 3599(a)		
11:21-1.3, 1.4, 1.5, 6, 7, 7A, 17, 18, App. Exh. N-T	Small Employer Health Benefits Program	25 N.J.R. 4437(a)		
11:21-2	Small Employer Health Benefits Program: Plan of Operation	25 N.J.R. 4563(a)		
11:21-2	Small Employer Health Benefits Program: public hearing on Plan of Operation	25 N.J.R. 4678(a)		
11:21-14	Small Employer Health Benefits Program: declaration and approval of reinsuring or risk-assuming carrier status	25 N.J.R. 4572(a)		
11:21-15	Small Employer Health Benefits Program: relief from obligations	25 N.J.R. 4577(a)		
11:21-App. Exh. E	Small Employer Health Benefits Program: correction to proposed Appendix Exhibit E and extension of comment period	25 N.J.R. 4458(a)		

Most recent update to Title 11: TRANSMITTAL 1993-8 (supplement August 16, 1993)

LABOR—TITLE 12

12:5	Department audit resolution procedures	25 N.J.R. 3417(a)	R.1993 d.511	25 N.J.R. 4748(a)
12:6	Petitions for rulemaking	25 N.J.R. 3682(a)	R.1993 d.512	25 N.J.R. 4748(b)
12:7	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1334(a)		
12:7	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA): extension of comment period	25 N.J.R. 2216(a)		
12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment Compensation and Temporary Disability: 1994 maximum benefit rates, taxable wage base, government entity contribution rate, base week, and alternative earnings test	25 N.J.R. 3922(a)		
12:17-11.2	Offset of unemployment benefits by retirement and pension income	25 N.J.R. 3923(a)		
12:18-1.1, 2.4, 2.27, 2.40, 2.43, 2.48, 3.1, 3.2, 3.3	Temporary Disability Benefits Program	25 N.J.R. 1515(c)		
12:23	Workforce Development Partnership Program: application and review process for customized training services	25 N.J.R. 449(a)		
12:23-3	Workforce Development Partnership Program: application and review process for individual training grants	25 N.J.R. 884(a)		
12:23-4	Workforce Development Partnership Program: application and review process for approved training	25 N.J.R. 886(a)		
12:23-5	Workforce Development Partnership Program: application and review process for additional unemployment benefits during training	25 N.J.R. 887(a)		
12:23-6	Workforce Development Partnership Program: application and review process for employment and training grants for services to disadvantaged workers	25 N.J.R. 1054(a)		
12:45	Vocational Rehabilitation Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2216(b)		
12:112	Occupational Safety and Health Review Commission	25 N.J.R. 3059(a)	R.1993 d.474	25 N.J.R. 4498(b)
12:175	Ski lift safety	25 N.J.R. 4581(a)		
12:235-1.6	Workers' Compensation: 1994 maximum benefit rate	25 N.J.R. 3925(a)		

Most recent update to Title 12: TRANSMITTAL 1993-7 (supplement August 16, 1993)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A				
12A:1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1335(b)		
12A:10-2	Minority and female contractor and subcontractor participation in State construction contracts	25 N..R. 4461(b)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses: extension of comment period	25 N.J.R. 2216(c)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses	25 N.J.R. 2484(a)		
12A:121	Urban Enterprise Zone Authority: policies	25 N.J.R. 4582(a)		
Most recent update to Title 12A: TRANSMITTAL 1993-4 (supplement August 16, 1993)				
LAW AND PUBLIC SAFETY—TITLE 13				
13:1-7.2	Police Training Commission rules: administrative correction	_____	_____	25 N.J.R. 4106(a)
13:1C	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1338(a)		
13:18-6.1, 6.2	Division of Motor Vehicles: insurance verification	25 N.J.R. 3925(b)		
13:19-10.1	Operating motorcycle or motorized bicycle without protective helmet	25 N.J.R. 2646(a)	R.1993 d.486	25 N.J.R. 4599(b)
13:20-37	Motor vehicles with modified chassis height	24 N.J.R. 3662(a)		
13:20-37	Motor vehicles with modified chassis height: extension of comment period	24 N.J.R. 4333(b)		
13:20-43	Enhanced motor vehicle inspection and maintenance program: pre-proposal	25 N.J.R. 3418(a)		
13:26	Transportation of bulk commodities	25 N.J.R. 1343(a)	R.1993 d.418	25 N.J.R. 4106(b)
13:27-5.8	Board of Architects: examination fees	25 N.J.R. 3704(a)		
13:29-1.13	Board of Accountancy: biennial renewal fee for inactive or retired licensees	25 N.J.R. 1665(b)		
13:30-1.1	Board of Dentistry: qualifications of applicants for licensure to practice	25 N.J.R. 2216(d)		
13:30-8.1	Board of Dentistry: fee schedules	25 N.J.R. 3927(a)		
13:30-8.6	Board of Dentistry: professional advertising	25 N.J.R. 2823(a)		
13:30-8.7	Board of Dentistry: patient records	25 N.J.R. 1833(a)		
13:33-1.35, 1.36	Ophthalmic dispensers and technicians: referrals; space rental agreements	24 N.J.R. 4010(a)		
13:34	Board of Marriage Counselor Examiners rules	25 N.J.R. 3060(a)		
13:35-2A.9, 2A.11, 6.13	Certified midwife practice: prescriptive authority	25 N.J.R. 4583(a)		
13:35-6.10	Board of Medical Examiners: request for comment regarding advertising of specialty certification	25 N.J.R. 2824(a)		
13:35-6.18	Board of Medical Examiners: control of anabolic steroids	24 N.J.R. 4012(a)		
13:35-10	Practice of athletic trainers	25 N.J.R. 265(a)		
13:35-11	Board of Medical Examiners: Alternative Resolution Program	25 N.J.R. 2824(b)		
13:37	Board of Nursing rules	25 N.J.R. 455(b)		
13:37-7	Certification of nurse practitioners/clinical nurse specialists	25 N.J.R. 2829(a)		
13:37-12.1	Board of Nursing: fee schedule	25 N.J.R. 3928(a)		
13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)		
13:37-14	Homemaker-home health aide competency evaluation: public hearing	25 N.J.R. 3704(b)		
13:39-5.2	Board of Pharmacy: information on prescription labels	25 N.J.R. 1667(a)		
13:39A-2.5	Board of Physical Therapy: referral of patients from chiropractors	25 N.J.R. 3938(a)		
13:41-2.1	Board of Professional Planners: professional misconduct	24 N.J.R. 3221(a)	R.1993 d.506	25 N.J.R. 4748(c)
13:42	Board of Psychological Examiners rules	25 N.J.R. 3062(a)		
13:42	Board of Psychological Examiners rules: public hearing and extension of comment period regarding psychoanalysis and scope of practice, and employment by non-profit community organization	25 N.J.R. 4585(a)		
13:42-1.2	Board of Psychological Examiners: written examination fee	25 N.J.R. 3929(a)		
13:43	State Board of Shorthand Reporting rules	25 N.J.R. 3079(a)	R.1993 d.471	25 N.J.R. 4499(a)
13:44-1.2, 1.3, 1.4, 2.9	Board of Veterinary Medical Examiners: examinations	25 N.J.R. 3930(a)		
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: late renewal and reinstatement fee timeframes	25 N.J.R. 3931(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)		
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
13:44E-2.9	Board of Chiropractic Examiners: notification of change of address; service of process	25 N.J.R. 3936(a)		
13:44E-2.10, 2.11	Board of Chiropractic Examiners: display of license; right to licensure hearing	25 N.J.R. 3936(b)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization of services; excessive fees	25 N.J.R. 3937(a)		
13:44E-2.14	Board of Chiropractic Examiners: referral of patients to physical therapists	25 N.J.R. 3938(a)		
13:44G-1-5, 7, 8	Board of Social Work Examiners rules	25 N.J.R. 3081(a)		
13:45A-12.3	Sale of animals: administrative correction	_____	_____	25 N.J.R. 4600(a)
13:45A-21, 22	Kosher Enforcement Bureau: sale of food represented as kosher	25 N.J.R. 3086(a)		
13:45A-26	Automotive dispute resolution	25 N.J.R. 3939(a)		
13:46-23.5, 23A	State Athletic Control Board: standards of ethical conduct	24 N.J.R. 4489(a)	R.1993 d.460	25 N.J.R. 4499(b)
13:60	Motor carrier safety	25 N.J.R. 3091(a)	R.1993 d.472	25 N.J.R. 4501(a)
13:70-1.31	Thoroughbred racing: prohibited services by Racing Commission employees and appointees	25 N.J.R. 4458(b)		
13:70-3.40	Thoroughbred racing: minimum age for admittance to racetrack	25 N.J.R. 2647(a)	R.1993 d.483	25 N.J.R. 4600(b)
13:70-12.4	Thoroughbred racing: claimed horse	25 N.J.R. 1059(a)		
13:70-14A.1	Thoroughbred racing: intent of medication rules	25 N.J.R. 3099(a)		
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	25 N.J.R. 3100(a)		
13:70-20.11	Thoroughbred racing: limitations on entering or starting	25 N.J.R. 3101(a)		
13:70-21.4	Thoroughbred racing: medication	25 N.J.R. 3102(a)		
13:70-29.52	Thoroughbred racing: Pick(N)	25 N.J.R. 4585(b)		
13:70-29.53	Thoroughbred racing: trifecta	25 N.J.R. 3103(a)	R.1993 d.516	25 N.J.R. 4751(a)
13:71-1.26	Harness racing: prohibited services by Racing Commission employees and appointees	25 N.J.R. 4459(a)		
13:71-2.3	Harness racing: suspension from driving	25 N.J.R. 2647(b)	R.1993 d.484	25 N.J.R. 4600(c)
13:71-5.18	Harness racing: minimum age for admittance to racetrack	25 N.J.R. 2648(a)	R.1993 d.485	25 N.J.R. 4600(d)
13:71-23.1	Harness racing: intent of medication rules	25 N.J.R. 3104(a)		
13:71-23.3B, 23.3C	Harness racing: pre-race blood gas analyzing machine testing program	25 N.J.R. 3427(a)	R.1993 d.513	25 N.J.R. 4751(b)
13:71-23.8	Harness racing: administering medication to respiratory bleeders	25 N.J.R. 3105(a)		
13:71-27.50	Harness racing: trifecta	25 N.J.R. 3106(a)	R.1993 d.515	25 N.J.R. 4752(a)
13:71-27.56	Harness racing: the Pick(N)	25 N.J.R. 3705(a)	R.1993 d.514	25 N.J.R. 4752(b)
13:79	Safe and Secure Communities Program	Emergency (expires 10-26-93)	R.1993 d.476	25 N.J.R. 4511(a)

Most recent update to Title 13: TRANSMITTAL 1993-8 (supplement August 16, 1993)

PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14

14:0	IntraLATA competition for telecommunications services: preproposal	25 N.J.R. 3682(b)		
14:0	Intrastate dial-around compensation: preproposal	25 N.J.R. 4586(a)		
14:3-3.6	Discontinuance of service to multi-family dwellings	25 N.J.R. 1346(a)		
14:3-10.15	Solid waste collection: customer lists	24 N.J.R. 3286(c)	R.1993 d.508	25 N.J.R. 4763(a)
14:11-7.10	Solid waste disposal facilities: initial tariff for special in lieu payment	24 N.J.R. 3286(c)	R.1993 d.508	25 N.J.R. 4763(a)
14:11-8	Natural gas pipelines	25 N.J.R. 897(a)	R.1993 d.361	25 N.J.R. 4106(c)
14:18-2.11	Cable television: pre-proposal regarding disposition of on-premises wiring	24 N.J.R. 4496(a)		
14:18-2.11	Cable television: change in hearing date and comment period for pre-proposal regarding disposition of on-premises wiring	25 N.J.R. 270(a)		
14:18-10.5	Cable television: performance monitoring	25 N.J.R. 2700(a)		

Most recent update to Title 14: TRANSMITTAL 1993-4 (supplement July 19, 1993)

ENERGY—TITLE 14A

Most recent update to Title 14A: TRANSMITTAL 1993-1 (supplement February 16, 1993)

STATE—TITLE 15

15:1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1347(a)		
15:10-8	Certification of electronic voting systems	25 N.J.R. 4587(a)		

Most recent update to Title 15: TRANSMITTAL 1993-2 (supplement May 17, 1993)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PUBLIC ADVOCATE—TITLE 15A				
Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)				
TRANSPORTATION—TITLE 16				
16:1B	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1478(a)		
16:25	Utility accommodation	25 N.J.R. 2217(a)	R.1993 d.433	25 N.J.R. 4111(a)
16:28-1.6, 1.56, 1.111	Speed limit zones along U.S. 40, U.S. 40 and 322, and Route 87 in Atlantic County	25 N.J.R. 3942(a)		
16:28-1.33	Speed limit zones along Route 41 in Gloucester, Camden, and Burlington counties	25 N.J.R. 2833(a)	R.1993 d.456	25 N.J.R. 4507(a)
16:28-1.92	Speed limit zones along Route 169 in Bayonne and Jersey City	25 N.J.R. 2834(a)	R.1993 d.457	25 N.J.R. 4507(b)
16:28-1.125	Speed limits along Route 67 in Fort Lee	25 N.J.R. 3442(a)	R.1993 d.500	25 N.J.R. 4601(a)
16:28A-1.2, 1.31, 1.36, 1.44	Parking restrictions along U.S. 1 and 9 in Elizabeth, Route 45 in Woodbury, Route 57 in Washington Borough, Route 88 in Lakewood and Brick Township	25 N.J.R. 3443(a)	R.1993 d.499	25 N.J.R. 4601(b)
16:28A-1.6, 1.7, 1.33, 1.41, 1.52, 1.57	Restricted parking and stopping on Route 7 in Nutley, U.S. 9 in Galloway Township, Route 47 in Vineland, Route 77 in Bridgeton, Route 173 in Bethlehem, and U.S. 206 in Lawrence Township	25 N.J.R. 2649(a)	R.1993 d.426	25 N.J.R. 4118(a)
16:28A-1.19	Parking restrictions along Route 28 in Bound Brook	25 N.J.R. 3943(a)		
16:28A-1.19, 1.57	Parking restrictions along Route 28 in Bound Brook and U.S. 206 in Hamilton Township	25 N.J.R. 4459(b)		
16:28A-1.20, 1.25, 1.31, 1.41	Restricted parking and stopping along Route 29 in Lambertville, Route 35 in Berkeley Township, Route 45 in Woodbury, and Route 77 in Bridgeton	25 N.J.R. 3127(a)	R.1993 d.501	25 N.J.R. 4602(a)
16:28A-1.36	Restricted parking along Route 57 in Washington Borough	25 N.J.R. 2834(b)	R.1993 d.458	25 N.J.R. 4507(c)
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:28A-1.41	Restricted parking along Route 77 in Bridgeton	25 N.J.R. 3944(b)		
16:28A-1.41	Time limit parking in Bridgeton	25 N.J.R. 4118(a)		
16:30-3.8	Shoulder use lane along I-195 in Millstone Township	25 N.J.R. 2651(a)	R.1993 d.427	25 N.J.R. 4117(a)
16:30-6.1	Weight limit on Edison Bridge along U.S. 9 over Raritan River	Emergency (expires 9-27-93)	R.1993 d.417	25 N.J.R. 3863(a)
16:30-10.15	Midblock crosswalk along Route 27 in Franklin Township and North Brunswick	25 N.J.R. 3128(a)	R.1993 d.502	25 N.J.R. 4603(a)
16:30-10.16	Midblock crosswalk on Route 71 in Belmar	25 N.J.R. 3683(a)		
16:31-1.10	Left turn prohibition along U.S. 30 in Magnolia Borough	25 N.J.R. 3445(a)	R.1993 d.503	25 N.J.R. 4603(b)
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